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Contents

Federal Register

Vol. 69, No. 144

Wednesday, July 28, 2004

Agricultural Marketing Service
PROPOSED RULES
Kiwifruit grown in—
California, 44975–44981

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Meetings:
Horse protection technology, 45004

Army Department
PROPOSED RULES
Personnel:
Decorations, medals, ribbons, and similar devices, 45113–45170
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45023

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Botswana; psychosocial support and peer counseling service to HIV-infected women and their families; expansion; correction, 45112

Coast Guard
RULES
Pollution:
Ballast water—
Mandatory management program for U.S. waters, 44952–44961

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Vietnam, 45021–45022

Commodity Futures Trading Commission
PROPOSED RULES
Confidential information and commission records and information, 44981–44988

Comptroller of the Currency
RULES
Risk-based capital:
Consolidated asset-backed commercial paper program assets—
Capital treatment, 44908–44925

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45022–45023

Customs and Border Protection Bureau
NOTICES
Tariff Suspension and Trade Act:
2004 FINA World Swimming Championships; duty-free treatment of imported articles, 45072

Defense Department
See Army Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Individual Case Management Program terminated, Persons with Disabilities Program renamed, and extended and custodial care policies clarified, 44942–44952
PROPOSED RULES
Grant and agreement regulations; OMB policy directives, 44990–45002

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Children with disabilities; services and results improvement, 45023–45024
Vocational and adult education:
National Research Centers; project period extension and waivers, 45024–45026

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45026
Atomic energy agreements; subsequent arrangements, 45026

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 44967–44970
Wyoming, 44965–44967
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 45003
Washington; correction, 45112
NOTICES
Pesticide, food, and feed additive petitions:
Abamectin, 45037–45042
Carfentrazone-ethyl, 45042–45047
Spiromesifen, 45047–45051
Pesticide programs:
Risk assessments—
2,4-DB (4-(2,4-dichlorophenoxy) butyric acid, etc., 45035–45037

Pesticides; experimental use permits, etc.:
Syngenta Seeds, Inc., 45051–45053
Reports and guidance documents; availability, etc.:
Green Construction Specs; Federal Guide, 45053–45055

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations, etc.—
Other financial institutions lending, 44925

Federal Accounting Standards Advisory Board
NOTICES
Reports and guidance documents; availability, etc.:
Reclassification of statement of social insurance; proposal to defer effective date, 45055–45056

Federal Aviation Administration
RULES
Airworthiness directives:
Rolls-Royce plc, 44925–44927

Federal Communications Commission
RULES
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services
Captioned telephone providers; waiver deadlines reminder, 44970–44971

Federal Deposit Insurance Corporation
RULES
Risk-based capital:
Consolidated asset-backed commercial paper program assets—
Capital treatment, 44908–44925

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 45032–45033
Environmental statements; availability, etc.:
Fall River Rural Electric Cooperative, Inc., 45033–45034
Hydroelectric applications, 45034–45035
Meetings:
Northern Natural Gas Co.; settlement conference, 45035
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 45027
CenterPoint Energy Gas Transmission Co., 45027–45028
Chandeleur Pipe Line Co., 45028
Equitrans, L.P., 45028–45029
Iroquois Gas Transmission System, L.P., 45029
Midwestern Gas Transmission Co., 45029–45030
National Fuel Gas Supply Corp., 45030
North Baja Pipeline, LLC, 45030
Viking Gas Transmission Co., 45030–45031
West Texas Gas, Inc., 45031–45032

Federal Maritime Commission
NOTICES
Agreements filed, 45056
Ocean transportation intermediary licenses:
A A Shipping LLC et al., 45056–45057
Amoy Line et al., 45057
Delta Line International, Inc., et al., 45057
Senior Executive Service:
Performance Review Board; membership, 45057

Federal Reserve System
RULES
Risk-based capital:
Consolidated asset-backed commercial paper program assets—
Capital treatment, 44908–44925
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45057–45058
Banks and bank holding companies:
Change in bank control, 45058
Formations, acquisitions, and mergers, 45058–45059

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45059–45060
Premerger notification waiting periods; early terminations, 45060–45063
Prohibited trade practices:
Aspen Technology, Inc., 45063–45066
Nutramax Laboratories, Inc., 45066–45067
Senior Executive Service:
Performance Review Board; membership, 45067

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Marketable book-entry Treasury bills, notes, and bonds:
Plain Language Uniform Offering Circular; sale and issue, 45201–45224

Food and Drug Administration
RULES
Color additives:
D&C Black No. 2; cosmetics coloring, 44927–44930
NOTICES
Human drugs:
New drug applications—
Schering Corp. et al.; approval withdrawn; correction, 45068

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Eastern Arizona, 45004
Lake County, 45005

Government Ethics Office
RULES
Certificates of divestiture, 44893–44896

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45067–45068

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45072–45075

Industry and Security Bureau
NOTICES
Export transactions:
List of unverified persons in foreign countries, guidance to exporters as to ''red flags''(Supplement No. 3 to 15 CFR part 732); update, 45008–45010

Internal Revenue Service
RULES
Income taxes:
Charitable contributions; allocation and apportionment of deductions, 44930–44932
PROPOSED RULES
Income taxes:
Charitable contributions; allocation and apportionment of deductions, 44988–44990

International Trade Administration
NOTICES
Antidumping:
Frozen concentrated orange juice from—
Brazil, 45012
Preserved mushrooms from—
China, 45012–45017
Antidumping and countervailing duties:
Administrative review requests, 45010–45012

International Trade Commission
NOTICES
Import investigations:
Audio digital-to-analog converters and products containing same, 45075
Sebacic acid from—
China, 45075–45076
Stainless steel plate from—
Various countries, 45076–45077
Stainless steel wire rod from—
Various countries, 45077
U.S.-Bahrain Free Trade Agreement; potential economywide and selected sectoral effects, 45077–45078

Justice Department
See Justice Programs Office
RULES
Executive Office for Immigration Review:
Definitions; fees; powers and authority of Department of Homeland Security officers and employees in removal proceedings, 44903–44908

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45078–45081

Labor Department
See Occupational Safety and Health Administration

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 45084–45085

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Exemption petitions, etc.—
Ford Motor Co., 45109–45110
Yokohama Tire Corp., 45110
Nonconforming vehicles—
Importation eligibility; determinations, 45110–45111

National Institute of Standards and Technology
NOTICES
Committees; establishment, renewal, termination, etc.:
Advanced Technology Program Advisory Committee, 45018
Advanced Technology Visiting Committee, 45017–45018
Malcolm Baldrige National Quality Award Board of Overseers, 45018–45019
Malcolm Baldrige National Quality Award Judges Panel, 45019–45020
Manufacturing Extension Partnership National Advisory Board, 45020
Meetings:
Help America Vote Act; National Voluntary Laboratory Accreditation Program; workshop, 45020–45021

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45068–45069
Meetings:
National Institute of Allergy and Infectious Diseases, 45071
National Institute of Dental and Craniofacial Research, 45069–45070
National Institute of Neurological Disorders and Stroke, 45070
National Institute on Aging, 45070–45071
Scientific Review Center, 45071–45072

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Deep-water species, 44973
Northern rockfish, 44973–44974
NOTICES
Permits:
Scientific research, 45021

National Science Foundation
NOTICES
Meetings; Sunshine Act, 45085–45086

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45086–45087
Environmental statements; availability, etc.:
King's College, Wilkes-Barre facility, PA, 45088–45089
University of Texas, Austin, TX, 45089–45091
Applications, hearings, determinations, etc.:
Kennecott Uranium Co., 45087–45088
Union Electric Co., 45088

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, extension, 45081–45083

Postal Service
RULES
Persons with disabilities; access to Postal Service programs, activities, facilities, and electronic and information technology, 44962–44965
PROPOSED RULES
International Mail Manual:
International Priority Mail and International Surface Air Lift mailers; discontinuance of volume discount rates, 45002–45003

Public Debt Bureau
See Fiscal Service

Rural Utilities Service
RULES
Grants:
Broadband Grant Program; eligibility and application requirements, review and approval process, and administration procedures, 44896–44903
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Connect Program, 45005–45008

Securities and Exchange Commission
PROPOSED RULES
Investment advisers:
Hedge fund advisers; registration, 45171–45200
Securities:
Trust and fiduciary activities exception; exemptions and defined terms (Regulation B), 44988
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 45091–45102
Chicago Board Options Exchange, Inc., 45102–45103
National Association of Securities Dealers, Inc., 45103–45104
Pacific Exchange, Inc., 45104–45106

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45106
Small business size standards:
Nonmanufacture rule; waivers—
Miscellaneous electrical equipment and component manufacturing, 45106
Other communications equipment manufacturing, 45107
Paint and paint manufacturing, 45107–45108
Power-driven handtool manufacturing, 45106–45107

State Department
NOTICES
Art objects; importation for exhibition:
Dead Sea Scrolls, 45108
Totems to Turquoise: Native North American Jewelry Arts of the Northwest and Southwest, 45108
Grants and cooperative agreements; availability, etc.:
U.S.-Egypt Science and Technology Program, 45108–45109

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Peoria, IL, et al., 45111

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
RULES
Risk-based capital:
Consolidated asset-backed commercial paper program assets—
Capital treatment, 44908–44925

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
Director of Intelligence and Security, 44971–44973

Treasury Department
See Comptroller of the Currency
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
RULES
Terrorism Risk Insurance Program:
Litigation management, 44932–44942

Separate Parts In This Issue

Part II
Defense Department, Army Department, 45113–45170

Part III
Securities and Exchange Commission, 45171–45200

Part IV
Treasury Department, Fiscal Service, 45201–45224

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2634.....44893

7 CFR
1739.....44896

Proposed Rules:
920.....44975

8 CFR
1001.....44903
1003.....44903
1103.....44903
1287.....44903

12 CFR
3.....44908
208.....44908
225.....44908
325.....44908
567.....44908
614.....44925
615.....44925

14 CFR
39.....44925

17 CFR

Proposed Rules:
40.....44981
41.....44981
145.....44981
240.....44988
242.....44988
275.....45172
279.....45172

21 CFR
74.....44927

26 CFR
1.....44930

Proposed Rules:
1.....44988

31 CFR
50.....44932
356.....45202

32 CFR
199.....44942

Proposed Rules:
21.....44990
22.....44990
25.....44990
32.....44990
33.....44990
34.....44990
37.....44990
578.....45114

33 CFR
151.....44952

39 CFR
255.....44962

Proposed Rules:
20.....45002

40 CFR
52 (2 documents) 44965, 44967

Proposed Rules:
52 (2 documents) 45003, 45112

47 CFR
64.....44970

49 CFR
1.....44971

50 CFR
679 (2 documents) 44973

Rules and Regulations

Federal Register
Vol. 69, No. 144
Wednesday, July 28, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Revisions to the Certificates of Divestiture Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: In this final rule, the Office of Government Ethics has rewritten its regulation concerning Certificates of Divestiture in plain language. This rule also revises certain procedures for issuing Certificates of Divestiture and the definition of permitted property into which proceeds of the sale of property are reinvested.

DATES: *Effective Date:* August 27, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah J. Bortot, Office of Government Ethics; Telephone: 202–482–9300; TDD: 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1043 of the Internal Revenue Code of 1986, 26 U.S.C. 1043, was enacted as part of the Ethics Reform Act of 1989 (Pub. L. 101–194). Section 1043 authorizes the Director of OGE to issue a Certificate of Divestiture to an eligible person who is divesting property in order to comply with a Federal conflict of interest law, regulation, rule, or Executive order, or if requested by a congressional committee as a condition of confirmation. A person who receives a Certificate of Divestiture may defer payment of capital gains tax as long as he or she timely purchases certain permitted property with the proceeds of the sale. OGE published an interim rule on April 18, 1990 (at 55 FR 14407–14409) implementing section 1043. On June 25, 1996, the Office of Government Ethics published a final rule at 61 FR 32633–32636. The final rule was based on comments to the interim rule and on OGE's experience under the interim rule and the May 1990 Technical Corrections to the Ethics Reform Act of 1989 (Pub. L. 101–280), which amended section 1043 of the Internal Revenue Code of 1986. The OGE Certificates of Divestiture executive branchwide regulation is now codified at subpart J of 5 CFR part 2634.

On January 13, 2004, OGE published a set of proposed amendments to the regulation, proposing to make certain improvements. See 69 FR 1954–1957. The proposed rule provided a 60-day comment period. The Office of Government Ethics received one comment letter from an organization. After a careful review of the comment letter and making some additional plain language modifications, OGE is publishing this final rule.

II. Summary of Comments and Revisions

We have attempted to improve the current Certificates of Divestiture regulation by: Organizing the material more logically; using shorter sentences; eliminating unnecessary technical language; and stating the rule's requirements more clearly. The one comment letter suggested many changes to make the regulation even simpler. After careful review, OGE has adopted some of the suggestions. In particular, we have redrafted §§ 2634.1001 and 2634.1003 of the proposed rule to make them easier to understand. Consequently, § 2634.1001 of the proposed rule is now divided into §§ 2634.1001 and 2634.1002, and proposed sections 2634.1002–2634.1007 have been renumbered in this final rule accordingly.

The final rule retains the same revisions as set forth in the proposed rule. First, we changed the meaning of a ''diversified investment fund,'' in paragraph (2) of the definition of permitted property in new (renumbered) § 2634.1003, to track the definition of diversified mutual fund and diversified unit investment trust as those terms are used in 5 CFR 2640.102.[1] Second, several changes will streamline and simplify the procedure OGE uses to issue a Certificate of Divestiture. The final rule clarifies the information related to financial disclosure that needs to be submitted as part of the Certificate of Divestiture request and simplifies the procedure related to the timing of a submission of a request to OGE.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preambles to the proposed and final revisions, to be codified in a revised subpart J of 5 CFR part 2634, note the legal basis and benefits of as well as the need for the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this regulation, once it becomes effective, since the provisions only clarify and improve the Certificates of Divestiture regulatory procedures. Finally, this rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C.

[1] When the Certificate of Divestiture rule was first published in April 1990, the definition of ''diversified investment fund'' included common trust funds maintained by banks. At that time, common trust funds were required to be diversified under rules published by the Comptroller of the Currency. However, in December 1996, the Office of the Comptroller of the Currency eliminated the diversification requirement. *See* 61 FR 68543, 68551. Therefore, common trust funds are not a suitable alternative for permitted property and have been deleted from the definition of diversified investment fund. Eligible persons who invested in common trust funds as permitted property prior to the effective date of this final rule may continue to hold those funds.

chapter 6) that this amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and members of their immediate families.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final amended regulation because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: July 21, 2004.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Subpart J of part 2634 is revised to read as follows:

Subpart J—Certificates of Divestiture

Sec.

2634.1001 Overview.
2634.1002 Role of the Internal Revenue Service.
2634.1003 Definitions.
2634.1004 General rule.
2634.1005 How to obtain a Certificate of Divestiture.
2634.1006 Rollover into permitted property.
2634.1007 Cases in which Certificates of Divestiture will not be issued.
2634.1008 Public access to a Certificate of Divestiture.

Subpart J—Certificates of Divestiture

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and establishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

Eligible person means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

Permitted property means:

(1) An obligation of the United States; or

(2) A diversified investment fund. A diversified investment fund is a diversified mutual fund or diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);

(3) Provided, however, a permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive order. As a result, requirements applicable to specific agencies and positions may limit an eligible person's choices of permitted property. An employee seeking a Certificate of Divestiture should consult the appropriate designated agency ethics official to determine whether a statute, regulation, rule, or Executive order may limit choices of permitted property.

§ 2634.1004 General rule.

(a) The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property in accordance with the procedures of § 2634.1005 of this subpart if:

(1) The Director determines that divestiture of the property by an eligible person is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; or

(2) A congressional committee requires divestiture as a condition of confirmation.

(b) The Director of the Office of Government Ethics cannot issue a Certificate of Divestiture for property that already has been sold.

Example 1 to § 2634.1004: An employee is directed to divest shares of stock, a limited partnership interest, and foreign currencies. If the sale of these assets will result in capital gains under the Internal Revenue Code, the employee may request and receive a Certificate of Divestiture.

Example 2 to § 2634.1004: An employee of the Department of Commerce is directed to divest his shares of XYZ stock acquired through the exercise of options held in an employee benefit plan. His gain from the sale of the stock will be treated as ordinary

income. Because only capital gains realized under Federal tax law are eligible for deferral under section 1043, a Certificate of Divestiture cannot be issued for the sale of the XYZ stock.

Example 3 to § 2634.1004: During her Senate confirmation hearing, a nominee to a Department of Defense (DOD) position is directed to divest stock in a DOD contractor as a condition of her confirmation. Eager to comply with the order to divest, the nominee sells her stock immediately after the hearing and prior to being confirmed by the Senate. Once she is a DOD employee, she requests a Certificate of Divestiture for the stock. Because the Office of Government Ethics cannot issue a Certificate of Divestiture for property that has already been divested, the employee's request for a Certificate of Divestiture will be denied.

Example 4 to § 2634.1004: After receiving a Certificate of Divestiture, the spouse of a Food and Drug Administration employee sold stock in a regulated company. Between the time of the request for the Certificate of Divestiture and the sale of the stock, the stock price dropped and the spouse sold the stock at a loss. Because the sale of the stock did not result in capital gains, the spouse has no need for the Certificate of Divestiture and cannot submit it to the Internal Revenue Service for deferral of gains. No further action need be taken by the employee or the employee's spouse in connection with the Certificate of Divestiture.

§ 2634.1005 How to obtain a Certificate of Divestiture.

(a) *Employee's request to the designated agency ethics official.* An employee seeking a Certificate of Divestiture must submit a written request to the designated agency ethics official at his or her agency. The request must contain:

(1) A full and specific description of the property that will be divested. For example, if the property is corporate stock, the request must include the number of shares for which the eligible person seeks a Certificate of Divestiture;

(2) A brief description of how the eligible person acquired the property;

(3) A statement that the eligible person holding the property has agreed to divest the property; and

(4)(i) The date that the requirement to divest first applied; or

(ii) The date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements.

(b) *Designated agency ethics official's submission to the Office of Government Ethics.* The designated agency ethics official must forward to the Director of the Office of Government Ethics the employee's written request described in paragraph (a) of this section. In addition, the designated agency ethics official must submit:

(1) A copy of the employee's latest financial disclosure report. If the employee is not required to file a financial disclosure report, the designated agency ethics official must obtain from the employee, and submit to the Office of Government Ethics, a listing of the employee's interests that would be required to be disclosed on a confidential financial disclosure report excluding gifts and travel reimbursements. For purposes of this listing, the reporting period is the preceding twelve months from the date the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property;

(2) An opinion that describes why divestiture of the property is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; and

(3) A brief description of the employee's position or a citation to a statute that sets forth the duties of the position.

(c) *Divestitures required by a congressional committee.* In the case of a divestiture required by a congressional committee as a condition of confirmation, the designated agency ethics official must submit appropriate evidence that the committee requires the divestiture. A transcript of congressional testimony or a written statement from the designated agency ethics official concerning the committee's custom regarding divestiture are examples of evidence of the committee's requirements.

(d) *Divestitures for property held in a trust.* In the case of divestiture of property held in a trust, the employee must submit a copy of the trust instrument, as well as a list of the trust's current holdings, unless the holdings are listed on the employee's most recent financial disclosure report. In certain cases involving divestiture of property held in a trust, the Director may not issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

Example 1 to paragraph (d): An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. (*See* 5 CFR 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.)

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

§ 2634.1006 Rollover into permitted property.

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

Example 1 to paragraph (a): A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

Example 2 to paragraph (a): The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in

such securities. However, she may invest the proceeds in a diversified mutual fund. See the definition of *permitted property* at § 2634.1003.

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

§ 2634.1007 Cases in which Certificates of Divestiture will not be issued.

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at 5 CFR part 2640 need not be divested for a Certificate of Divestiture to be issued.

Example 1 to paragraph (b): A Department of Agriculture employee owns shares of stock in Better Workspace, Inc. valued at $25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to $15,000 of the stock under the regulatory exemption for interests in securities at 5 CFR 2640.202(a). He would be able to request a Certificate of Divestiture for the $10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a Certificate of Divestiture for the entire $25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above $15,000 again.

(c) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

§ 2634.1008 Public access to a Certificate of Divestiture.

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603 of this part.

[FR Doc. 04–17200 Filed 7–27–04; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1739

RIN 0572–AB94

Broadband Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is publishing regulations to administer the Community Connect Grant Program for the provision of broadband transmission service in rural America. This final rule is intended to establish eligibility and application requirements, the review and approval process, and grant administration procedures for the Community Connect Grant Program.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810. Email address: *Bobbie.Purcell@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Community Connect Grant Program is 10.863. The Catalog is available on a subscription basis from the Superintendent of Documents, the Unites States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an opportunity for public comment. Because this final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This final rule has been examined under RUS environmental regulations at 7 CFR part 1794. The RUS Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0127 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

On July 8, 2002, RUS published a Notice of Funds Availability (''NOFA'') in the **Federal Register** (67 FR 45079) announcing its Community Connect pilot grant program for the provision of broadband transmission service in extremely rural, lower-income American communities. Initially, twenty million dollars in grant authority was made available to promote ''community-oriented connectivity,'' which would stimulate economic development and enhance educational and health care opportunities in rural areas through theretofore unavailable broadband transmission service. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act of 2002, Public Law 107–76, Title III, *Distance Learning and Telemedicine Program (2001).* In addition, a community center that would provide such service free to area residents for two years was required.

In response to the July 8, 2002, NOFA, RUS received more than 300 applications totaling more than $185 million in funding requests. As part of a national competition, RUS reviewed the applications for eligibility and scored the applications according to the rurality of the project, the economic need of the project service area, and the ''community-oriented-connectivity'' benefits to be derived from the proposed service. On May 16, 2003, Secretary of Agriculture, Ann Veneman, announced the 40 highest scoring grants totaling $20,184,642. This announcement fully utilized RUS' 2002 appropriation.

Due to the overwhelming response to that NOFA, RUS had eligible applications on hand totaling more than the $10 million appropriation received for Fiscal Year 2003. *See* Consolidated Appropriations Resolution of 2003, Public Law 108–7, 117 Stat. 11, Title III, *Distance Learning and Telemedicine Program (2003).* To eliminate the need for fully eligible applicants to resubmit applications during Fiscal Year 2003, RUS utilized its 2003 appropriation by funding eligible projects submitted in accordance with the July 8, 2002, NOFA. The 2003 grant announcements were made September 24, 2003.

For Fiscal Year 2004, $9 million in grants will be made available through a national competition to applicants providing broadband transmission service on a ''community-oriented connectivity'' basis. *See* Consolidated Appropriations Act of 2004, Public Law 108–199, 118 Stat. 3, Title III, *Distance Learning and Telemedicine Program (2004).*

To encourage ''community-oriented connectivity,'' RUS will provide grants to eligible applicants who will deploy broadband transmission service in rural communities where such service does not currently exist; who will connect all critical community facilities such as local schools, education centers, libraries, hospitals, health care providers, law enforcement agencies, public safety organizations, fire, and rescue services, as well as residents and businesses; and who will operate a community center which provides free and open access to area residents. Grants will be made available, on a competitive basis, for the deployment of broadband transmission services to critical community facilities, rural residents, and rural businesses and for the construction, acquisition, expansion, and/or operation of a community center which would provide free access to broadband transmission services to community residents for at least two years. Funding is also available for end-user equipment, software, and installation costs. A state-of-the-art community center will not only provide improved access but will aid rural residents in developing on-line businesses and will allow them to reap the benefits of Internet-based advanced placement courses and continuing adult education. Applications are limited to one project, as defined in this regulation. Applicants wishing to serve multiple projects must submit an application for each project.

On May 14, 2004, RUS published a proposed rule in the **Federal Register** (69 FR 26777) and received the following comments addressed below. RUS now is issuing the following final regulation to administer the program for Fiscal Year 2004.

The effective date for this regulation is based on two factors. First, the program will essentially operate as it has been since the pilot phase. No significant changes have been made with the implementation of this regulation. Second, in an effort to expedite the application process this year, RUS believes that an ''immediate'' effective date is necessary in order to proceed with opening the application window to enable application processing and approval of grants during this fiscal year.

Comments

Comment: Funding should be limited to only non-profit entities. The commenter stated that funding for profit companies subsidizes businesses that do not need funding.

Response: RUS believes that limiting funding to only non-profit organizations would inhibit the facilitation of broadband services in many small, rural communities. Where a qualified, for profit organization already exists, it would be burdensome to require a new non-profit organization to be established in order to seek financial assistance. All applicants must compete for funding on a national basis; the scoring criteria is designed to measure the needs and characteristics of the community and residents being served (income levels, population, and need for services), regardless of the type of entity proposing to provide them. In many rural areas, the existing telecommunications company may be the only viable option for promoting service in the most rural and economically challenged areas. Excluding these companies would therefore prohibit the expansion of broadband service to many isolated, rural communities where the utilization of debt financing is economically prohibitive.

Comment: The definition of broadband service (200 Kb/s in both directions) should be raised to 10Mb/s.

Response: RUS uses the Federal Communications Commission's current definition of high-speed advanced services, which is 200 Kb/s upstream and down stream. RUS annually reviews this definition to determine if changes are necessary. Nothing would prohibit an applicant from offering higher speeds.

Comment: Clarification was requested on the definition of ''Service Area''; the commenter was unsure if two towns separated by only a few miles could be combined into one service area.

Response: RUS believes that the definition is clear. It states: Service Area means a *single* [emphasis added]

Community * * *. The definition of Community states: Community means any incorporated or unincorporated town, village, or borough recognized in the U.S. Census in a Rural Area. Therefore, only one Census recognized community (town, village, etc.) is eligible per application. Two or more Census recognized communities, regardless of their proximity to one another cannot be combined. However, unincorporated areas or locally recognized communities, NOT recognized in the Census, that are contiguous to the eligible Census community can be included.

Comment: Concern was expressed over the exclusion of funding for facilities that would duplicate existing services; the commenter stated this provision would protect incumbent telecommunications companies and prohibit another entity from providing service. The commenter believes that this is contrary to the intent of the program.

Response: The purpose of the program is clearly stated in § 1739.1: ''RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services.'' Those areas would be areas without broadband service. If an incumbent local exchange carrier (ILEC) is currently providing service that meets the definition of broadband, there is no need to finance a competing entity using grant funds; RUS has other loan programs that offer financing for competitive local exchange carrier (CLEC) purposes. Grant funding is a very scarce, limited Federal resource. Grant funds in this program are specifically targeted to areas where no broadband service exists. In a community where an ILEC is not providing broadband, grant funding is available; however, the grantee may not duplicate the ILEC's voice service.

Comment: When calculating the ''rurality'' of the project, differing demographics such as population dispersion and proximity to other towns should be considered.

Response: In order to fairly score an application, objective scoring criteria should be based on verifiable, widely available data. The legislation authorizing this program defines the eligible population area as being 20,000 or less. Therefore, we have to consider population data. There are other ways to approximate the rurality of an area, but they all have inequities and some are difficult to consistently and fairly measure. By allowing the applicant to define their own limits of the ''service area,'' RUS believes it has provided flexibility to design broadband systems that can serve the widest practical number of rural residents, yet still be a sustainable project.

Comment: Awards should be based on the needs of the communities.

Response: RUS agrees. Community need is one of the scoring criteria on which awards are made. In addition, the other two scoring criteria are a reflection of the community itself (size measured in ''rurality'' and economic need measured by the community's per capita personal income).

Comment: Too much emphasis is being placed on required documentation of local community support for the proposed broadband services (such as town meetings, market surveys, etc.).

Response: Local community support is a key component of this program. This is a unique approach designed to engage an entire community in its implementation and provide a holistic methodology for the deployment of broadband services. As such, applicants must provide documentation that ensures that the proposed services are desired and will be utilized in ways which best meet the community's needs. In addition, experience has proven that the higher the level of involvement from the local community, the more successful and sustainable the project tends to be. That is why it is important for applicants to adequately document their community's involvement in the project.

Comment: Grant size to any one applicant should be limited.

Response: Individual community infrastructure needs vary greatly from one community to the next. For that reason, RUS chose not to limit the size of the grant to any applicant, since the applicant is required to provide service to the entire community. In addition, RUS reserves the right to review and adjust all project costs and expenditures if necessary to ensure that funds are utilized prudently.

Comment: There was concern expressed over the requirement for an engineering design to be submitted with the application; the commenter believes that RUS is requiring a design to be prepared by an engineering firm or consultant and suggested that the engineering design for the project not be required with the application.

Response: An engineering design is a critical component of the application. It provides RUS with assurance that the applicant has the ability to construct the system as proposed and deliver the proposed services. The engineering design must be satisfactory to RUS but does not have to be prepared by an outside engineering firm; the design can be prepared internally.

Comment: Recommendation to adjust the maximum number of computers required for the community center to less than one percent of the population of the community; the commenter supported a minimum of ten computers per center.

Response: There is no ''minimum percentage;'' applicants are only required to have a minimum of ten Computer Access Points in the community center.

Comment: Applicants should be allowed to bundle local exchange telecommunications service with broadband service to help subsidize cost of broadband service.

Response: In order to most efficiently utilize scare grant resources, the grant funds are specifically targeted to provide facilities for the delivery of broadband services where such services do not currently exist; they are not intended to be utilized to replace existing services, such as voice access. This non-duplication policy ensures that funding will be utilized in the most effective manner.

Comment: Recommendation that RUS require proof from the companies that claim to provide broadband service in a proposed area; the commenter is concerned about inaccurate claims on the availability of broadband service.

Response: In the grant program, *the applicant* must certify that broadband service does not currently exist in the proposed service area. This should eliminate inaccurate claims from existing service providers. In addition, before awarding funds, RUS will verify the certification of the applicant through site visits to ensure that broadband service does not exist.

Comment: Recommendation to increase the population eligibility level from 20,000 to 50,000 inhabitants.

Response: The program is statutorily required to limit funding to communities of 20,000 inhabitants or fewer by the appropriations bill which authorized the funding under the Distance Learning and Telemedicine program.

Comment: Consideration should be given for the state of Alaska's unique geographic and demographic circumstances, regarding populations and remoteness, with regard to the definition of community; the scoring criteria for need; the types of services covered; and provision of ''free'' service to critical community facilities.

Response: When implementing a nationally competitive grant program, standards must be set that attempt to treat every applicant as equally as possible. In establishing the scoring criteria and weights for each criterion,

RUS took into consideration measures that it believes offers an equal chance to each applicant without regard to specific geographic location. While two of the measures are objective (rurality and income levels), the third measure is subjective (benefit and need). This subjective measure allows for applicant's to explain the unique issues they are facing and points are awarded based on the application's ability to address those issues and produce benefits.

Comment: Recommendation to include, as eligible for financing, ''extremely rural'' service areas that are not recognized by the Census even if the applicant is not proposing to serve one census recognized community.

Response: In a competitive grant program, it is necessary to have consistent, well defined criteria that ensure that all applicants are treated equally. In doing so, RUS chose to define communities as those recognized by the Census. This enables RUS to verify the population and income levels for each applicant using a neutral, well defined source. This ensures competitive fairness among all applicants and eliminates inaccurate service territory information. RUS encourages the inclusion of non-Census recognized communities that are contiguous to the applicant's Census recognized service territory.

Comment: In lieu of providing a community center with free access to services for two years, allow for a free computer and broadband service to residents' homes for at least two years.

Response: This would undermine the community-oriented connectivity concept, which is key to the program's goal. The community center will facilitate broadband initiatives and provide the necessary training and computer skills to those residents that are seeking them. It will also provide a long-term, low cost means of access beyond two years to those residents that cannot afford service at home. In addition, free home access would strain an applicant's sustainability, since revenues from residential access would be used to support the system and its ability to provide free access to critical community facilities.

List of Subjects in 7 CFR 1739

Broadband; Grant programs—Communications; Rural Areas; Telecommunications; and Telephone.

■ For reasons set forth in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations by adding part 1739 as follows:

PART 1739—BROADBAND GRANT PROGRAM

Subpart A—Community Connect Grant Program

Sec.

1739.1 Purpose.
1739.2 Funding availability and application dates and addresses.
1739.3 Definitions.
1739.4–1739.9 [Reserved]
1739.10 Eligible applicant.
1739.11 Eligible project.
1739.12 Eligible grant purposes.
1739.13 Ineligible grant purposes.
1739.14 Matching contributions.
1739.15 Completed application.
1739.16 Review of grant applications.
1739.17 Scoring of applications.
1739.18 Grant documents.
1739.19 Reporting and oversight requirements.
1739.20 Audit requirements.
1739.21 OMB control number.

Subpart B [Reserved]

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—Community Connect Grant Program

§ 1739.1 Purpose.

(a) The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide, on a ''community-oriented connectivity'' basis, broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained in this subpart.

(b) Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals.

§ 1739.2 Funding availability and application dates and addresses.

(a) RUS will publish, annually in the **Federal Register**, a Notice of Funds Availability (hereinafter ''NOFA'') that will set forth the total amount of funding available; the maximum and minimum funding for each grant; the application submission dates; and the appropriate addresses and agency contact information. The NOFA will also outline and explain the procedures for submission of applications, including electronic submissions. RUS may publish more than one NOFA should additional funding become available.

(b) Notwithstanding paragraph (a) of this section, RUS may, in response to a surplus of qualified eligible applications which could not be funded from the previous fiscal year, decline to publish a NOFA for the following fiscal year and fund said applications without further public notice.

§ 1739.3 Definitions.

As used in this subpart:

Bandwidth means the capacity of the radio frequency band or physical facility needed to carry the Broadband Transmission Service.

Basic Broadband Transmission Service means the broadband transmission service level provided by the applicant at the lowest rate or service package level for residential or business customers, as appropriate, provided that such service meets the requirements of this part.

Broadband Transmission Service means providing an information-rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Community means any incorporated or unincorporated town, village, or borough recognized in the U.S. Census in a Rural Area.

Community Center means a public building, or a section of a public building with at least ten (10) Computer Access Points, that is used for the purposes of providing free access to and/or instruction in the use of broadband Internet service, and is of the appropriate size to accommodate this purpose. The community center must be open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Examples of facilities that may be partially used for the described purposes include school, library, or city hall.

Computer Access Point means a new computer terminal with access to Basic Broadband Transmission Service.

Critical Community Facilities means every public school or education center, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations in the proposed Service Area.

Eligible Applicant shall have the meaning as set forth in § 1739.10.

Eligible Grant Purposes shall have the meaning as set forth in § 1739.12.

End-User Equipment means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, inside wiring, interactive video equipment, or other facilities required for the provision and use of Broadband Transmission Service.

Matching Contribution means the applicant's qualified contribution to the Project, as outlined in § 1739.14.

Project means the applicant's proposed Basic Broadband Transmission Service financed by the grant and Matching Contribution for the proposed Service Area.

Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, which is part of the Rural Development Utilities Program.

Service Area means a single Community, and may include the unincorporated areas or locally recognized communities, not recognized in the U.S. Census, located outside and contiguous to the Community's boundaries, in which the applicant proposes to provide Broadband Transmission Service.

Spectrum means a defined band of frequencies that will accommodate the Broadband Transmission Service.

Telecommunications Terminal Equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over-the-air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

USDA means the United States Department of Agriculture.

§§ 1739.4–1739.9 [Reserved]

§ 1739.10 Eligible applicant.

To be eligible for a grant, the applicant must:

(a) Be legally organized as an incorporated organization, an Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c)*, a state or local unit of government, or other legal entity, including cooperatives or private corporations or limited liability companies organized on a for-profit or not-for-profit basis.

(b) Have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

§ 1739.11 Eligible project.

To be eligible for a grant, the Project must:

(a) Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by RUS prior to the award of the grant;

(b) Serve one Community recognized in the latest U.S. Census. Additional communities located in the contiguous areas outside the Community's boundaries that are not recognized (due to size) in the U.S. Census, can be included in the applicant's proposed Service Area, but must be supported by documentation, acceptable to RUS, as to their existence;

(c) Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

(d) Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

(e) Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

§ 1739.12 Eligible grant purposes.

Grant funds may be used to finance:

(a) The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

(b) The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

(c) End-User Equipment needed to carry out the Project;

(d) Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction. Salary and administrative expenses will be subject to review, and may be limited by RUS for reasonableness in relation to the scope of the Project; and

(e) The purchase of land, buildings, or building construction needed to carry out the Project.

§ 1739.13 Ineligible grant purposes.

(a) Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

(b) Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

§ 1739.14 Matching contributions.

(a) The grant applicant must contribute a Matching Contribution which is at least fifteen percent (15%) of the grant amount requested and shall be in the form of:

(1) Cash for eligible grant purposes.

(2) In-kind contributions for purposes that could have been financed with grant funds under this part. In-kind contributions must be new or non-depreciated assets with established monetary values. Manufacturers' or service providers' discounts shall not be considered as a Matching Contribution.

(3) The rental value of space provided within an existing Community Center, provided that the space is provided free of charge to the applicant, for the first 2 years of operation.

(4) Salary expenses incurred for the individual(s) operating the Community Center, for the first 2 years of operation.

(5) Expenses incurred in operating the Community Center, for the first 2 years of operation.

(b) Costs incurred by the applicant, or by others on behalf of the applicant, for

facilities, installed equipment, or other services rendered prior to submission of a completed application shall not be considered as an Eligible Grant Purpose or Matching Contribution.

(c) Rental values of space provided must be substantiated by rental agreements documenting the cost of space of a similar size in a similar location.

(d) Rental values, salaries, and other expenses incurred in operating the Community Center will be subject to review by RUS for reasonableness in relation to the scope of the Project.

(e) Any financial assistance from federal sources shall not be considered as a Matching Contribution unless there is a federal statutory exception specifically authorizing the federal financial assistance to be considered as such.

§ 1739.15 Completed application.

A completed application must include the following documentation, studies, reports and information in form satisfactory to RUS. Applications should be prepared in conformance with the provisions of this part and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the RUS Application Guide for this program, found at *http://www.usda.gov/rus/telecom/* containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

(a) *An Application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the Project.* The applicant must provide RUS with a general project overview that addresses the following categories:

(1) A description of why the Project is needed;

(2) A description of the applicant;

(3) An explanation of the total Project cost;

(4) A general overview of the broadband telecommunications system to be developed, including the types of equipment, technologies, and facilities to be used;

(5) Documentation describing the procedures used to determine the unavailability of existing Broadband Transmission Service; and

(6) A description of the participating Critical Community Facilities.

(c) *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in § 1739.17.

(d) *System design.* The applicant must submit a system design that contains the following, satisfactory to RUS:

(1) A narrative discussing the proposed Community Center, all costs of the Project, all existing and proposed facilities that are a part of the Project, the services to be provided by the Project, and the proposed Service Area;

(2) Engineering design studies providing an economical and practical engineering design of the Project, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs; and

(3) A map of the proposed Service Area reflecting the proposed location of the Community Center and all participating Critical Community Facilities.

(e) *Scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the Project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the Project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line item costs for Eligible Grant Purposes, the Matching Contribution, and other sources of funds necessary to complete the Project.

(f) *Community-Oriented Connectivity Plan.* The applicant must provide a Community-Oriented Connectivity Plan consisting of the following:

(1) A listing of all participating Critical Community Facilities to be connected. For those Critical Community Facilities in the Service Area which will not be included in the Project, an explanation of why they are not being included should be provided. The applicant must also provide documentation that it has consulted with agents of all Critical Community Facilities in the Service Area, and must provide statements as to their willingness to participate, or not to participate, in the proposed Project;

(2) A description of the services available to local residents through the use of the Community Center;

(3) A listing of the proposed Telecommunications Terminal Equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the Project designed to further the deployment and use of Broadband Transmission Service, that the applicant intends to build or fund using RUS grant funds and the Matching Contribution; and

(4) If other telecommunications carriers (including interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) are participating in the delivery of services, a description of the consultations and the anticipated role of such providers in the proposed Project.

(g) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating the sustainability of the Project during the first two years and after completion and the sufficiency of resources and expertise necessary to undertake and complete the Project. The following financial information is required:

(1) Certified financial statements, if available; otherwise, the most current income statement and balance sheet for existing operations; and

(2) *Pro forma* financial information for 5 years, evidencing the sustainability of the Project.

(h) *A statement of experience.* Information on the owners' and principal employees' relevant work experience that would ensure the success of the Project. The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and to perform the activities proposed under the grant application.

(j) *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

(k) *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(4) 7 CFR part 3018—New Restrictions on Lobbying.

(5) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(6) Certification regarding Architectural Barriers.

(7) Certification regarding Flood Hazard Precautions.

(8) An environmental report, in accordance with 7 CFR part 1794.

(9) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(10) Federal Obligation Certification on Delinquent Debt.

§ 1739.16 Review of grant applications.

(a) All applications for grants must be delivered to RUS at the address and by the date specified in the NOFA (*see* § 1739.2) to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(c) Applications conforming with this part will then be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in § 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

(d) Regardless of the score an application receives, if RUS determines that the Project is technically or financially infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

§ 1739.17 Scoring of applications.

(a) All eligible applications will receive points for the following scoring criteria:

(1) The rurality of the Project (up to 40 points);

(2) The economic need of the Project's Service Area (up to 30 points); and

(3) The ''community-oriented connectivity'' benefits derived from the proposed service (up to 30 points).

(b) Scoring criteria:

(1) *The rurality of the project*—up to 40 points.

(i) This criterion will be used to evaluate the rurality of the Community served by the Project, in accordance with the following method of scoring. Rurality shall be determined by the 2000 population data contained in the U.S. Bureau of the Census at *http://factfinder.census.gov.* The following categories are used in the evaluation of rurality:

(A) Level 1 means any Community having a population of less than 500 inhabitants.

(B) Level 2 means any Community having a population of at least 500 and not in excess of 1,000 inhabitants.

(C) Level 3 means any Community having a population over 1,000 and not in excess of 2,000 inhabitants.

(D) Level 4 means any Community having a population over 2,000 and not in excess of 3,000 inhabitants.

(E) Level 5 means any Community having a population over 3,000 and not in excess of 4,000 inhabitants.

(F) Level 6 means any Community having a population over 4,000 and not in excess of 5,000 inhabitants.

(G) Level 7 means any Community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any Community having a population over 10,000 and not in excess of 20,000 inhabitants.

(ii) Each application will receive points based on the location of the facilities financed using the definitions in paragraphs (b)(1)(i)(A) through (H) of this section.

(A) For a Service Area that includes a Level 1 Community, it will receive 40 points.

(B) For a Service Area that includes a Level 2 Community, it will receive 35 points.

(C) For a Service Area that includes a Level 3 Community, it will receive 30 points.

(D) For a Service Area that includes a Level 4 Community, it will receive 25 points.

(E) For a Service Area that includes a Level 5 Community, it will receive 20 points.

(F) For a Service Area that includes a Level 6 Community, it will receive 15 points.

(G) For a Service Area that includes a Level 7 Community, it will receive 10 points.

(H) For a Service Area that includes a Level 8 Community, it will receive 5 points.

(2) *The economic need of the Project Service Area*—up to 30 points.

(i) This criterion will be used to evaluate the economic need of the Service Area. Applicants must utilize the per capita personal income for the Community serviced, as determined by the U.S. Bureau of the Census at *http://factfinder.census.gov.* Applicants will be awarded points as outlined below for service provided in the Community where the per capita personal income (PCI) is less than 70 percent of the national average per capita personal income (NAPCI):

(A) PCI is 75 percent or greater of NAPCI; 0 points;

(B) PCI is less than 75 percent and greater than or equal to 70 percent of NAPCI; 5 points;

(C) PCI is less than 70 percent and greater than or equal to 65 percent of NAPCI; 10 points;

(D) PCI is less than 65 percent and greater than or equal to 60 percent of NAPCI; 15 points;

(E) PCI is less than 60 percent and greater than or equal to 55 percent of NAPCI; 20 points;

(F) PCI is less than 55 percent and greater than or equal to 50 percent of NAPCI; 25 points;

(G) PCPI is less than 50 percent of NAPCPI; 30 points;

(ii) [Reserved]

(3) *The ''community-oriented connectivity'' benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the Project, and local community involvement in planning and implementation of the Project. Applicants may receive up to 30 points for documenting the need for services and benefits derived from service as explained in this section.

(ii) RUS will consider:

(A) The extent of the applicant's documentation explaining the economic, education, health care, and public safety issues facing the community and the applicant's proposed plan to address these challenges on a community-wide basis;

(B) The extent of the Project's planning, development, and support by local residents, institutions, and community facilities will be considered. This includes evidence of community-wide involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the Project planning and development;

(C) The extent to which the Community Center will be used for instructional purposes including Internet usage, Web-based curricula, and Web page development; and

(D) Web-based community resources enabled or provided by the applicant, such as community bulletin boards, directories, and public web-hosting.

§ 1739.18 Grant documents.

The terms and conditions of grants shall be set forth in grant documents prepared by RUS. The documents shall require the applicant to own all equipment and facilities financed by the grant. Among other matters, RUS may prescribe conditions to the advance of funds that address concerns regarding the Project feasibility and sustainability. RUS may also prescribe terms and conditions applicable to the construction and operation of the Project and the delivery of Broadband Transmission Service to Rural Areas, as well as other terms and conditions applicable to the individual Project.

§ 1739.19 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the Project is complete and the funds are expended by the applicant. Recipients are to submit an original and one copy of all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) A final project performance report must be provided by the recipient. It must provide an evaluation of the success of the Project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients, as it determines necessary, to assure that Projects are completed in accordance with the approved scope of work and that the grant is expended for Eligible Grant Purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work within designated time periods is being accomplished, and other performance objectives are being achieved.

§ 1739.20 Audit requirements.

A grant recipient shall provide RUS with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, an existing Telecommunications or Electric Borrower with RUS, or any other entity not covered by the following paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, ''Policy on Audits of RUS Borrowers.''

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with 7 CFR part 3052, ''Audits of States, Local Governments, and Non-Profit Organizations.''

§ 1739.21 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572–0127.

Subpart B—[Reserved]

Dated: July 16, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–17105 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1001, 1003, 1103, 1239 and 1287

[EOIR No. 139I; AG Order No. 2728–2004]

RIN 1125–AA43

Executive Office for Immigration Review; Definitions; Fees; Powers and Authority of DHS Officers and Employees in Removal Proceedings

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends regulations relating to the Executive Office for Immigration Review to conform with certain regulatory changes made by the Department of Homeland Security (DHS) for consistency and clarity. This rule makes no substantive changes in the Department of Justice regulations, but makes appropriate revisions to the definitions and fee provisions and the regulations relating to issuance of notices to appear and subpoenas in the EOIR regulations, in order to avoid confusing and unnecessary duplication of provisions already set forth in the DHS regulations. Finally, this rule makes a necessary technical change to an existing regulation.

DATES: *Effective date:* This interim rule is effective on July 28, 2004.

Comment date: Written comments must be submitted on or before August 27, 2004.

ADDRESSES: Please submit written comments to Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125–AA43 on your correspondence. You may view an electronic version of this interim rule at *www.regulations.gov*. You may also comment via the Internet to EOIR at *eoir.regs@usdoj.gov* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125–AA43 in the subject box.

FOR FURTHER INFORMATION CONTACT: Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (HSA) creating the new Department of Homeland Security (DHS) and transferring the functions of the former Immigration and Naturalization Service (INS) to the Department of Homeland Security. Public Law 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002). The Attorney General retained the functions of the Executive Office for Immigration Review (EOIR) in the Department of Justice. HSA section 1101, 116 Stat. at 2273.

In order to implement the transfer of functions under the HSA, the Attorney General reorganized title 8 of the Code of Federal Regulations and divided the regulations into chapters relating to the functions of the then-INS (chapter I) and the functions of EOIR (chapter V). 68 FR 9824 (Feb. 28, 2003); *see also* 68 FR 10349 (March 5, 2003). The Attorney General transferred appropriate parts, subparts and sections of the regulations, and duplicated other parts, subparts and sections, to ensure continuity in the regulations pertaining to EOIR, while making the appropriate division of authority under the HSA. The Secretary of Homeland Security has since issued two regulations amending 8 CFR

chapter I. In light of those changes, the Attorney General is making conforming amendments to ensure continuity and to clarify the regulations in 8 CFR chapter V.

Definitions; Powers and Authority of DHS Officers in Removal Proceedings

On June 13, 2003, the Secretary of Homeland Security issued a final regulation conforming portions of the regulations in 8 CFR chapter I regarding legacy INS functions transferred into the structures established in the HSA in accordance with DHS' reorganization plan. 68 FR 35273 (June 13, 2003). Relevant changes made by DHS included revised definitions in 8 CFR part 1, and revisions to provisions in part 239 and part 287 designating DHS officers who are authorized to issue Notices to Appear in connection with proceedings before immigration judges and the Board of Immigration Appeals, and who are authorized to issue and serve administrative subpoenas. The Attorney General has determined that it is appropriate to adjust the regulations in 8 CFR parts 1001, 1239, and 1287 relating to EOIR in order to reflect these changes, eliminate unnecessary duplication, and ensure greater clarity.

Specifically, in 8 CFR 1.1, DHS has changed the definitions of the terms ''Service'' and ''Commissioner,'' and added the terms ''Secretary,'' ''Bureau,'' ''BCIS,'' ''CBP,'' and ''ICE.'' These definitions refer directly to DHS or legacy components of the INS, and this rule revises the definitions in 8 CFR 1001.1 to cross-reference relevant terms rather than attempting to duplicate the specific DHS definitions, which DHS may change over time.

This rule makes two exceptions to the definitions promulgated by DHS. Unless otherwise specifically noted, the term ''Department'' in 8 CFR chapter V refers to the Department of Justice, while the DHS regulations in 8 CFR chapter I use the term to refer to the Department of Homeland Security. Moreover, this rule revises the definition of the term ''Director'' in 8 CFR chapter V to refer to the Director of EOIR, unless otherwise specified. The definition in 8 CFR 1001.1(o) now cross-references the term ''director,'' when used in the context of a DHS official, to the definitions in the DHS regulations in 8 CFR 1.1(o).

The rule also revises 8 CFR 1239.1 to cross-reference rather than duplicate the list of officers authorized to issue a notice to appear in 8 CFR 239.1 and to make conforming changes to regulatory references reflecting the transfer of functions to DHS from the former INS. Cross-referencing the list of officers authorized to issue a notice to appear, a rule within DHS' authority, will simplify the regulations. Additionally, 8 CFR 1239.2 has been amended to remove unnecessary provisions, and cross-reference the provisions of 8 CFR 239.2 regarding motions to dismiss a notice to appear.

The rule also amends 8 CFR 1287.4 to focus solely on the issuance of subpoenas by immigration judges during the course of immigration proceedings. As revised, the rule eliminates duplicative provisions relating to DHS's authority by simply cross-referencing the provisions of the DHS regulations relating to the issuance and service of subpoenas by DHS officers and employees. The authority of DHS officers to issue and serve subpoenas prior to commencement of proceedings is within the jurisdiction of DHS. Additionally, a reference to naturalization proceedings under 8 CFR part 335 has been removed from 8 CFR 1287.4(a)(2)(ii) as unnecessary.

Changes to the Fees Provisions

The Secretary of Homeland Security published a final rule in the **Federal Register** on April 15, 2004 altering the schedule of fees collected from persons filing immigration benefit applications, and making other changes in 8 CFR 103.7. 69 FR 20528. In this interim rule, the Department removes provisions from 8 CFR 1103.7 that relate solely to DHS in order to eliminate the duplicative schedule of DHS fees contained in 8 CFR 1103.7(b) as well as in 8 CFR 103.7(b). This rule also makes revisions in 8 CFR 1103.7 to clarify the requirements and processes for filing fees charged in proceedings before immigration judges.

In addition, this rule refines the provisions regarding filing fees before the immigration judges and the Board of Immigration Appeals in 8 CFR 1003.24 and 1003.8, respectively. The Department is not changing the amount of the fee required for filing appeals, motions, or fees related solely to EOIR Forms. Fees for applications for relief based on DHS Forms that are filed with the immigration court or the Board continue to depend on the DHS fee schedule. Nor is the Department changing the existing process for how fees are paid for such filings.

Instead, this rule changes the structure of the fees regulations at 8 CFR 1003.8, 1003.24, and 1103.7 to make it easier for the public to understand when and how to pay a filing fee in matters relating to proceedings before the immigration judges and the Board. The Department is providing a clearer enumeration of when fees are and are not required, clearer direction on how fees are paid, and cross-references to the list of forms and fees published by the Department of Homeland Security that may be filed during the course of removal and related proceedings that require a fee, such as Form I–485 (Application to Register Permanent Residence or to Adjust Status), and Form I–881 (NACARA, Application for Suspension of Deportation or Special Rule Cancellation of Removal). All forms published by the Department of Justice that require a fee are now listed separately from Department of Homeland Security forms. This rule also includes new language to allow for future electronic fee payment before the Board, a concept that is under consideration.

The provisions in this interim rule with request for comments that have not previously appeared in the regulations of the Department are extracted from the Board of Immigration Appeals Practice Manual and explain with greater clarity when fees are not required, how fees may be waived, the amount required, payment of single fees in consolidated proceedings, forms of payment, and payment to DHS of application fees. These provisions reflect current practice and reduce that practice to regulatory form.

Technical Change

A technical change removes 8 CFR 1003.1(a)(7) to eliminate potential confusion with the language of 8 CFR 1003.1(e)(4). On August 26, 2002, the Department published a final rule improving the management of the Board of Immigration Appeals. 67 FR 54878. That rule included new provisions relating to the Board's case management process, and incorporated into that process the authority for the issuance of an affirmance without opinion. *See* 8 CFR 1003.1(e)(4). The final regulation inadvertently failed to remove the prior regulatory language addressing affirmance without opinion, contained in 8 CFR 1003.1(a)(7), which serves no further purpose in view of the regulatory changes incorporating this subject into the broader case management provisions in § 1003.1(e). Therefore, this rule removes 8 CFR 1003.1(a)(7).

Administrative Procedure Act

The Department of Justice is publishing this rule as an interim rule, with provisions for post-promulgation public comments, because the rule affects only the internal management of the Department of Justice and does not make any substantive changes to rules that affect the general public. 5 U.S.C.

552(d). The language of the regulations pertaining to payment of fees is intended to state more clearly the existing standards and procedures for payment of fees, and is drawn from previously published guidance from the Executive Office for Immigration Review. These changes do not alter the amount, standards, or procedures for payment of fees that are payable in connection with proceedings before the immigration judges and the Board of Immigration Appeals. Other changes in this rule merely make conforming changes in response to regulations promulgated by the Department of Homeland Security, and delete an outdated procedural provision that the Department inadvertently failed to remove when it published new procedural rules for the Board in 2002.

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.

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.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

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

List of Subjects

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1103

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

8 CFR Part 1239

Administrative practice and procedure, Aliens, and Immigration.

8 CFR Part 1287

Immigration and Law enforcement officers.

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

PART 1001—DEFINITIONS

■ 1. The authority citation for 8 CFR part 1001 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103.

■ 2. Amend § 1001.1 by revising paragraphs (c), (d), (o), (p), and (s), and adding paragraphs (u) through (w) to read as follows:

§ 1001.1 Definitions.

* * * * *

(c) The term *Service* means the Immigration and Naturalization Service, as it existed prior to March 1, 2003. Unless otherwise specified, references to the Service on or after that date mean the offices of the Department of Homeland Security to which the functions of the former Service were transferred pursuant to the Homeland Security Act, Public Law 107–296 (Nov. 25, 2002), as provided in 8 CFR chapter I.

(d) The term *Commissioner* means the Commissioner of the Immigration and Naturalization Service prior to March 1, 2003. Unless otherwise specified, references to the Commissioner on or after that date mean those officials of the Department of Homeland Security who have succeeded to the functions of the Commissioner of the former Service, as provided in 8 CFR chapter I.

* * * * *

(o) The term *Director*, unless otherwise specified, means the Director of the Executive Office for Immigration Review. For a definition of the term *Director* when used in the context of an official with the Department of Homeland Security, *see* 8 CFR 1.1(o).

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, removal, or rescission.

* * * * *

(s) The terms *government counsel* or *Service counsel*, in the context of proceedings in which the Department of Homeland Security has appeared, mean any officer assigned to represent the Department of Homeland Security in any proceeding before an immigration judge or the Board of Immigration Appeals.

* * * * *

(u) The term *Department*, unless otherwise specified, means the Department of Justice.

(v) The term *Secretary,* unless otherwise specified, means the Secretary of Homeland Security.

(w) The term *DHS* means the Department of Homeland Security. These rules incorporate by reference the organizational definitions for components of DHS as provided in 8 CFR 1.1.

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. The authority citation for 8 CFR part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

§ 1003.1 [Amended]

■ 4. Section 1003.1 is amended by removing and reserving paragraph (a)(7).

■ 5. Section 1003.8 is revised to read as follows:

§ 1003.8 Fees before the Board.

(a) *Appeals and motions before the Board—(1) When a fee is required.* Except as provided in paragraph (a)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (a)(3) of this section, is required in connection with the filing of an appeal, a motion to reopen, or a motion to reconsider before the Board.

(2) *When a fee is not required.* A filing fee is not required in the following instances:

(i) A custody bond appeal filed pursuant to § 1003.1(b)(7);

(ii) A motion to reopen that is based exclusively on an application for relief that does not require a fee;

(iii) A motion to reconsider that is based exclusively on a prior application for relief that did not require a fee;

(iv) A motion filed while an appeal, a motion to reopen, or a motion to reconsider is already pending before the Board;

(v) A motion requesting only a stay of removal, deportation, or exclusion;

(vi) Any appeal or motion filed by the Department of Homeland Security;

(vii) A motion that is agreed upon by all parties and is jointly filed; or

(viii) An appeal or motion filed under a law, regulation, or directive that specifically does not require a filing fee.

(3) *When a fee may be waived.* The Board has the discretion to waive a fee for an appeal, motion to reconsider, or motion to reopen upon a showing that the filing party is unable to pay the fee. Fee waivers shall be requested through the filing of a Fee Waiver Request (Form EOIR–26A), including the declaration to be signed under penalty of perjury substantiating the filing party's inability to pay the fee. The fee waiver request shall be filed along with the Notice of Appeal or the motion. If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

(4) *Method of payment.* When a fee is required for an appeal or motion, the fee shall accompany the appeal or motion.

(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, the fee for filing an appeal or motion with the Board shall be paid by check, money order, or electronic payment in a manner and form authorized by the Executive Office for Immigration Review. When paid by check or money order, the fee shall be payable to the ''United States Department of Justice,'' drawn on a bank or other institution that is located within the United States, and payable in United States currency. The check or money order shall bear the full name and alien registration number of the alien. A payment that is uncollectible does not satisfy a fee requirement.

(ii) *Appeals from Department of Homeland Security decisions.* The fee for filing an appeal, within the jurisdiction of the Board, from the decision of a Department of Homeland Security officer shall be paid to the Department of Homeland Security in accordance with 8 CFR 103.7(a).

(b) *Applications for relief.* Fees for applications for relief are not collected by the Board, but instead are paid to the Department of Homeland Security in accordance with 8 CFR 103.7. When a motion before the Board is based upon an application for relief, only the fee for the motion to reopen shall be paid to the Board, and payment of the fee for the application for relief shall not accompany the motion. If the motion is granted and proceedings are remanded to the immigration judge, the application fee shall be paid in the manner specified in 8 CFR 1003.24(c)(1).

■ 6. Section 1003.24 is revised to read as follows:

§ 1003.24 Fees pertaining to matters within the jurisdiction of an immigration judge.

(a) *Generally.* All fees for the filing of motions and applications in connection with proceedings before the immigration judges are paid to the Department of Homeland Security in accordance with 8 CFR 103.7, including fees for applications published by the Executive Office for Immigration Review. The immigration court does not collect fees.

(b) *Motions to reopen or reconsider—(1) When a fee is required.* Except as provided in paragraph (b)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (d) of this section, is required in connection with the filing of a motion to reopen or a motion to reconsider.

(2) *When a fee is not required.* A filing fee is not required in the following instances:

(i) A motion to reopen that is based exclusively on an application for relief that does not require a fee;

(ii) A motion to reconsider that is based exclusively on a prior application for relief that did not require a fee;

(iii) A motion filed while proceedings are already pending before the immigration court;

(iv) A motion requesting only a stay of removal, deportation, or exclusion;

(v) A motion to reopen a deportation or removal order entered in absentia if the motion is filed pursuant to section 242B(c)(3)(B) of the Act (8 U.S.C. 1252b(c)(3)(B)), as it existed prior to April 1, 1997, or section 240(b)(5)(C)(ii) of the Act (8 U.S.C. 1229a(b)(5)(C)(ii)), as amended;

(vi) Any motion filed by the Department of Homeland Security;

(vii) A motion that is agreed upon by all parties and is jointly filed; or

(viii) A motion filed under a law, regulation, or directive that specifically does not require a filing fee.

(c) *Applications for relief—(1) When filed during proceedings.* When an application for relief is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security in accordance with 8 CFR 103.7. The fee receipt must accompany the application when it is filed with the immigration court.

(2) *When submitted with a motion to reopen.* When a motion to reopen is based upon an application for relief, the fee for the motion to reopen shall be paid to the Department of Homeland Security and the fee receipt shall accompany the motion. Payment of the fee for the application for relief must be paid to the Department of Homeland Security within the time specified by the immigration judge.

(d) *Fee waivers.* The immigration judge has the discretion to waive a fee for a motion or application for relief upon a showing that the filing party is unable to pay the fee. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 substantiating the filing party's inability to pay the fee. If the request for a fee waiver is denied, the application or motion will not be deemed properly filed.

PART 1103—APPEAL, RECORDS, AND FEES

■ 7. The authority citation for 8 CFR part 1103 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

■ 8. Section 1103.7 is revised to read as follows:

§ 1103.7 Fees.

(a) *Remittances—(1) In general.* Fees shall be submitted in connection with any formal appeal, motion, or application prescribed in this chapter in the amount prescribed by law or regulation. Payment of any fee under this section does not constitute filing of the appeal, motion, or application with the Board of Immigration Appeals or with the immigration court.

(2) *Board of Immigration Appeals.* The fee for filing an appeal or a motion with the Board of Immigration Appeals shall be paid pursuant to the provisions of 8 CFR 1003.8 when a fee is required.

(3) *All other fees payable in connection with immigration proceedings.* Except as provided in 8 CFR 1003.8, the Executive Office for Immigration Review does not accept the payment of any fee relating to Executive Office for Immigration Review proceedings. Instead, such fees, when required, shall be paid to, and accepted by, an office of the Department of Homeland Security authorized to accept fees, as provided in 8 CFR 103.7(a)(1). The Department of Homeland Security shall return to the payer, at the time of payment, a receipt for any fee paid, and shall also return to the payer any documents, submitted with the fee, relating to any immigration proceeding. The fee receipt and the application or motion shall then be submitted to the Executive Office for Immigration Review. Remittances to the Department of Homeland Security for applications, motions, or forms filed in connection with immigration proceedings shall be payable subject to the provisions of 8 CFR 103.7(a)(2).

(b) *Amounts of fees—(1) Appeals.* For filing an appeal to the Board of Immigration Appeals, when a fee is required pursuant to 8 CFR 1003.8, as follows:

Form EOIR–26. For filing an appeal from a decision of an immigration judge—$110.

Form EOIR–29. For filing an appeal from a decision of an officer of the Department of Homeland Security—$110.

Form EOIR–45. For filing an appeal from a decision of an adjudicating official in a practitioner disciplinary case—$110.

(2) *Motions.* For filing a motion to reopen or a motion to reconsider, when a fee is required pursuant to 8 CFR 1003.8 or 1003.24—$110.

(3) *Multiple parties.* When an appeal or motion is filed on behalf of two or more aliens and the aliens are covered by one decision, only one fee is required.

(4) *Applications for Relief—(i) Forms published by the Executive Office for Immigration Review.* Fees for applications for relief shall be paid in accordance with 8 CFR 1003.8(b) and 1003.24(c) as follows:

Form EOIR–40. Application for Suspension of Deportation—$100.

Form EOIR–42A. Application for Cancellation of Removal for Certain Permanent Residents—$100.

Form EOIR–42B. Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents—$100.

(ii) *Forms published by the Department of Homeland Security.* The fees for applications published by the Department of Homeland Security and used in immigration proceedings are governed by 8 CFR 103.7.

(c) *Fee waivers.* For provisions relating to the authority of the Board or the immigration judges to waive any of the fees prescribed in paragraph (b) of this section, see 8 CFR 1003.8 and 1003.24. No waiver may be granted with respect to the fee prescribed for a Department of Homeland Security form or action that is identified as non-waivable in regulations of the Department of Homeland Security.

(d) *Requests for records under the Freedom of Information Act.* Fees for production or disclosure of records under 5 U.S.C. 552 may be waived or reduced in accordance with 28 CFR 16.11.

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

■ 9. The authority citation for 8 CFR part 1239 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229.

■ 10. In § 1239.1, paragraph (a) is revised to read as follows:

§ 1239.1 Notice to appear.

(a) *Commencement.* Every removal proceeding conducted under section 240 of the Act (8 U.S.C. 1229a) to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court. For provisions relating to the issuance of a notice to appear by an immigration officer, or supervisor thereof, see 8 CFR 239.1(a).

* * * * *

■ 11. Section 1239.2 is amended by:

■ a. Removing and reserving paragraph (b); and by

■ b. Revising paragraphs (a), (c), and (d), to read as follows:

§ 1239.2 Cancellation of notice to appear.

(a) *Prior to commencement of proceedings.* For provisions relating to the authority of an immigration officer to cancel a notice to appear prior to the vesting of jurisdiction with the immigration judge, see 8 CFR 239.2(a) and (b).

(b) [Reserved]

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, government counsel or an officer enumerated in 8 CFR 239.1(a) may move for dismissal of the matter on the grounds set out under 8 CFR 239.2(a). Dismissal of the matter shall be without prejudice to the alien or the Department of Homeland Security.

(d) *Motion for remand.* After commencement of the hearing, government counsel or an officer enumerated in 8 CFR 239.1(a) may move for remand of the matter to the Department of Homeland Security on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Department of Homeland Security.

* * * * *

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

■ 12. The authority citation for Part 1287 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357.

■ 13. Section 1287.4 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii)(A), and paragraph (c) to read as set forth below; and

■ b. Amending paragraph (d) by removing the words ''officer or''.

§ 1287.4 Subpoena.

(a) *Who may issue—(1) Criminal or civil investigations.* For provisions relating to the authority of immigration officers to issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations, *see* 8 CFR 287.4(a)(1).

(2) *Proceedings other than naturalization proceedings—(i) Prior to commencement of proceedings.* For provisions relating to who may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this title, other

than under 8 CFR part 335, or any application made ancillary to the proceeding, *see* 8 CFR 287.4(a)(2)(i).

(ii) *Subsequent to commencement of any proceeding.* (A) In any proceeding under this chapter and in any proceeding ancillary thereto, an immigration judge having jurisdiction over the matter may, upon his/her own volition or upon application of government counsel, the alien, or other party affected, issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both.

* * * * *

(c) *Service.* For provisions relating to who may serve a subpoena issued under this section, *see* 8 CFR 287.4(c).

* * * * *

Dated: July 21, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–17118 Filed 7–27–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 04–19]

RIN 1557–AC76

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1162]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC75

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2004–36]

RIN 1550–AB79

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Consolidation of Asset-Backed Commercial Paper Programs and Other Related Issues

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are amending their risk-based capital standards by removing a sunset provision that would preclude a certain capital treatment for asset-backed commercial paper (ABCP) programs after a certain date. The final rule will permanently permit sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) to exclude from their risk-weighted asset base those assets in ABCP programs that are consolidated onto sponsoring banking organizations' balance sheets as a result of Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities, as revised (FIN 46–R).

The agencies also are implementing more risk-sensitive risk-based capital standards for credit exposures arising from involvement with ABCP. This final rule generally requires banking organizations to hold risk-based capital against eligible ABCP liquidity facilities with an original maturity of one year or less that provide liquidity support to ABCP by imposing a 10 percent credit conversion factor on such facilities.

The agencies have decided not to implement the proposed risk-based capital charge for securitizations of revolving retail credit facilities (for example, credit card receivables) that incorporate early amortization provisions. In addition, the agencies are making technical amendments to their risk-based capital standards by deleting tables and attachments that summarize risk categories, credit conversion factors, and transitional arrangements.

DATES: This final rule is effective September 30, 2004. However, any banking organization may elect to adopt, as of July 28, 2004, the capital treatment described in this final rule for assets in ABCP programs that are consolidated onto the balance sheets of sponsoring banking organizations as a result of FIN 46–R. All liquidity facilities that provide support to ABCP will be treated as ''eligible ABCP liquidity facilities,'' regardless of their compliance with the definition of ''eligible ABCP liquidity facilities'' in the final rule, until September 30, 2005. On that date and thereafter, liquidity facilities that do not meet the final rule's definition of ''eligible ABCP liquidity facility'' will be treated as recourse obligations or direct credit substitutes.

FOR FURTHER INFORMATION CONTACT: *OCC:* Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Laura Goldman, Counsel, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Thomas R. Boemio, Senior Project Manager, Policy, (202) 452–2982, David Kerns, Supervisory Financial Analyst, (202) 452–2428, Barbara Bouchard, Deputy Associate Director, (202) 452–3072, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Senior Counsel, (202) 452–2263, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Robert F. Storch, Chief Accountant, (202) 898–8906, Division of Supervision and Consumer Protection; Michael B. Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Christine A. Smith, Project Manager, (202) 906–5740; or Karen Osterloh, Special Counsel, Regulation and Legislation Division, Chief Counsel's Office, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Asset-Backed Commercial Paper Programs

An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, those customers.[1] The asset pools in an ABCP program might include, for example, trade receivables, consumer loans, or asset-backed securities. The ABCP program raises cash to provide funding to the banking organization's customers through the issuance of externally rated commercial paper into the market. Typically, the sponsoring banking organization provides liquidity

[1] ABCP programs generally also include structured investment vehicles, which are entities that earn a spread by issuing commercial paper and medium-term notes and using the proceeds to purchase highly-rated debt securities.

and credit enhancements to the ABCP program, which aid the program in obtaining high credit ratings that facilitate the issuance of the commercial paper.[2]

B. ABCP Programs and FIN 46–R

In January 2003, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 46, ''Consolidation of Variable Interest Entities'' (FIN 46). FIN 46 required the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities by no later than the end of the first annual reporting period beginning after June 15, 2003. FIN 46 was then revised by FASB in December 2003 (that is, FIN 46–R) and generally was effective for public banking organizations by March 31, 2004. FIN 46–R clarified several issues relating to the consolidation of VIEs and provided multiple and delayed effective dates, but did not directly affect issues relevant to this rulemaking.

FIN 46–R requires the consolidation of many ABCP programs onto the balance sheets of banking organizations.[3] In contrast, under pre-FIN 46 accounting standards, the sponsors of ABCP programs normally were not required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets must include all of the program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

C. Interim Final and Proposed Rules

The agencies believe that the consolidation of ABCP program assets generally would result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations involved with the programs. Sponsoring banking organizations generally face limited risk exposure to ABCP programs. This risk usually is confined to the credit enhancements and liquidity facility arrangements that sponsoring banking organizations provide to these programs. In addition, operational controls and structural provisions, along with overcollateralization or other credit enhancements provided by the companies that sell assets into ABCP programs, mitigate the risks to which sponsoring banking organizations are exposed.

Because of the limited risks, the agencies adopted an interim final rule with a request for comment that permitted sponsoring banking organizations, through the end of the first quarter of 2004, to exclude from risk-weighted assets (for purposes of calculating the risk-based capital ratios) ABCP program assets that require consolidation under FIN 46–R (October 2003 interim final rule). See 68 FR 56530 (October 1, 2003). The agencies also amended their risk-based capital rules to exclude from tier 1 and total capital any minority interest in sponsored ABCP programs that are consolidated under FIN 46–R. Exclusion of minority interests associated with consolidated ABCP programs is appropriate when such programs' assets are not included in a sponsoring organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. This interim risk-based capital treatment was initially scheduled to expire on April 1, 2004. However, the agencies subsequently issued another interim final rule to extend to July 1, 2004 the time during which the interim risk-based capital treatment would be in effect. See 69 FR 22382 (April 26, 2004).

Concurrent with the publication of the October 2003 interim final rule, the agencies also published a notice of proposed rulemaking (NPR) that would make permanent the interim risk-based capital treatment for consolidated ABCP program assets. See 68 FR 56568 (October 1, 2003). The NPR also proposed to establish risk-based capital requirements for (1) short-term liquidity facilities extended to ABCP programs and (2) securitizations of revolving credit exposures (for example, credit card receivables) that incorporate early amortization provisions. The period during which the interim final rules have been in effect has provided the agencies with additional time to develop appropriate risk-based capital requirements for banking organizations' sponsorship of ABCP programs and their provision of liquidity support to ABCP, and to receive and analyze comments from the industry on the NPR.

Collectively, the agencies received 13 comment letters on the October 2003 interim final rule and the NPR. Commenters uniformly supported the exclusion of ABCP program assets from the risk-based capital calculations. Commenters expressed concern, however, with certain other aspects of the NPR, notably the credit conversion factor for eligible, short-term liquidity facilities and the NPR's relationship to the Basel Accord revision process.[4]

II. Final Rule

A. Exclusion of ABCP Program Assets and Related Minority Interests

In this final rule, the agencies are amending their risk-based capital standards by removing the interim final rule's July 1, 2004 sunset provision. Thus, the final rule will make permanent the exclusion of ABCP program assets consolidated under FIN 46–R and any associated minority interests from risk-weighted assets and tier 1 capital, respectively, when sponsoring banking organizations calculate their tier 1 and total risk-based capital ratios.

The risk-based capital treatment does not alter generally accepted accounting principles (GAAP) or the manner in which banking organizations must report consolidated on-balance sheet assets pursuant to FIN 46–R. In addition, the risk-based capital treatment does not affect the denominator of the tier 1 leverage capital ratio, which is based primarily

[2] For the purposes of this final rule, a banking organization is considered the sponsor of an ABCP program if it establishes the program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

[3] Under FIN 46–R, the FASB broadened the criteria for determining when one entity is deemed to have a controlling financial interest in another entity and, therefore, when an entity must consolidate another entity in its financial statements. An entity generally does not need to be analyzed under FIN 46–R if it is designed to have adequate capital, as described in FIN 46–R, and its shareholders control the entity with their voting or similar rights and are proportionally allocated its profits and losses. If the entity fails these criteria, it typically is deemed a VIE and each stakeholder in the entity (a group that can include, but is not limited to, legal-form equity holders, creditors, sponsors, guarantors, and servicers) must assess whether it is the entity's ''primary beneficiary'' using the FIN 46–R criteria. This analysis considers whether effective control exists by evaluating the entity's risks and rewards. In the end, the stakeholder who holds the majority of the entity's risks or rewards (or both) is the primary beneficiary and must consolidate the VIE.

[4] The risk-based capital standards of the agencies are based on the July 1988 Accord on International Convergence of Capital Measurements and Capital Standards adopted by the Basel Committee on Banking Supervision. The Basel Committee, however, is currently in the process of revising the 1988 Accord. See the proposed revision of the Basel Capital Accord, dated June 2004, issued by the Basel Committee.

on on-balance sheet assets as reported under GAAP. Thus, as a result of FIN 46–R, banking organizations must include all assets of consolidated ABCP programs as part of on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio. One commenter objected to this treatment, arguing that ABCP program assets should also be excluded from on-balance sheet assets when calculating the tier 1 leverage ratio. However, the agencies typically do not remove on-balance sheet assets from the total asset base for purposes of calculating the leverage ratio because the leverage ratio is intended to work in conjunction with the risk-based capital standards by providing a simple, GAAP-based measure of capital adequacy. There was not, in the agencies' judgment, sufficient reason to revise the leverage ratio in the manner suggested.

As a general matter, minority interests in consolidated subsidiaries are included as a component of tier 1 capital and, hence, are incorporated into the tier 1 leverage capital ratio calculation. However, under this final rule, minority interests related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46–R are not to be included in tier 1 capital. Because the program's assets would not be consolidated for risk-based capital purposes, the agencies believe that the minority interest that supports those assets should not be included in the banking organization's consolidated regulatory capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization would likely be lower than it would be if the ABCP program assets were consolidated and related minority interest were permitted to remain in the capital calculation. The agencies do not anticipate that the exclusion of minority interests related to consolidated ABCP program assets would significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the amount of equity in ABCP programs generally is small relative to the capital levels of the sponsoring organizations.

In addition, commenters noted that the definitions of an ''ABCP program'' proposed in the NPR were not consistent among the agencies, and requested that the definitions be harmonized. Two commenters asked that the definition be broadened to explicitly include structured investment vehicles.[5] The agencies believe that it is important that the definition of an ABCP program be both clear and consistent among the agencies. Therefore, the final rule for each agency defines an ''ABCP program'' to be a program that primarily issues (that is, more than 50 percent) externally rated commercial paper backed by assets or other exposures held in a bankruptcy-remote, special purpose entity. As a result, the definition of ''ABCP program'' generally includes structured investment vehicles and securities arbitrage programs. The agencies believe that the ''primarily issues'' requirement ensures that programs covered by this final rule retain their ABCP character by requiring that such programs generally issue no less than 50 percent ABCP.

Under the final rule, a banking organization will be able to exclude FIN 46–R related assets from its risk-weighted asset base only with respect to programs that meet the rule's definition of an ''ABCP program.'' Thus, a banking organization sponsoring a program issuing ABCP that does not meet the rule's definition of an ''ABCP program'' must continue to include the program's assets in the institution's risk-weighted asset base.

B. Liquidity Facilities Supporting ABCP

In addition to the exclusion of consolidated ABCP program assets from risk-weighted assets and related minority interests from tier 1 capital, the agencies are amending their risk-based capital requirements with respect to liquidity facilities that support ABCP. Liquidity facilities supporting ABCP often take the form of commitments to lend to, or purchase assets from, the ABCP programs in the event that funds are needed to repay maturing commercial paper. Typically, this need for liquidity is due to a timing mismatch between cash collections on the underlying assets in the program and scheduled repayments of the commercial paper issued by the program. Under the current risk-based capital standards, liquidity facilities with an original maturity of over one year (that is, long-term liquidity facilities) are converted to an on-balance sheet credit equivalent amount using the 50 percent credit conversion factor. Prior to this final rule, liquidity facilities with an original maturity of one year or less (that is, short-term liquidity facilities) were converted to an on-balance sheet credit equivalent amount utilizing the zero percent credit conversion factor. As a result, such short-term liquidity facilities were not subject to any risk-based capital charge prior to this rule.

In the agencies' view, a banking organization that provides liquidity facilities to ABCP is exposed to credit risk regardless of the term of the liquidity facilities. For example, an ABCP program may require a liquidity facility to purchase assets from the program at the first sign of deterioration in the credit quality of an asset pool, thereby removing such assets from the program. In such an event, a draw on the liquidity facility exposes the banking organization to credit risk. The agencies believe that the existing risk-based capital rules do not adequately reflect the risks associated with liquidity facilities supporting ABCP.

Although the agencies believe that liquidity facilities expose banking organizations to credit risk, the agencies also believe that the short term of commitments with an original maturity of one year or less exposes banking organizations to a lower degree of credit risk than longer term commitments, provided the liquidity facility meets certain asset quality requirements discussed below. This difference in degree of credit risk should be reflected in the risk-based capital requirement for the exposure. For this reason, in the NPR the agencies proposed a 20 percent credit conversion factor on eligible short-term liquidity facilities providing liquidity support to ABCP.

Two commenters explicitly agreed with the agencies' position that regulatory capital should be held against liquidity facilities that provide liquidity support to ABCP and that have an original maturity of one year or less. Seven commenters stated that the proposed 20 percent credit conversion factor for short-term liquidity facilities was too high given the low historical losses and the overall strength of the credit risk profiles of such liquidity facilities. Six of these seven commenters instead suggested that a conversion factor in the range of 5–10 percent would be more appropriate given banking organizations' credit loss experience with short-term liquidity facilities. One commenter noted that the proposed capital charge would put U.S. banks at a competitive disadvantage relative to foreign banks and non-bank funding sources. The agencies generally agree with these commenters. In addition, recent examination experience suggests that application of a 10 percent credit conversion factor would result in an effective capital charge that is more reflective of the amount of economic capital that banking organizations maintain internally for short-term liquidity facilities supporting ABCP.

[5] Structured investment vehicles are ABCP programs that issue commercial paper and medium-term notes and use the proceeds to purchase highly-rated debt securities.

After consideration of the comments, the agencies have decided to impose a 10 percent credit conversion factor on eligible short-term liquidity facilities supporting ABCP, as opposed to the 20 percent credit conversion factor set forth in the NPR. A 50 percent credit conversion factor will continue to apply to eligible long-term ABCP liquidity facilities. These credit conversion factors will apply regardless of whether the structure issuing the ABCP meets the definition of an ''ABCP program'' under the final rule. For example, a capital charge would apply to an eligible short-term liquidity facility that provides liquidity support to ABCP where the ABCP constitutes less than 50 percent of the securities issued causing the issuing structure not to meet this final rule's definition of an ''ABCP program.'' However, if a banking organization (1) does not meet this final rule's definition of an ''ABCP program'' and must include the program's assets in its risk-weighted asset base, or (2) otherwise chooses to include the program's assets in risk-weighted assets, then there will be no risk-based capital requirement assessed against any liquidity facilities that support that program's ABCP. In addition, ineligible liquidity facilities will be treated as recourse obligations or direct credit substitutes.

The resulting credit equivalent amount would then be risk-weighted according to the underlying assets or the obligor, after considering any collateral or guarantees, or external credit ratings, if applicable. For example, if an eligible short-term liquidity facility providing liquidity support to ABCP covered an asset-backed security (ABS) externally rated AAA, then the notional amount of the liquidity facility would be converted at 10 percent to an on-balance sheet credit equivalent amount and assigned to the 20 percent risk weight category appropriate for AAA-rated ABS.[6]

C. Overlapping Exposures to an ABCP Program

In many cases, a banking organization may have multiple exposures to a single ABCP program (for example, both a credit enhancement and a liquidity facility). The agencies do not intend to subject a banking organization to duplicative risk-based capital requirements against these multiple exposures where they overlap and cover the same underlying asset pool. Accordingly, the final rule requires that a banking organization must hold risk-based capital only once against the assets covered by the overlapping exposures. Where the overlapping exposures are subject to different risk-based capital requirements, the banking organization must apply the risk-based capital treatment that results in the highest capital charge to the overlapping portion of the exposures.

For example, assume a banking organization provides a program-wide credit enhancement that would absorb 10 percent of the losses in all of the underlying asset pools in an ABCP program and pool-specific liquidity facilities that cover 100 percent of each of the underlying asset pools.[7] The banking organization would be required to hold capital against 10 percent of the underlying asset pools because it is providing the program-wide credit enhancement. The banking organization also would be required to hold capital against 90 percent of the liquidity facilities it is providing to each of the underlying asset pools. However, if a banking organization chooses to consolidate ABCP program assets onto its balance sheet for risk-based capital purposes the organization would not be required also to hold risk-based capital against any credit enhancements or liquidity facilities that cover those same program assets.

If different banking organizations have overlapping exposures to an ABCP program, however, each organization must hold capital against the entire maximum amount of its exposure. As a result, while duplication of capital charges will not occur for individual banking organizations, some systemic duplication may occur where multiple banking organizations have overlapping exposures to the same ABCP program.

D. Asset Quality Test

In order for a liquidity facility, either short-or long-term, that supports ABCP *not* to be considered a recourse obligation or a direct credit substitute, it must meet the rule's definition of an ''eligible ABCP liquidity facility.'' The NPR proposed that the liquidity facility, in order to be an eligible liquidity facility, meet a reasonable asset quality test that, among other things, precluded funding assets that are 60 days or more past due or in default. The funding of assets past due 60 days or more using a liquidity facility exposes the institution to a greater degree of credit risk than the funding of assets of a more current nature.

Five commenters objected to the uniform 60 days past due asset quality test, noting that although it may be appropriate for trade receivables, it is not appropriate for many other asset classes. These commenters believed that a reasonable asset quality test could be defined to include assets that are 90 to 180 days or more past due, depending upon the type of asset (for example, residential mortgages or credit cards). Furthermore, one commenter stated that the 60-day delinquency standard would significantly overstate the risk of default in the case of credit cards since the amount of credit card receivables that is ultimately charged-off between 120 days and 180 days usually is far less than the amount that is 60-days delinquent. Five commenters suggested that the definition of an eligible liquidity facility should be more flexible and incorporate asset quality tests that vary based on the specific transaction structures or underlying asset types.

Specifically, these commenters proposed that each banking organization should be allowed to develop its own asset quality tests, subject to supervisory oversight. Although the agencies considered the possibility of developing separate past due requirements for different asset categories, and the possibility of permitting each banking organization to develop its own asset quality test, the agencies believe that these approaches would be complex to develop and burdensome to administer, and would lack uniform application among banking organizations.

The agencies believe that it is important to ensure that the primary function of an eligible liquidity facility is to provide liquidity and, accordingly, such a facility should not be used to fund assets with the higher degree of credit risk typically associated with seriously delinquent assets. However, the agencies agree that a limitation of 60 days or more past due might be too constraining for some asset types held in an ABCP program.

This final rule increases the number of days in the past due requirement to 90 days or more past due. The agencies believe that when assets are 90 days or more past due, they typically have deteriorated to the point where there is an extremely high probability of default. Assets that are 90 days past due, for example, often must be placed on non-accrual status in accordance with the agencies' Uniform Retail Credit Classification and Account Management Policy. See 65 FR 36904 (June 12, 2000). Further, they generally must also be

[6] See 12 CFR part 3, appendix A, Section 4(d) (OCC); 12 CFR parts 208 and 225, appendix A, III.B.3.c. (FRB); 12 CFR part 325, appendix A, II.B.5.d. (FDIC); 12 CFR 567.6(b) (OTS).

[7] This example assumes that a banking organization is able to use the internal ratings that it has assigned to liquidity facilities providing support to ABCP and also assumes that such facilities would be assigned to the 100 percent risk category.

classified ''substandard'' under that Policy.

Commenters also suggested that the asset quality test should be modified to reflect guarantees providing credit protection to the bank providing the liquidity facility. The agencies agree that in the case of a government guarantee, the past due limitation is not a relevant asset quality test. As a result, this final rule does not apply the ''days past due'' limitation in the asset quality test with respect to assets that are either conditionally or unconditionally guaranteed by the United States government or its agencies, or another OECD central government subsequent to a draw on a liquidity facility.

In addition, to qualify as an eligible liquidity facility, the agencies proposed in the NPR that, if the assets covered by the liquidity facility are initially externally rated (at the time the facility is provided), the facility may be used to fund only those assets that are externally rated investment grade at the time of funding. If the asset quality tests are not met (that is, if a banking organization actually funds through the liquidity facility assets that do not satisfy the facility's asset quality tests), the liquidity facility will be considered a recourse obligation or a direct credit substitute and generally will be converted at 100 percent as opposed to 10 or 50 percent.[8]

Three commenters asserted that the asset quality test proposed for transactions with externally rated assets was inappropriate, noting that the test is irrelevant for transactions without a ratings-based trigger where asset quality is determined using cash flow or other benchmarks. These commenters also noted that, in some cases, the price of assets purchased under the liquidity facility is adjusted for the assets' credit quality, mitigating the need for a ratings-based asset quality test. Moreover, one commenter asserted that the increase in regulatory capital that occurs when the rating on an asset-backed security underlying a liquidity facility declines makes the additional limitation on non-investment grade assets unnecessary.

While the agencies acknowledge that some liquidity facility agreements adjust the purchase price of assets for credit quality, the agencies believe that most purchases of rated assets through liquidity facilities are conducted at a price that exceeds the assets' market value, which in the agencies' view is equivalent to credit enhancement. Even in cases where the purchase price is adjusted, it is not necessarily adjusted to market value.

For these reasons, the final rule considers the practice of purchasing assets that are externally rated below investment grade out of an ABCP program as the equivalent of providing credit protection to the commercial paper investors. Thus, liquidity facilities permitting purchases of below investment grade securities will be considered either recourse or direct credit substitutes. However, for the same reason mentioned previously, this final rule does not apply the ''investment grade'' limitation in the asset quality test with respect to assets that are conditionally or unconditionally guaranteed by the United States government or its agencies, or another OECD central government subsequent to a draw on a liquidity facility.

E. Applicability of the Market Risk Capital Requirements

The amendments to the risk-based capital standards with respect to liquidity facilities reflect the efforts of the agencies to ensure that banking organizations maintain adequate capital with respect to exposures represented by liquidity facilities supporting ABCP. Under the current risk-based capital standards, liquidity facilities held in the trading book may be subject to the market risk capital requirements instead of the banking book capital requirements. Consequently, in the NPR, the agencies proposed that banking organizations subject to the market risk capital rules would not be permitted to apply those rules to any liquidity facility supporting ABCP held in the trading book. This final rule adopts the proposed market risk exception to preclude banking organizations that are subject to the market risk capital rules from applying those rules to positions held in a bank's trading book that act, in form or in substance, as liquidity facilities supporting ABCP.

Under this final rule, any facility held in the trading book whose primary function, in form or in substance, is to provide liquidity to ABCP—even if the facility does not qualify as an eligible ABCP liquidity facility under the rule—will be subject to the banking book risk-based capital requirements. Specifically, organizations will be required to convert the notional amount of all trading book positions that provide liquidity to ABCP to credit equivalent amounts by applying the appropriate banking book credit conversion factors. For example, the full amount of all eligible ABCP liquidity facilities with an original maturity of one year or less will be subject to a 10 percent conversion factor, as described previously, regardless of whether the facility is carried in the trading account or the banking book.

Two commenters objected to this provision, noting that it ignores GAAP accounting decisions with respect to the trading book classification of individual transactions, and that a well-defined mechanism for assessing capital in the trading book already exists. In addition, these commenters stated that the mark-to-market accounting discipline applied to trading book positions, combined with individual banking organizations' market value adjustments for illiquidity or pricing uncertainty, assures that adequate capital is held on a ''real-time'' basis. These commenters also suggested that banking organizations be permitted to apply the trading book capital rules to liquidity facilities or arrangements that satisfy certain criteria. While the agencies understand the benefit of consistent classification under GAAP and appreciate the value of the market risk capital framework, the agencies believe that a market risk exception for ABCP-related liquidity facilities is necessary to ensure an adequate risk-based capital charge for such exposures and to mitigate regulatory capital arbitrage opportunities.

III. Early Amortization Capital Charge

In the NPR, the agencies also proposed the assessment of a risk-based capital charge against the risks associated with early amortization, a common feature in securitizations of revolving retail credit exposures (for example, credit card receivables). When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the nature of the underlying assets. The early amortization provision often present in securitizations of revolving retail credit facilities increases the likelihood that investors will be repaid before being subject to risk of significant credit losses.

The NPR was not the first time that the agencies have raised the issue of whether to impose a capital charge on securitizations of revolving credit exposures that incorporate early amortization provisions. On March 8, 2000, the agencies published a notice of proposed rulemaking on recourse obligations and direct credit substitutes (March 2000 NPR). See 65 FR 12320. In

[8] In the NPR, the agencies proposed an additional requirement that ABCP liquidity facilities only fund against assets that met the funding criteria under the asset quality test. The agencies believe that this criterion is unnecessary and, as a result, have deleted it from the final rule.

the March 2000 NPR, the agencies proposed a fixed conversion factor of 20 percent to be applied to the amount of assets under management in all revolving securitizations that contained early amortization features, in recognition of the risks associated with these structures. The agencies acknowledge that the March 2000 NPR was not particularly risk sensitive and would have required the same amount of capital for all securitizations of revolving credit exposures that contained early amortization features, regardless of the risk present in a particular securitization transaction. In the subsequent November 2001 final rule (66 FR 59614) (November 2001 final rule), which implemented many of the provisions in the March 2000 NPR, the agencies reiterated their concerns with early amortization, indicating that the risks associated with securitization, including those posed by an early amortization feature, were not fully captured in the then current capital rules. In the November 2001 final rule, however, the agencies did not impose a special capital charge on securitizations with early amortization features.

In the interim, the Basel Committee on Banking Supervision (Basel Committee) set forth a more risk-sensitive proposal that would assess capital against securitizations of revolving exposures with early amortization features based on key indicators of risk, such as excess spread levels. The risk-based capital charge for early amortization proposed in the NPR was based on the proposal set forth by the Basel Committee in its third consultative paper issued in April 2003.[9]

Three commenters stated that the proposal as set forth in the NPR was, in their view, a significant improvement over previous proposed capital charges for early amortization. Five commenters, however, recommended that any changes to the regulatory capital guidelines in this area be made through the Basel process. Coordinating both the timing and the substance of an early amortization capital charge internationally would help maintain a level playing field across countries and would avoid requiring U.S. banking organizations to implement new capital rules, only to require them to implement slightly different rules in the future when the agencies implement the Basel changes. Moreover, three commenters requested that the agencies establish an alternative approach for controlled early amortization transactions similar to that proposed by the Basel Committee in the third Consultative Paper (dated April 2003).

At this time, the capital treatment of retail credit, including securitizations of revolving credits, may change as the revised Basel framework proceeds through the U.S. rulemaking process. Therefore, the ultimate treatment of securitizations of revolving credit exposures incorporating early amortization provisions is still uncertain. As a result, the agencies have decided that, at this time, it would not be appropriate to implement a risk-based capital charge for securitizations of revolving credits when the treatment may be revised with the implementation of the new Basel Accord. However, the agencies intend to revisit this issue in the near future for possible domestic implementation for all U.S. banking organizations.

IV. Elimination of Summary Sections of Rules Text

The final rule also removes tables and attachments in the risk-based capital standards that summarize the risk categories, credit conversion factors, and transitional arrangements. These tables and attachments are outdated and unnecessary because the substance of these summaries is included in the main text of the risk-based capital standards. Furthermore, these summary tables and attachments were originally provided to assist banking organizations unfamiliar with the new framework during the transition period when the agencies' risk-based capital requirements were initially implemented in 1989. No comments were received on this issue. The agencies consider this change to be technical in nature and do not intend any substantive impact on the risk-based capital standards.

V. Effective Dates

This final rule is effective September 30, 2004. However, any banking organization may elect to adopt, as of July 28, 2004, the capital treatment described in this final rule for assets in ABCP programs that are consolidated onto the balance sheets of sponsoring banking organizations as a result of FIN 46–R. All liquidity facilities providing liquidity support to ABCP will be treated as ''eligible ABCP liquidity facilities'' until September 30, 2005. On that date, all ABCP-related liquidity facilities that do not meet this final rule's definition of an eligible ABCP liquidity facility will be treated as direct credit substitutes or recourse obligations. This transition period for ABCP-related liquidity facilities existing prior to this final rule's effective date should provide banking organizations with sufficient time to revise their liquidity facilities over the next year to ensure that the facilities meet the eligibility criteria set forth in this final rule.

VI. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act (12 U.S.C. 4802) generally requires that regulations take effect on the first day of a calendar quarter unless an agency finds good cause that the regulations should become effective sooner and publishes its finding with the rule. The agencies believe that it is important to make this final rule effective before banking organizations must calculate their regulatory risk-based capital ratios at the end of the third quarter 2004. If ABCP program assets are consolidated onto the balance sheets of sponsoring banking organizations under FIN 46–R, then the agencies believe that the resulting capital requirements could be excessive in light of the risks incurred by those organizations as related to those assets. In addition, with respect to liquidity facilities that support ABCP, the current risk-based capital charges may not sufficiently reflect the risks associated with such liquidity facilities. The issuance of this final rule with a September 30, 2004, effective date will ensure that banking organizations maintain appropriate risk-based capital levels with respect to ABCP program assets and ABCP liquidity facilities in calculating their regulatory capital ratios for the third quarter 2004.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this final rule will not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For purposes of the Regulatory Flexibility Act, ''small entities'' are banking organizations having assets of $150 million or less. There are approximately 18 banking organizations that will be affected by this final rule. All are well over that size threshold. Accordingly, a regulatory flexibility analysis is not required.

[9] The credit conversion factors used in the October 2003 NPR mirror those in the agencies' August 2003 Advance Notice of Proposed Rulemaking for non-controlled early amortization of uncommitted retail credit lines. See 68 FR 45899 (August 4, 2003).

Paperwork Reduction Act

The Agencies have determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS believe that exclusion of consolidated ABCP program assets from risk-weighted assets for risk-based capital purposes will not result in any expenditures by national banks or savings associations. The exclusion of consolidated ABCP program assets is designed to offset the effect of FIN 46–R on risk-based capital. With respect to the risk-based capital treatment of liquidity facilities, because all national banks and savings associations that provide liquidity facilities to ABCP programs currently exceed regulatory minimum capital requirements, the OCC and OTS do not believe these banks will be required to raise additional capital.

Executive Order 12866

The OCC and OTS have determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter 1

Authority and Issuance

■ For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In appendix A to part 3, section 1 is amended as follows:
■ a. Paragraphs (c)(31) to (c)(37) are redesignated as paragraphs (c)(32) to (c)(38);
■ b. Paragraph (c)(30) is removed;
■ c. Paragraphs (c)(19) to (c)(29) are redesignated as paragraphs (c)(21) to (c)(31);
■ d. New paragraph (c)(20) is added;
■ e. Paragraphs (c)(9) to (c)(18) are redesignated as paragraphs (c)(10) to (c)(19);
■ f. Paragraph (c)(8) is redesignated as paragraph (c)(9) and revised;
■ g. Paragraphs (c)(4) to (c)(7) are redesignated as paragraphs (c)(5) to (c)(8);
■ h. New paragraph (c)(4) is added; and
■ i. Paragraph (c)(3) is revised.

■ 3. In appendix A to part 3, section 2, paragraph (a)(3) is revised.

■ 4. In appendix A to part 3, section 3 is amended as follows:
■ a. Paragraph (a)(4)(iii) is revised;
■ b. New paragraphs (a)(5) and (a)(6) are added;
■ c. Paragraph (b) introductory text is revised by amending the fourth sentence;
■ d. Paragraphs (b)(2)(ii) is revised;
■ e. Paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(7), respectively;
■ f. New paragraph (b)(4) is added;
■ g. Newly redesignated paragraph (b)(5)(i) is revised; and
■ h. New paragraph (b)(6) is added.

■ 5. In appendix A to part 3, section 4 is amended as follows:
■ a. Paragraphs (a)(4)(vi) and (a)(4)(vii) are revised;
■ b. New paragraph (a)(4)(viii) is added;
■ c. Paragraphs (a)(11)(vi) and (a)(11)(vii) are revised;
■ d. New paragraph (a)(11)(viii) is added; and
■ e. Paragraphs (j) and (k) are removed.

■ 6. In appendix A to part 3, section 5, Tables 1 through 4 are removed.

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines and Definitions

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(c) * * *

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(3) *Asset-backed commercial paper program* means a program that primarily issues externally rated commercial paper backed by assets or other exposures held in a bankruptcy-remote, special-purpose entity.

(4) *Asset-backed commercial paper sponsor* means a bank that:

(i) Establishes an asset-backed commercial paper program;

(ii) Approves the sellers permitted to participate in an asset-backed commercial paper program;

(iii) Approves the asset pools to be purchased by an asset-backed commercial paper program; or

(iv) Administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

(9) *Commitment* means any arrangement that obligates a national bank to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, home equity lines of credit, liquidity facilities, or similar transactions.

* * * * *

(20) *Liquidity facility* means a legally binding commitment to provide liquidity to various types of transactions, structures or programs. A liquidity facility that supports asset-backed commercial paper, in any amount, by lending to, or purchasing assets from any structure, program, or conduit constitutes an *asset-backed commercial paper liquidity facility.*

* * * * *

Section 2. Components of Capital

* * * * *

(a) * * *

* * * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that the following are not included in Tier 1 capital or total capital:

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in a nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(23) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 3(a)(5)(i) of this appendix A.

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

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(a) * * *

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(4) * * *

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(iii) Asset-or mortgage backed securities that are externally rated are risk weighted in accordance with section 4(d) of this appendix A.

* * * * *

(5) *Asset-backed commercial paper programs subject to consolidation.* (i) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

(ii) If a bank excludes such consolidated asset-backed commercial paper program assets from risk-weighted assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such asset-backed commercial paper program, including direct credit substitutes, recourse obligations, residual interests, asset-backed commercial paper liquidity facilities, and loans, in accordance with section 3 and section 4 of this appendix A.

(iii) If a bank either is not permitted to exclude consolidated asset-backed commercial paper program assets or elects not to exclude consolidated asset-backed commercial paper program assets from its risk-weighted assets, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with sections 3(a) and 4 of this appendix A. Any direct credit substitutes and recourse obligations (including residual interests and asset-backed commercial paper liquidity facilities), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to a capital charge under this section 4 of this appendix A.

(iv) If a bank has multiple overlapping exposures (such as a program-wide credit enhancement and an asset-backed commercial paper liquidity facility) to an asset-backed commercial paper program that is not consolidated for risk-based capital purposes, the bank must apply the highest capital charge applicable to the exposures but is not required to hold capital multiple times for the overlapping exposures under section 4 of this appendix A.

(6) *Other variable interest entities subject to consolidation.* If a bank is required to consolidate the assets of a variable interest entity other than an asset-backed commercial paper program under generally accepted accounting principles, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with sections 3(a) and 4 of this appendix A. Any direct credit substitutes and recourse obligations (including residual interests), and loans that a bank may provide to such a variable interest entity are not subject to any capital charge under section 4 of this appendix A.

(b) * * * Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this appendix A, or external credit rating in accordance with section 4(d), if applicable. * * *

* * * * *

(2) * * *

(i) * * *

(ii) Unused portion of commitments with an original maturity exceeding one-year;[17] however, commitments that are asset-backed commercial paper liquidity facilities must satisfy the eligibility requirements under section 3(b)(6)(ii) of this appendix A;

* * * * *

[17] Participations in commitments are treated in accordance with section 4 of this Appendix A.

(4) *10 percent credit conversion factor.* Unused portion of asset-backed commercial paper liquidity facilities with an original maturity of one year or less that satisfy the eligibility requirements under section 3(b)(6)(ii) of this appendix A.

(5) * * * (i) Unused portion of commitments with an original maturity of one year or less, but excluding any asset-backed commercial paper liquidity facilities;

* * * * *

(6) *Liquidity facility provided to asset-backed commercial paper.* (i) *Noneligible asset-backed commercial paper liquidity facilities treated as recourse or direct credit substitute.* Unused portion of asset-backed commercial paper liquidity facilities that do not meet the criteria for an eligible liquidity facility provided to asset-backed commercial paper in accordance with section 3(b)(6)(ii) of this appendix A must be treated as recourse or as a direct credit substitute, and assessed the appropriate risk-based capital charge in accordance with section 4 of this appendix A.

(ii) *Eligible asset-backed commercial paper liquidity facility.* Except as provided in section 3(b)(6)(iii) of this appendix A, in order for the unused portion of an asset-backed commercial paper liquidity facility to be eligible for either the 50 percent or 10 percent credit conversion factors under section 3(b)(2)(ii) or 3(b)(4) of this appendix A, the asset-backed commercial paper liquidity facility must satisfy the following criteria:

(A) At the time of draw, the asset-backed commercial paper liquidity facility must be subject to a asset quality test that:

(*1*) Precludes funding of assets that are 90 days or more past due or in default; and

(*2*) If the assets that an asset-backed commercial paper liquidity facility is required to fund are externally rated securities at the time they are transferred into the program, the asset-backed commercial paper liquidity facility must be used to fund only securities that are externally rated investment grade at the time of funding. If the assets are not externally rated at the time they are transferred into the program, then they are not subject to this investment grade requirement.

(B) The asset-backed commercial paper liquidity facility must provide that, prior to any draws, the bank's funding obligation is reduced to cover only those assets that satisfy the funding criteria under the asset quality test as provided in section 3(b)(6)(ii)(A) of this appendix A.

(iii) *Exception to eligibility requirements for assets guaranteed by the United States Government or its agencies, or the central government of an OECD country.* Notwithstanding the eligibility requirements for asset-backed commercial paper program liquidity facilities in section 3(b)(6)(ii), the unused portion of an asset-backed commercial paper liquidity facility may still qualify for either the 50 percent or 10 percent credit conversion factors under section 3(b)(2)(ii) or 3(b)(4) of this appendix A, if the assets required to be funded by the asset-back commercial paper liquidity facility are guaranteed, either conditionally or unconditionally, by the United States Government or its agencies, or the central government of an OECD country.

(iv) *Transition period for asset-backed commercial paper liquidity facilities.* Notwithstanding the eligibility requirements for asset-backed commercial paper program liquidity facilities in section 3(b)(6)(i) of this appendix A, the unused portion of an asset-backed commercial paper liquidity will be treated as eligible liquidity facilities pursuant to section 3(b)(6)(ii) of this appendix A regardless of their compliance with the definition of eligible liquidity facilities until September 30, 2005. On that date and thereafter, the unused portions of asset-backed commercial paper liquidity facilities that do not meet the eligibility requirements in section 3(b)(6)(i) of this appendix A will be treated as recourse obligations or direct credit substitutes.

* * * * *

Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations

(a) * * *

* * * * *

(4) * * *

* * * * *

(vi) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer case advances that meet the conditions of section 4(a)(8)(i) and (ii) of this appendix A, are not direct credit substitutes;

(vii) Clean-up calls on third-party assets. Clean-up calls that are 10% or less of the original pool balance and that are exercisable at the option of the bank are not direct credit substitutes; and

(viii) Unused portion of noneligible asset-backed commercial paper liquidity facilities.

* * * * *

(11) * * *

* * * * *

(vi) Credit derivatives issued that absorb more than the bank's pro rata share of losses from the transferred assets;

(vii) Clean-up calls. Clean-up calls that are 10% or less of the original pool balance and that are exercisable at the option of the bank are not recourse arrangements; and

(viii) Noneligible asset-backed commercial paper liquidity facilities.

* * * * *

■ 7. Appendix B to part 3 is amended by adding a new sentence at the end of section 2, paragraph (a) to read as follows:

Appendix B to Part 3—Risk-Based Capital Guidelines; Market Risk Adjustment

* * * * *

Section 2. Definitions

* * * * *

(a) * * * Asset backed commercial paper liquidity facilities, in form or in substance, in a bank's trading account are excluded from covered positions, and instead, are subject to the risk-based capital requirements as provided in appendix A of this part.

* * * * *

Dated: July 13, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In Appendix A to part 208, the following amendments are made:

■ a. Section II.A.1.c. is revised.

■ b. Section III.B.3.a., *Definitions,* is revised.

■ c. Section III.B.6. is revised.

■ d. In section III.D—

■ i. The third sentence of the introductory paragraph is revised and the last sentence is removed.

■ ii. In paragraph 2., *Items with a 50 percent conversion factor,* the fourth undesignated paragraph is removed, the five remaining undesignated paragraphs are designated as 2.a. through 2.e., and the newly designated paragraph 2.c. is revised.

■ iii. Paragraph 4., *Items with a zero percent conversion factor,* is redesignated as paragraph 5. and a new paragraph 4., *Items with a 10 percent conversion factor,* is added.

■ iv. The first sentence in redesignated paragraph 5., *Items with a zero percent conversion factor,* is revised.

■ v. Footnote 54 is removed and reserved.

■ e. Attachments IV, V, and VI are removed.

Appendix A To Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in tier 1 capital because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries whose assets are included in a bank's risk-weighted asset base. While not subject to an explicit sublimit within tier 1, banks are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within tier 1. Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities, are not included in the bank's tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. In addition, minority interests in consolidated asset-backed commercial paper programs (ABCP) (as defined in section III.B.6. of this appendix A) that are sponsored by a bank are not to be included in the bank's tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

* * * * *

III. * * *

B. * * *

3. * * *

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the

''protection purchaser'') to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the ''protection provider''). The value of a credit derivative is dependent, at least in part, on the credit performance of the ''reference asset.''

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

1. Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

2. Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

3. Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the pro rata share of the bank's interest in the third-party asset. If the bank has no claim on the third-party asset, then the bank's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

1. Financial standby letters of credit that support financial claims on a third party that exceed a bank's pro rata share of losses in the financial claim;

2. Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank's pro rata share in the financial claim;

3. Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

4. Credit derivative contracts under which the bank assumes more than its pro rata share of credit risk on a third party exposure;

5. Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

6. Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes;

7. Clean-up calls on third party assets. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not direct credit substitutes; and

8. Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

iv. *Eligible ABCP liquidity facility* means a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. In addition, if the assets that an eligible ABCP liquidity facility is required to fund against are externally rated assets or exposures at the inception of the facility, the facility can be used to fund only those assets or exposures that are externally rated investment grade at the time of funding. Notwithstanding the eligibility requirements set forth in the two preceding sentences, a liquidity facility will be considered an eligible ABCP liquidity facility if the assets that are funded under the liquidity facility and which do not meet the eligibility requirements are guaranteed, either conditionally or unconditionally, by the U.S. government or its agencies, or by the central government of an OECD country.

v. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally recognized statistical rating organization.

vi. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

vii. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

viii. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

1. To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

2. To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

ix. *Liquidity Facility* means a legally binding commitment to provide liquidity support to ABCP by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing ABCP.

x. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

1. The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

2. For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

xi. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

xii. *Recourse* means the retention, by a bank, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a pro rata share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

1. Credit-enhancing representations and warranties made on the transferred assets;

2. Loan servicing assets retained pursuant to an agreement under which the bank will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.x. of this appendix are not recourse arrangements;

3. Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

4. Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

5. Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

6. Credit derivatives issued that absorb more than the bank's pro rata share of losses from the transferred assets;

7. Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not recourse arrangements; and

8. Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

xiii. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank to credit risk directly

or indirectly associated with the transferred assets that exceeds a pro rata share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xiv. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xv. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xvi. *Sponsor* means a bank that establishes an ABCP program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

xvii. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xviii. *Traded position* means a position that is externally rated and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program means a program that primarily issues externally rated commercial paper backed by assets or other exposures held in a bankruptcy-remote, special purpose entity.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C., and III.D. of this appendix.

c. If a bank has multiple overlapping exposures (such as a program-wide credit enhancement and multiple pool-specific liquidity facilities) to an ABCP program that is not consolidated for risk-based capital purposes, the bank is not required to hold duplicative risk-based capital under this appendix against the overlapping position. Instead, the bank should apply to the overlapping position the applicable risk-based capital treatment that results in the highest capital charge.

* * * * *

III. * * *

D. * * * The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor, the nature of any collateral, or external credit ratings.[47]

* * * * *

2. *Items with a 50 percent conversion factor.* * * *

c.i. Commitments are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible ABCP liquidity facilities, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the bank is obligated solely for its *pro rata* share, only the bank's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio.

ii Banks that are subject to the market risk rules are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of over one year that are carried in the trading account at 50 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that support ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix E to part 208) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes, and assessed the appropriate risk-based capital treatment in accordance with section III.B.3. of this appendix.

* * * * *

4. *Items with a 10 percent conversion factor.* a. Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less are converted at 10 percent.

b. Banks that are subject to the market risk rules are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of one year or less that are carried in the trading account at 10 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that support ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix E of this part) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix.

5. * * * These include unused portions of commitments (with the exception of eligible ABCP liquidity facilities) with an original maturity of one year or less,[54] or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

■ 3. Amend Appendix E to part 208 by adding two new sentences at the end of section 2(a) to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

* * * * *

Section 2. Definitions * * *

(a) * * * Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as liquidity facilities that provide liquidity support to asset-backed commercial paper. Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

[47] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B of this appendix A.

[54] [Reserved].

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In Appendix A to part 225, the following amendments are made:
■ a. Section II.A.1.c. is revised.
■ b. Section III.B.3.a., *Definitions*, is revised.
■ c. Section III.B.6. is revised.
■ d. In section III.D—
■ i. The third sentence of the introductory paragraph is revised and the last sentence is removed.
■ ii. In paragraph 2., *Items with a 50 percent conversion factor*, the fourth undesignated paragraph is removed, the five remaining undesignated paragraphs are designated as 2.a. through 2.e., and the newly designated paragraph 2.c. is revised.
■ iii. Paragraph 4, *Items with a zero percent conversion factor*, is redesignated as paragraph 5. and a new paragraph 4. is added.
■ iv. The first sentence is redesignated paragraph 5., *Items with a zero percent conversion factor*, is revised.

d. Attachments IV, V, and VI are removed.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in tier 1 capital because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries whose assets are included in a banking organization's risk-weighted asset base. While not subject to an explicit sublimit within tier 1, banking organizations are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within tier 1. Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's tier 1 or total capital base if the organization's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. In addition, minority interests in consolidated asset-backed commercial paper programs (ABCP) (as defined in section III.B.6. of this appendix A) that are sponsored by a banking organization are not to be included in the organization's tier 1 or total capital base if the bank holding company excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

* * * * *

III. * * *

B. * * *

3. * * *

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the ''protection purchaser'') to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the ''protection provider''). The value of a credit derivative is dependent, at least in part, on the credit performance of the ''reference asset.''

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank holding company to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

1. Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

2. Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

3. Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank holding company assumes, in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank holding company (third-party asset) and the risk assumed by the bank holding company exceeds the pro rata share of the bank holding company's interest in the third-party asset. If the bank holding company has no claim on the third-party asset, then the bank holding company's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

1. Financial standby letters of credit that support financial claims on a third party that exceed a bank holding company's pro rata share of losses in the financial claim;

2. Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank holding company's pro rata share in the financial claim;

3. Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

4. Credit derivative contracts under which the bank holding company assumes more than its pro rata share of credit risk on a third party exposure;

5. Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

6. Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes;

7. Clean-up calls on third party assets. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not direct credit substitutes; and

8. Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

iv. *Eligible ABCP liquidity facility* means a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. In addition, if the assets that an eligible ABCP liquidity facility is required to fund against are externally rated assets or exposures at the inception of the facility, the facility can be used to fund only those assets or exposures that are externally rated investment grade at the time of funding. Notwithstanding the eligibility requirements set forth in the two preceding sentences, a liquidity facility will be considered an eligible ABCP liquidity facility if the assets that are funded under the liquidity facility and which do not meet the eligibility requirements are guaranteed, either conditionally or unconditionally, by the U.S. government or its agencies, or by the central government of an OECD country.

v. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally recognized statistical rating organization.

vi. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

vii. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

viii. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

1. To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

2. To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

ix. *Liquidity Facility* means a legally binding commitment to provide liquidity support to ABCP by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing ABCP.

x. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

1. The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

2. For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

xi. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

xii. *Recourse* means the retention, by a bank holding company, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a pro rata share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank holding company transfers assets and retains an explicit obligation to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank holding company provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

1. Credit-enhancing representations and warranties made on the transferred assets;

2. Loan servicing assets retained pursuant to an agreement under which the bank holding company will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.x. of this appendix are not recourse arrangements;

3. Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

4. Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

5. Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

6. Credit derivatives issued that absorb more than the bank holding company's pro rata share of losses from the transferred assets;

7. Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not recourse arrangements; and

8. Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

xiii. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank holding company to credit risk directly or indirectly associated with the transferred assets that exceeds a pro rata share of the bank holding company's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank holding company to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xiv. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xv. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xvi. *Sponsor* means a bank holding company that establishes an ABCP program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

xvii. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xviii. *Traded position* means a position that is externally rated and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

6. *Asset-backed commercial paper programs*. a. An asset-backed commercial paper (ABCP) program means a program that primarily issues externally rated commercial paper backed by assets or exposures held in a bankruptcy-remote, special purpose entity.

b. A bank holding company that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank holding company is the sponsor of the ABCP program. If a bank holding company excludes such consolidated ABCP program assets, the bank holding company must assess the appropriate risk-based capital charge against any exposures of the organization arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C., and III.D. of this appendix.

c. If a bank holding company has multiple overlapping exposures (such as a program-wide credit enhancement and multiple pool-specific liquidity facilities) to an ABCP program that is not consolidated for risk-based capital purposes, the bank holding company is not required to hold duplicative risk-based capital under this appendix against the overlapping position. Instead, the bank holding company should apply to the overlapping position the applicable risk-based capital treatment that results in the highest capital charge.

* * * * *

III. * * *

D. * * * The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor, the nature of any collateral, or external credit ratings.[51]

* * * * *

2. *Items with a 50 percent conversion factor.* * * *

c.i. Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in

[51] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B of this appendix A.

loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible ABCP liquidity facilities, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the banking organization is obligated solely for its *pro rata* share, only the organization's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio.

ii. Banking organizations that are subject to the market risk rules are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of over one year that are carried in the trading account at 50 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that support ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix E of this part) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes, and assessed the appropriate risk-based capital treatment in accordance with section III.B.3. of this appendix.

* * * * *

4. *Items with a 10 percent conversion factor.* a. Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less also are converted at 10 percent.

b. Banking organizations that are subject to the market risk rules are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of one year or less that are carried in the trading account at 10 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that support ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix E of this part) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix.

5. * * * These include unused portions of commitments (with the exception of eligible ABCP liquidity facilities) with an original maturity of one year or less, or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

■ 3. Amend Appendix E to part 225 by adding two new sentences at the end of section 2(a) to read as follows:

Appendix E To Part 225—Capital Adequacy Guidelines for Bank Holding Companies; Market Risk Measure

* * * * *

Section 2. Definitions * * *

(a) * * * Covered positions exclude all positions in a banking organization's trading account that, in form or in substance, act as liquidity facilities that provide liquidity support to asset-backed commercial paper. Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 19, 2004.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 2. In Appendix A to part 325, the following amendments are made:

■ a. Section I.A.1. is revised.

■ b. Section II.B.5(a), Definitions, is revised.

■ c. Section II.B.6. is revised.

■ d. In section II.D—

■ i. The third sentence of the introductory paragraph is revised and the last sentence is removed;

■ ii. In paragraph 2., *Items With a 50 Percent Conversion Factor,* the five undesignated paragraphs are designated as 2.a. through 2.e., the newly designated paragraph 2.c. is revised, and the second sentence of the newly designated paragraph 2.d. is revised;

■ iii. Paragraph 4., *Items With a Zero Percent Conversion Factor,* is redesignated as paragraph 5. and a new paragraph 4., *Items With a 10 Percent Conversion Factor,* is added; and

■ iv. The first sentence in redesignated paragraph 5., *Items With a Zero Percent Conversion Factor,* is revised.

■ e. Tables III and IV are removed.

Appendix A To Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A.* * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

(a) At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus any disallowed deferred tax assets, and minus any amount of nonfinancial equity investments required to be deducted pursuant to section II.B.(6) of this Appendix.

(b) Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

(c) Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumultive or noncumulative.

[3] An exception is allowed for intanglble assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

(d) Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in nonfinancial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A. In addition, minority interests in consolidated asset-backed commercial paper programs (ABCP) that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section II.B.6. of this appendix.

* * * * *

II. * * *

B. * * *

5. * * *

a. *Definitions*—(1) *Credit derivative* means a contract that allows one party (the ''protection purchaser'') to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the ''protection provider''). The value of a credit derivative is dependent, at least in part, on the credit performance of the ''reference asset.''

(2) *Credit-enhancing interest only strip* is defined in § 325.2(g).

(3) *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

(i) Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(ii) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(iii) Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

(4) *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on-or off-balance sheet credit exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the pro rata share of the bank's interest in the third-party asset. If the bank has no claim on the third-party asset, then the bank's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial standby letters of credit, which includes any letter of credit or similar arrangement, however named or described, that support financial claims on a third party that exceed a bank's *pro rata* share of losses in the financial claim;

(ii) Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of credit losses from the underlying assets;

(iv) Credit derivative contracts under which the bank assumes more than its *pro rata* share of credit risk on a third party asset or exposure;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

(vi) Purchased loan servicing assets if the servicer:

(A) Is responsible for credit losses with the loans being serviced,

(B) Is responsible for making servicer cash advances (unless the advances are not direct credit substitutes because they meet the conditions specified in section II.B.5(a)(9) of this Appendix A), or

(C) Makes or assumes credit-enhancing representations and warranties with respect to the loans serviced;

(vii) Clean-up calls on third party assets. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance are not direct credit substitutes; and

(viii) Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

(5) *Eligible ABCP liquidity facility* means a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. In addition, if the assets that an eligible ABCP liquidity facility is required to fund against are externally rated assets or exposures at the inception of the facility, the facility can be used to fund only those assets or exposures that are externally rated investment grade at the time of funding. Notwithstanding the eligibility requirements set forth in the two preceding sentences, a liquidity facility will be considered an eligible ABCP liquidity facility if the assets that are funded under the liquidity facility and which do not meet the eligibility requirements are guaranteed, either conditionally or unconditionally, by the U.S. government or its agencies, or by the central government of an OECD country.

(6) *Externally rated* means that an instrument or obligation has received a credit rating from a nationally recognized statistical rating organization.

(7) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(8) *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

(9) *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(i) To receive money borrowed by, or advanced to, or advanced to, or for the account of, a second party (the account party), or

(ii) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(10) *Liquidity facility* means a legally binding commitment to provide liquidity support to ABCP by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing ABCP.

(11) *Mortgage servicer cash advance* means funds that a residential mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(i) The mortgage servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(ii) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal of that loan.

(12) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1).

(13) *Recourse* means an arrangement in which a bank retains, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a *pro rata*

share of the bank's claim on the asset. If a bank has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(i) Credit-enhancing representations and warranties made on the transferred assets;

(ii) Loan servicing assets retained pursuant to an agreement under which the bank:

(A) Is responsible for losses associated with the loans being serviced, or

(B) Is responsible for making mortgage servicer cash advances (unless the advances are not a recourse obligation because they meet the conditions specified in section II.B.5(a)(11) of this Appendix A).

(iii) Retained subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(v) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(vi) Credit derivative contracts under which the bank retains more than its pro rata share of credit risk on transferred assets;

(vii) Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not recourse arrangements; and

(viii.) Liquidity facilities that provide liquidity support to ABCP (other than eligible ABCP liquidity facilities).

(14) *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles (GAAP)) of financial assets, whether through a securitization or otherwise, and that exposes a bank to credit risk directly or indirectly associated with the transferred assets that exceeds a *pro rata* share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of the risk-based capital treatment in this appendix.

(15) *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(16) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(17) *Sponsor* means a bank that establishes an ABCP program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

(18) *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

(19) *Traded position* means a position that is externally rated and is retained, assumed or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

6. *Asset-backed commercial paper programs*. a. An asset-backed commercial paper (ABCP) program means a program that primarily issues externally rated commercial paper backed by assets or other exposures held in a bankruptcy-remote, special purpose entity.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections II.B.5., II.C. and II.D. of this appendix.

c. If a bank has multiple overlapping exposures (such as a program-wide credit enhancement and multiple pool-specific liquidity facilities) to an ABCP program that is not consolidated for risk-based capital purposes, the bank is not required to hold capital under duplicative risk-based capital requirements under this appendix against the overlapping position. Instead, the bank should apply to the overlapping position the applicable risk-based capital treatment that results in the highest capital charge.

* * * * *

II. * * *

D. * * * The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor, the nature of any collateral, or external credit ratings.[45]

* * * * *

2. *Items With a 50 Percent Conversion Factor*. * * *

* * * * *

c.i. Commitments are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible ABCP liquidity facilities, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain *material adverse change* clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the bank is obligated solely for its *pro rata* share, only the bank's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio.

ii. Banks that are subject to the market risk rules in appendix C to part 325 are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of over one year that are carried in the trading account at 50 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that support ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix C of this part) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes, and assessed the appropriate risk-based capital treatment in accordance with section II.B.5. of this appendix.

[45] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.B of this appendix A.

d. * * *

Thus, after a commitment has been converted at 50 percent, portions of commitments that have been conveyed to other U.S. depository institutions or OECD banks, but for which the originating bank retains the full obligation to the borrower if the participating bank fails to pay when the commitment is drawn upon, will be assigned to the 20 percent risk category.

* * * * *

4. *Items With a 10 Percent Conversion Factor.* a. Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less that provide liquidity support to ABCP also are converted at 10 percent.

b. Banks that are subject to the market risk rules in appendix C to part 325 are required to convert the notional amount of eligible ABCP liquidity facilities, in form or in substance, with an original maturity of one year or less that are carried in the trading account at 10 percent to determine the appropriate credit equivalent amount even though those facilities are structured or characterized as derivatives or other trading book assets. Liquidity facilities that provide liquidity support to ABCP, in form or in substance, (including those positions to which the market risk rules may not be applied as set forth in section 2(a) of appendix C of this part) that are not eligible ABCP liquidity facilities are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section II.B.5. of this appendix.

5. *Items with a Zero Percent Conversion Factor.* These include unused portions of commitments, with the exception of eligible ABCP liquidity facilities, with an original maturity of one year or less, or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

■ 3. In Appendix C to part 325, add two new sentences to the end of section 2(a) to read as follows:

Appendix C To Part 325—Risk-Based Capital for State Non-Member Banks; Market Risk

* * * * *

Section 2. Definitions

* * * * *

(a) * * * Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as liquidity facilities that provide liquidity support to asset-backed commercial paper. Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of June, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 567—CAPITAL

■ 1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 2. Amend § 567.1 by:
■ A. Revising the definition of an ''asset-backed commercial paper program;''
■ B. Revising the definition of ''commitment;''
■ C. Revising paragraphs (6) and (7) and adding a new paragraph (8) to the definition of ''direct credit substitute;''
■ D. Adding a definition of ''eligible ABCP liquidity facility;''
■ E. Adding a definition of ''liquidity facility;'' and
■ F. Revising paragraphs (6) and (7) and adding a new paragraph (8) to the definition of ''recourse:''

§ 567.1 Definitions

* * * * *

Asset-backed commercial paper program. The term *asset-backed commercial paper program* (ABCP program) means a program that primarily issues commercial paper that has received a credit rating from an NRSRO and that is backed by assets or other exposures held in a bankruptcy-remote special purpose entity. The term *sponsor* of an ABCP program means a savings association that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the asset pools to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

Commitment. The term commitment means any arrangement that obligates a savings association to:

(1) Purchase loans or securities;

(2) Extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, home equity lines of credit, eligible ABCP liquidity facilities, or similar transactions.

* * * * *

Direct credit substitute. * * *

* * * * *

(6) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Servicer cash advances as defined in this section are not direct credit substitutes;

(7) Clean-up calls on third party assets. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the savings association are not direct credit substitutes; and

(8) Liquidity facilities that provide support to asset-backed commercial paper (other than eligible ABCP liquidity facilities).

Eligible ABCP liquidity facility. The term *eligible ABCP liquidity facility* means a liquidity facility that supports asset-backed commercial paper, in form or in substance, and that meets the following criteria:

(1)(i) At the time of the draw, the liquidity facility must be subject to an asset quality test that precludes funding against assets that are 90 days or more past due or in default; and

(ii) If the assets that the liquidity facility is required to fund against are assets or exposures that have received a credit rating by a NRSRO at the time the inception of the facility, the facility can be used to fund only those assets or exposures that are rated investment grade by an NRSRO at the time of funding; or

(2) If the assets that are funded under the liquidity facility do not meet the criteria described in paragraph (1) of this definition, the assets must be guaranteed, conditionally or unconditionally, by the United States Government, its agencies, or the central government of an OECD country.

* * * * *

Liquidity facility. The term *liquidity facility* means a legally binding commitment to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper.

* * * * *

Recourse. * * *

* * * * *

(6) Credit derivatives that absorb more than the savings association's pro rata

share of losses from the transferred assets;

(7) Clean-up calls on assets the savings association has sold. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the savings association are not recourse arrangements; and

(8) Liquidity facilities that provide support to asset-backed commercial paper (other than eligible ABCP liquidity facilities).

* * * * *

■ 3. Amend § 567.5 by revising paragraph (a)(1)(iii) to read as follows:

§ 567.5 Components of Capital

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the savings association excludes the consolidated assets of such programs from risk-weighted assets pursuant to § 567.6(a)(3);

* * * * *

■ 4. Amend § 567.6 by:

■ A. Revising paragraph (a)(2)(ii)(B);

■ B. Redesignating paragraphs (a)(2)(iv) and (a)(2)(v) as paragraphs (a)(2)(v) and (vi), respectively;

■ C. Adding paragraph (a)(2)(iv);

■ D. Revising redesignated paragraph (a)(2)(v)(A);

■ E. Revising the heading to redesignated paragraph (a)(2)(vi), and revising the references to paragraph (a)(2)(v) in that redesignated paragraph to refer to paragraph (a)(2)(vi);

■ F. Revising paragraph (a)(3); and

■ G. Removing paragraph (a)(4).

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(ii) * * *

(B) Unused portions of commitments (including home equity lines of credit and eligible ABCP liquidity facilities) with an original maturity exceeding one year except those listed in paragraph (a)(2)(v) of this section. For eligible ABCP liquidity facilities, the resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees, or external credit ratings under paragraph (b)(3) of this section, if applicable; and

* * * * *

(iv) *10 percent credit conversion factor (Group D).* Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less. The resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees, or external credit ratings under paragraph (b)(3) of this section, if applicable;

(v) *Zero percent credit conversion factor (Group E).* (A) Unused portions of commitments with an original maturity of one year or less, except for eligible ABCP liquidity facilities.

(vi) *Off-balance sheet contracts; interest rate and foreign exchange rate contracts (Group F).* * * *

* * * * *

(3) *Asset-backed commercial paper programs.* (i) A savings association that qualifies as a primary beneficiary and must consolidate an ABCP program that is a variable interest entity under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets if the savings association is the sponsor of the ABCP program.

(ii) If a savings association excludes such consolidated ABCP program assets from risk-weighted assets, the savings association must assess the appropriate risk-based capital requirement against any exposures of the savings association arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with paragraphs (a)(1) and (2) and (b) of this section.

(iii) If a savings association bank has multiple overlapping exposures (such as a program-wide credit enhancement and a liquidity facility) to an ABCP program that is not consolidated for risk-based capital purposes, the savings association is not required to hold duplicative risk-based capital under this part against the overlapping position. Instead, the savings association should apply to the overlapping position the applicable risk-based capital treatment that results in the highest capital charge.

* * * * *

Dated: June 24, 2004.

By the Office of Thrift Supervision.

James T. Gilleran,

Director.

[FR Doc. 04–16818 Filed 7–27–04; 8:45 am]

BILLING CODE 4801–01–P; 6720–01–P; 6210–01–P; 6714–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 615

RIN 3052–AB96

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; OFI Lending; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 614 and 615 on May 26, 2004 (69 FR 29852). This final rule removes unnecessary provisions in the existing other financing institution (OFI) regulations that impede the flow of credit or do not enhance safe and sound operations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 22, 2004.

DATES: The regulation amending 12 CFR parts 614 and 615 published on May 26, 2004 (69 FR 29852) is effective July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: July 22, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–17120 Filed 7–27–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–38–AD; Amendment 39–13736; AD 2004–15–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with low pressure (LP) compressor fan blades part number (P/N) FW18548, installed. This AD requires LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades. This AD results from a number of new production LP compressor fan blades found with surfaces formed outside of design intent. Findings included sharp edges, burrs, and damage present in the area at the top of the shear key slots. We are issuing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

DATES: This AD becomes effective September 1, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 1, 2004.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to Rolls-Royce plc models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with LP compressor fan blades P/N FW18548 installed. We published the proposed AD in the **Federal Register** on October 23, 2003 (68 FR 60627). That action proposed to require LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Include Trent 884B–17 Model

One commenter requests that we add the Trent 884B–17 model to the AD applicability, as it is missing from the proposal.

We agree, and we have added the Trent 884B–17 model to applicability paragraph (c) and to Table 1. There are currently no U.S. operators of this engine model.

Include a Service Bulletin Reference

Two commenters request that we include a reference to RR Service Bulletin (SB) No. RB.211–72–E055, Revision 1, dated June 20, 2003, which contains source life information on the cycle limits specified in the proposal compliance section.

We agree, and we have added a reference to RR Alert Service Bulletin (ASB) No. RB.211–72–AE055, Revision 3, dated May 28, 2004, in paragraph (i) of the AD for informational purposes only.

Changes to SB No. RB.211–72–E055

RR revised SB No. RB.211–72–E055, Revision 2, to an Alert SB No. RB.211–72–AE055, Revision 3, issued on May 28, 2004. The bulletin changes the reference to Boeing 777–200IGW to Boeing 777–200ER as the IGW designation is old terminology. The revision also changes the limits from using the lowest limit on mixed model configurations to using a combination of the lives for mixed model configurations. We concur in part with the changes to the SB and have incorporated into the AD the changes that are pertinent. We also discovered that the Boeing 777–200IGW and 777–200ER models are not official, type-certified designations, so we removed reference to these models from the AD. The incorporated changes do not represent a substantive change in the AD compliance requirements and therefore do not require new notice of proposed rulemaking.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 350 RR models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines of the affected design in the worldwide fleet. We estimate that 106 engines installed on airplanes of U.S. registry would be affected by this AD. We also estimate that it would take about 100 work hours per engine to perform blade rework, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $689,000.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–38–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–15–02 Rolls-Royce plc: Amendment 39–13736. Docket No. 2003–NE–38–AD.

Effective Date

(a) This AD becomes effective September 1, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines, with low pressure (LP) compressor fan blades, part number (P/N) FW18548, installed. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Unsafe Condition

(d) This AD was prompted by a number of new production LP compressor blades found with surfaces formed outside of design intent. Findings included sharp edges, burrs, and damage present in the area at the top of the shear key slots. We are issuing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Actions Required for LP Compressor Fan Blades

(f) Replace LP compressor fan blades with new or previously reworked LP compressor blades at or before accumulating the specified cycles-since-new (CSN) in the following Table 1, or rework the existing blades as specified in paragraph (g) of this AD.

(g) Rework LP compressor fan blades at or before accumulating the specified CSN in the following Table 1. Follow paragraphs 3.B.(1) through 3.B.(22) of Accomplishment Instructions of RR service bulletin (SB) No. RB.211–72–E044, Revision 1, dated May 2, 2003, to do the blade rework.

TABLE 1.—LP COMPRESSOR FAN BLADE REPLACEMENT OR REWORK SCHEDULE

For engines installed on:	Engine model:	Replace or rework LP compressor fan blades at or before accumulating
Boeing 777–300 Series	Trent 884–17	2,400 CSN.
Boeing 777–300 Series	Trent 884B–17	2,400 CSN.
Boeing 777–300 Series	Trent 892–17	2,400 CSN.
Boeing 777–200 Series	Trent 895–17	3,200 CSN.
Boeing 777–200 Series	Trent 892–17	4,100 CSN.
Boeing 777–200 Series	Trent 892B–17	4,100 CSN.
Boeing 777–200 Series	Trent 884–17	4,100 CSN.
Boeing 777–200 Series	Trent 875–17	4,100 CSN.
Boeing 777–200 Series	Trent 877–17	4,100 CSN.

(h) For engines moved between configurations, the cycles remaining may be calculated using either of the following:

(1) Subtract the total CSN from the most limiting configuration's limit from Table 1; or

(2) Calculate the cycles remaining using the following equation:

Where:

X*r* = Cycles remaining in current configuration.

L*c* = Cyclic limit of current configuration from Table 1 of this AD.

X*n* = Cycles accumulated in configuration *n*.

L*n* = Cyclic limit in configuration *n* from Table 1.

(i) Information on the source life of the cycle limits in Table 1 of this AD can be found in RR Alert SB No. RB.211–72–AE055, Revision 3, dated May 28, 2003.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use RR SB No. RB.211–72–E044, Revision 1, dated May 2, 2003, to perform the blade rework required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418. You can review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(l) CAA airworthiness directive 001–05–2003, dated June 20, 2003, and RR Alert SB No. RB.211–72–AE055, Revision 3, dated May 28, 2004, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on July 14, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–16548 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 1987C–0023]

Listing of Color Additives Subject to Certification; D&C Black No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Black No. 2 (a high-purity furnace black, subject to FDA batch certification) as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel. This action is in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association.

DATES: This rule is effective August 30, 2004. Submit objections and requests for a hearing by August 27, 2004. See

section VIII of this document for information on the filing of objections.

ADDRESSES: Submit written objections and requests for a hearing 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: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3423.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of March 13, 1987 (52 FR 7933), FDA announced that a color additive petition (CAP 7C0208) had been filed by the Cosmetic, Toiletry, and Fragrance Association, Inc., 1110 Vermont Ave. NW., Washington, DC 20005 (current address, 1101 17th St. NW., suite 300, Washington, DC 20036–4702). The petition proposed to amend the color additive regulations in part 74 (21 CFR part 74, subpart C) to provide for the safe use of carbon black as a color additive for coloring cosmetics generally, including cosmetics for use in the area of the eye. The petitioner has now limited its proposed use of carbon black to the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel. During its review of the petition, the agency determined that the subject carbon black is a fine-particle high-purity furnace black that will require batch certification by FDA. The agency intends to give each certified batch of the subject color additive the name D&C Black No. 2. Therefore, this color additive will be identified as D&C Black No. 2.

The petitioner has requested the use of D&C Black No. 2 in cosmetics, including cosmetics for use in the area of the eye. The term ''area of the eye'' is defined in § 70.3(s) (21 CFR 70.3(s)) as ''the area enclosed within the circumference of the supra-orbital ridge and the infra-orbital ridge, including the eyebrow, the skin below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge.''

The regulation in 21 CFR 70.5(a) states that ''No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use.''

II. Identity and Specifications

D&C Black No. 2 is a high-purity carbon black prepared by the oil furnace process. It is manufactured by injecting a heated aromatic petroleum oil feedstock into the combustion zone of a natural gas fired furnace. The reaction is quenched with water and the carbon particles are further cooled and collected on a fabric filter. The high-purity furnace black that is the subject color additive of this rule consists essentially of pure carbon, formed as aggregated fine particles with a surface area range of 200 to 260 meters^2/gram.

As explained under III.B of this document, the color additive D&C Black No. 2 may contain low levels of potentially carcinogenic polynuclear aromatic hydrocarbon (PAH) contaminants. To limit the amounts of these contaminants in the color additive, FDA is requiring that D&C Black No. 2 for use in cosmetics be from a batch of the color additive certified by FDA, and is setting specifications for total PAHs, benzo[*a*]pyrene (B[*a*]P), and dibenz[*a,h*]anthracene. Because any PAH contaminants in the color additive can tightly bind to the carbon particles, the bioavailability of PAHs will be inversely related to the surface area of the carbon particles. Therefore, the agency is setting a specification for surface area, determined by the nitrogen Brunauer, Emmett, Teller (BET) method.

In general, the surface area of the carbon particles is also inversely related to their particle size. Because eye irritation may be caused by larger carbon particles, a specification for surface area by nitrogen BET will also limit the size of the carbon particles to those fine enough to ensure eye area safety.

To limit the amounts of heavy metals in the color additive, which substances may be derived from the manufacturing process water and the feedstock, the agency is also setting specifications for arsenic, lead, and mercury.

For a certifiable color additive, the sum of total color plus the levels of appropriate impurities should approximate 100 percent, allowing mass accountability. The total color from D&C Black No. 2 comes from the elemental carbon itself. The levels of appropriate impurities can be obtained from data for ash, volatile matter, and total sulfur. Therefore, the agency is setting specifications for total color (as carbon), ash content, weight loss on heating, and total sulfur.

III. Safety Evaluation

A. Determination of Safety

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(b)(4)), the so-called ''general safety standard'' for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (§ 70.3(i)) define safe as ''convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.''

The anticancer or Delaney clause of the color additive amendments (section 721(b)(5)(B) of the act) provides that for any use of a color additive which will or may result in ingestion of all or part of such additive, the color additive shall be deemed to be unsafe and shall not be listed if the additive is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal (section 721(b)(5)(B)(i) of the act). Further, under section 721(b)(5)(B)(ii) of the act, for any use of a color additive which will not result in ingestion of any part of such additive, the color additive shall be deemed to be unsafe and shall not be listed if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it is found to induce cancer in man or animal.

Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

B. Safety of Petitioned Use of the Additive

D&C Black No. 2 is inert. Its insolubility and lack of toxicity, coupled with a history of safe use of activated carbon in medicine, contribute to the agency's conclusion that the color additive itself is safe for its proposed uses. However, the color additive has been shown to contain low levels of PAH impurities, some of which are carcinogenic. To minimize exposure to contaminants, the agency is setting

limits for the following PAHs as a proportion of D&C Black No. 2: total PAHs (0.5 milligram (mg)/kilogram (kg)); B[*a*]P (0.005 mg/kg); and dibenz[*a,h*]anthracene (0.005 mg/kg).

Current data have shown B[*a*]P to be one of the most potent carcinogens of the PAH family. To assess the risk from exposure to PAHs, FDA has used toxic equivalency factors to express the comparative toxicity of PAHs as fractions of the toxicity of B[*a*]P. This approach expresses the amount of PAHs present in terms of B[*a*]P equivalents and estimates the risk for a mixture of PAHs as if it were one chemical compound. Under this system, B[*a*]P has been assigned a B[*a*]P toxic equivalency of 1. FDA has estimated the exposure to B[*a*]P equivalents from the use of high-purity furnace black in cosmetics to be no greater than 7.2 x 10^{-10} mg/kg body weight/day (Ref. 1). In estimating the exposure to B[*a*]P equivalents from the petitioned use of the color additive, FDA assumed that both B[*a*]P and dibenz[*a,h*]anthracene were present at their proposed limits of 0.005 mg/kg and that each of the other possible PAH contaminants would be present in equal amounts, with a total PAH concentration of 0.5 mg/kg (Ref. 1). Based on the evidence presented in the petition, the agency also concluded that no more than 10 percent of the total PAHs present were likely to be extractable from the additive under typical use conditions, and thus available for absorption by the body (Refs. 2 and 3).

The agency used data from a carcinogenesis bioassay on B[*a*]P, conducted by H. Brune, et al., to estimate the upper-bound limit of lifetime human risk from exposure to B[*a*]P equivalents resulting from the petitioned use of the color additive (Ref. 4). The authors reported treatment-related benign forestomach tumors or esophageal tumors in male rats exposed to B[*a*]P. Using a linear-at-low-dose extrapolation method and tumor incidence data from the H. Brune, et al. study, the FDA estimated the carcinogenic unit risk for B[*a*]P to be 1.75 (mg/kg body weight/day)$^{-1}$. Using this carcinogenic risk for B[*a*]P and an estimated daily exposure of 7.2 x10^{-10} mg of B[*a*]P equivalents/kg body weight/day, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the additive is 1.3 x 10^{-9}, or less than 1 in 1 billion (Refs. 1 and 5 through 7).

Because conservative assumptions were used to estimate exposure, and PAHs bind tightly to carbon black and are not expected to be bioavailable, the average individual exposure to B[*a*]P toxic equivalents is expected to be substantially less than the estimated exposure (Refs. 5 and 6). The actual risk will likely be less than the calculated upper-bound limit of risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to PAHs would result from the petitioned use of the additive.[1]

In addition, no toxicity was noted in studies provided by the petitioner to support the safety of D&C Black No. 2 to color cosmetics intended for use in the area of the eye (Ref. 8).

IV. Conclusions

Based on the data in the petition and other relevant considerations discussed in section III of this document, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Black No. 2 as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel. The agency also concludes that the color additive will achieve its intended technical effect, and thus, is suitable for this use. The agency further concludes that in accordance with 21 CFR 71.20(b), batch certification of D&C Black No. 2 is necessary to protect the public health because of the need to limit the levels of PAHs, some of which have been shown to be carcinogenic. Therefore, part 74 should be amended as set forth in this document.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Jensen, Division of Product Manufacture and Use, to White, Division of Petition Control, March 23, 1998.

2. Memorandum from Cramer, Food and Color Additives Review Section, to Kashtok, Direct Additive Branch, July 25, 1990.

3. Memorandum from Folmer, Division of Petition Review Chemistry Review Group, to Johnston, Division of Petition Review, September 30, 2003.

4. Brune, H., R. P. Deutsch-Wenzel, M. Habs, S. Ivankovis, and D. Schmahl, ''Investigation of the Tumorigenic Response to Benzo[*a*]pyrene in Aqueous Caffeine Solution Applied Orally to Sprague-Dawley Rats,'' *Journal of Cancer Research and Clinical Oncology*, 102:153–157, 1981.

5. Memorandum from Carlson, Division of Petition Review, to Peiperl, Division of Petition Review, July 2, 2003.

6. Memorandum from Kraeling, Cosmetic Toxicology Branch, to Peiperl, Division of Petition Control, April 22, 2003.

7. Memorandum from Folmer, Division of Petition Review Chemistry Review Group, to Peiperl, Division of Petition Review, July 1, 2003.

8. Memorandum from Kraeling, Office of Cosmetics and Colors, to Peiperl, Division of Petition Review, July 15, 1999.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall

[1] FDA has also estimated the upper-bound limit of lifetime human risk to PAHs using the worst-case assumption that all PAHs in the additive have the same carcinogenic potency as B[*a*]P. Based on this highly conservative approach, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the additive is 1.5 x 10^{-8}, or about 1 in 100 million (Ref. 6).

include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

■ 1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 74.2052 is added to subpart C to read as follows:

§ 74.2052 D&C Black No. 2.

(a) *Identity.* The color additive D&C Black No. 2 is a high-purity carbon black prepared by the oil furnace process. It is manufactured by the combustion of aromatic petroleum oil feedstock and consists essentially of pure carbon, formed as aggregated fine particles with a surface area range of 200 to 260 meters (m)^2/gram.

(b) *Specifications.* D&C Black No. 2 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Surface area by nitrogen BET (Brunauer, Emmett, Teller) method, 200 to 260 m^2/gram.

(2) Weight loss on heating at 950 °C for 7 minutes (predried for 1 hour at 125 °C), not more than 2 percent.

(3) Ash content, not more than 0.15 percent.

(4) Arsenic (total), not more than 3 milligrams per kilogram (mg/kg) (3 parts per million).

(5) Lead (total), not more than 10 mg/kg (10 parts per million).

(6) Mercury (total), not more than 1 mg/kg (1 part per million).

(7) Total sulfur, not more than 0.65 percent.

(8) Total PAHs, not more than 0.5 mg/kg (500 parts per billion).

(9) Benzo[*e*]pyrene, not more than 0.005 mg/kg (5 parts per billion).

(10) Dibenz[*a,h*]anthracene, not more than 0.005 mg/kg (5 parts per billion).

(11) Total color (as carbon), not less than 95 percent.

(c) *Uses and restrictions.* D&C Black No. 2 may be safely used for coloring the following cosmetics in amounts consistent with current good manufacturing practice: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Black No. 2 shall be certified in accordance with regulations in part 80 of this chapter.

Dated: July 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17153 Filed 7–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9143]

RIN 1545–AP30

Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations relating to the allocation and apportionment of the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B). These regulations change the method of allocating and apportioning these deductions from ratable apportionment on the basis of gross income to apportionment on the basis of income from sources within the United States. The temporary regulations will affect individuals and corporations that make contributions to charitable organizations and that have foreign source income and calculate their foreign tax credit limitations under section 904. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**. This document also contains final regulations that remove the existing regulations concerning allocation and apportionment of charitable contribution deductions.

DATES: *Effective Date:* These regulations are effective July 28, 2004.

Applicability Dates: For dates of applicability, see §§ 1.861–8(a)(5), 1.861–8T(e)(12)(iv), and 1.861–14T(e)(6)(ii). The regulations are applicable to charitable contributions made on or after July 28, 2004. Taxpayers may elect to apply these regulations to contributions made before July 28, 2004, but during a taxable year ending after July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes (202) 622–3850 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations under section 861 relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c). Currently, regulations under § 1.861–8(e)(9)(iv) provide that such deductions generally are not definitely related to any gross income and therefore are ratably apportioned to the statutory and residual groupings on the basis of gross income.

In 1991, the Treasury Department and the IRS issued proposed regulations (the 1991 proposed regulations) that would have changed the ratable apportionment rule of the final regulations to a rule that, assuming certain requirements are met, generally would apportion the deduction for a charitable contribution based on where the contribution would be used. Prop. Treas. Reg. § 1.861–8(e)(12), 56 Fed. Reg. 10,395 (1991). More specifically, the 1991 proposed regulations provided that the deduction for a charitable contribution would have been apportioned solely to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that the contribution will be used solely outside the United States or that the contribution may necessarily be used only outside the United States. The 1991 proposed regulations also provided that the deduction for a charitable contribution would have been apportioned solely to U.S. source gross income if the taxpayer,

at the time of the contribution, both designates the contribution for use solely in the United States and reasonably believes that the contribution will be so used. Under the 1991 proposed regulations, a deduction for a charitable contribution that is not apportionable to United States or foreign source gross income under the foregoing rules would have been ratably apportioned on the basis of gross income.

The preamble to the 1991 proposed regulations requested comments on the effects of the proposed rules on U.S. charities with significant international activities. Numerous comments were received on the 1991 proposed regulations, most of which recommended that the proposed rules not be adopted. The principal reason given was that the 1991 proposed regulations would reduce funding for foreign charitable activities generally. In addition, the designation and place of use requirements were seen as generating significant paperwork and accountability burdens for both the contributors and the recipient charities. Many comments suggested that, instead of the bifurcated allocation and apportionment in the proposed regulations, the deduction for a charitable contribution should be allocated solely to income from sources within the United States.

In response to the comments received, and upon further consideration of the issue, the 1991 proposed regulations are being withdrawn. *See* Notice of Proposed Rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. In addition, the notice of proposed rulemaking includes proposed regulations which cross reference these temporary regulations and proposed regulations with respect to deductions for charitable contributions that are allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)).

Explanation of Provisions

The temporary regulations provide that the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income and is apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping. For example, where a deduction for charitable contributions is allocated and apportioned for purposes of the foreign tax credit limitation, the charitable contribution deduction is allocated to all of the taxpayer's gross income and apportioned solely to the residual grouping consisting of U.S. source gross income. This revision of the regulations is consistent with the policy of the section 170 contribution rules. The revision is intended to ensure that a taxpayer is not discouraged from making a charitable contribution that is deductible under section 170 simply because the allocation and apportionment rules would reduce the taxpayer's foreign source income and, accordingly, the taxpayer's foreign tax credit limitation as a result of the deduction.

The temporary regulations also provide that, where a charitable contribution is made by a member of an affiliated group, the deduction for the charitable contribution is related to and allocated to the income of all of the members of the affiliated group and not to any subset of the group. This rule is consistent with the provisions of Notice 89–91 (1989–2 C.B. 408). Finally, the provisions of the final regulations under § 1.861–8(e)(9)(iv) and § 1.861–8(g), *Example 18,* which provide for ratable allocation and apportionment of deductions for charitable contributions, are removed.

The regulations are effective for charitable contributions made on or after July 28, 2004. Taxpayers may elect to apply these regulations to contributions made before July 28, 2004 but during a taxable year ending on or after July 28, 2004.

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) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section § 1.861–8 is amended as follows:

■ 1. Remove the language ''paragraphs (c)(2)'' from paragraph (a)(2) and add the language ''paragraphs (c)(3)'' in its place.

■ 2. Add a new second sentence to paragraph (a)(5)(i).

■ 3. Revise paragraph (e)(1).

■ 4. Remove the language ''paragraph (c)(2)'' from the paragraph (e)(9) introductory text and add the language ''paragraph (c)(3)'' in its place.

■ 5. Add the word ''and'' at the end of paragraph (e)(9)(iii).

■ 6. Remove paragraphs (e)(9)(iv) and (g) *Example 18* (iv).

■ 7. Redesignate paragraph (e)(9)(v) as paragraph (e)(9)(iv).

■ 8. Add new paragraph (e)(12).

■ 9. Redesignate paragraph (g) *Example 18* (i) as paragraph (g) *Example 18* (i)(A).

■ 10. Remove the last three entries in the table following the language ''Total gross income .... 40,000,000'' from newly designated paragraph (g) *Example 18* (i)(A).

■ 11. Add new paragraph (g) *Example 18* (i)(B) immediately following the table in newly designated paragraph (g) *Example 18* (i)(A).

■ 12. Designate the undesignated text following new paragraph (g) *Example 18* (i)(B) as paragraph (g) *Example 18* (i)(C).

The revisions and additions read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

(a) * * * (1) * * *

(5) * * * (i) * * * Paragraph (g) *Example 18* (i)(B) applies to charitable contributions made on or after July 28, 2004.

* * * * *

(e) *Allocation and apportionment of certain deductions*—(1) *In general.* Paragraphs (e)(2) and (e)(3) of this section contain rules with respect to the allocation and apportionment of interest

expense and research and development expenditures, respectively. Paragraphs (e)(4) through (e)(8) of this section contain rules with respect to the allocation of certain other deductions. Paragraph (e)(9) of this section lists those deductions which are ordinarily considered as not being definitely related to any class of gross income. Paragraph (e)(10) of this section lists special deductions of corporations which must be allocated and apportioned. Paragraph (e)(11) of this section lists personal exemptions which are neither allocated nor apportioned. Paragraph (e)(12) of this section contains rules with respect to the allocation and apportionment of deductions for charitable contributions. Examples of allocation and apportionment are contained in paragraph (g) of this section.

* * * * *

(12) [Reserved]. For further guidance, *see* § 1.861–8T(e)(12).

* * * * *

(g) *General examples.* * * *

Example 18. * * * (i)(A) * * *

(i)(B) In addition, X incurs expenses of its supervision department of $1,600,000.

* * * * *

■ **Par. 3.** Section 1.861–8T is amended as follows:

■ 1. Add new paragraph (e)(12).

■ 2. Add a new second sentence to paragraph (h).

The additions read as follows:

§ 1.861–8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).

* * * * *

(e) * * *

(12) *Deductions for certain charitable contributions*—(i) *In general.* The deduction for charitable contributions that is allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(i) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping.

(ii) *Coordination with § 1.861–14T.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section and § 1.861–14T(c)(1).

(iii) *Treaty provisions.* [Reserved]

(iv) *Effective date.* (A) The rules of paragraphs (e)(12)(i) and (ii) shall apply to charitable contributions made on or after July 28, 2004. Taxpayers may apply the provisions of paragraphs (e)(12)(i) and (ii) to charitable contributions made before July 28, 2004 but during the taxable year ending on or after July 28, 2004.

(B) The applicability of this section expires on or before July 27, 2007.

* * * * *

(h) * * * However, *see* paragraph (e)(12)(iv) of this section and § 1.861–14T(e)(6)(ii) for rules concerning the allocation and apportionment of deductions for charitable contributions.

* * *

■ **Par. 4.** Section 1.861–14T is amended by revising the section heading and adding paragraph (e)(6) to read as follows:

§ 1.861–14T Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations (temporary).

* * * * *

(e) * * *

(6) *Charitable contribution expenses*—(i) *In general.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of § 1.861–8T(e)(12) and paragraph (c)(1) of this section.

(ii) *Effective date.* (A) The rules of this paragraph shall apply to charitable contributions made on or after July 28, 2004 and, for taxpayers applying the second sentence of § 1.861–8T(e)(12)(iv)(A), to charitable contributions made during the taxable year ending on or after July 28, 2004.

(B) The applicability of this section expires on or before July 27, 2007.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–17079 Filed 7–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB08

Terrorism Risk Insurance Program; Litigation Management

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule concerning litigation management as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share with commercial property and casualty insurers the risk of insured losses from certified acts of terrorism that occur on or before the date the Program ends, on December 31, 2005. This final rule is the latest in a series of regulations that Treasury has issued to implement the Program and finalizes a proposed rule concerning litigation management related to insured losses under the Program.

DATES: This final rule is effective August 27, 2004.

FOR FURTHER INFORMATION CONTACT: David Brummond, Legal Counsel, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program, (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Act provides that the Program ends on December 31, 2005. The Act also provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation, and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.

Each entity that meets the definition of ''insurer'' (well over 2000 firms) must participate in the Program. The amount of federal payment for an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods. Once an insurer has met its individual deductible, the federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate limit of $100 billion.

The Program provides a federal reinsurance backstop for three years. The Act provides Treasury with authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative payments for insured losses that have been covered under any other federal program.

The mandatory availability or ''make available'' provisions in section 103(c) of the Act require that, for Program Year 1, Program Year 2, and, if so determined by the Secretary of the Treasury, for Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage cannot differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism. On June 18, 2004, the Secretary of the Treasury announced his determination to extend the make available requirements through Program Year 3.

As conditions for federal payment under the Program, insurers must provide clear and conspicuous disclosure to policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers submit claims and make certain certifications to Treasury. Treasury has recently published in the **Federal Register** a final rule concerning claims for Federal payment under the Program. See 69 FR 39296 (June 29, 2004).

Section 107 of the Act also contains specific provisions designed to manage litigation arising out of or resulting from a certified act of terrorism. If the Secretary determines that an act of terrorism under section 102 has occurred, section 107 establishes an exclusive Federal cause of action and remedy for property damage, personal injury, or death arising out of or relating to the act of terrorism. Section 107 also preempts certain State causes of action and provides that amounts awarded in actions for property damage, personal injury, or death that are attributable to punitive damages shall not count as ''insured losses'' (and thus shall not be paid) under the Program. The Act also gives the United States the right of subrogation with respect to any payment or claim paid by the United States under the Program. In connection with the implementation of the litigation management provisions of the Act, the President directed the Secretary to use his authority under the Act to propose a rule that would require insurers to obtain Treasury's advance approval before settling certain Federal causes of action described in section 107 of the Act. See 38 Weekly Comp. Pres. Doc. 2097 (Nov. 25, 2002); 2002 WL 14548111 (Dec. 2, 2002) (also accessible at *http://www.treasury.gov/trip*).

Throughout the implementation of the Program, Treasury has been guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders in a useful and efficient manner. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has coordinated the implementation of aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal that insurers develop their own capacity, resources, and mechanisms for terrorism insurance coverage when the Program expires.

B. Previously Issued Regulations

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury issued interim guidance to be relied upon by insurers until superseded by regulations. These notices of interim guidance have now been superseded by final regulations. The scope of the Program, key definitions, and other provisions laying the groundwork for Program implementation are at Subparts A, B, and C of 31 CFR part 50 (68 FR 41250; 68 FR 59720). Treasury's final rule applying provisions of the Act to State residual market insurance entities and State workers' compensation funds is at Subpart D of 31 CFR Part 50 (68 FR 59715). The final rule setting forth procedures for filing claims for payment of the Federal share of compensation for insured losses is at Subpart F of 31 CFR part 50, and Subpart G of 31 CFR part 50 contains the final rule concerning information to be retained as related to the handling and settlement of claims to enable Treasury to perform financial and claim audits (both at 69 FR 39296).

C. The Proposed Rule (Litigation Management)

Treasury published a proposed litigation management rule in the **Federal Register** at 69 FR 25341 on May 6, 2004 to implement the provisions in section 107 of the Act. The proposed litigation management rule required insurers to seek Treasury's advance approval of settlements of certain Federal causes of action involving insured losses and proposed clarifications of litigation management aspects related to the Program.

II. Summary of Comments and Final Rule

Treasury received four comments about the proposed rule; however, one of these comments was jointly submitted by an *ad hoc* industry working group that included insurance industry organizations, insurance companies, and property-casualty insurance industry trade associations and their member companies.[1] Comments were also received from a large commercial property-casualty insurance company; a large market of London-based insurers and reinsurers; and a real estate industry association. In addition, Treasury received a copy of a published Procedural Order from the Judicial Panel on Multidistrict

[1] The trade associations are: American Insurance Association (''AIA''), the American Association of State Compensation Insurance Funds (''AASCIF''), Council of Insurance Agents & Brokers (''CIAB''), The Financial Services Roundtable (''FSR''), Independent Insurance Agents & Brokers of America (''IIABA''), National Association of Mutual Insurance Companies (''NAMIC''), National Association of Professional Insurance Agents (''PIA''), Property Casualty Insurers Association of America (''PCI''), Reinsurance Association of America (''RAA''), and Surety Association of America (''SAA'').

Litigation, which adopted certain procedures for litigation under the Act.

In general, the proposed rule was received quite favorably by the real estate industry trade group, which commented that the rule would screen proposed settlements against litigation abuse and fulfill Congress's intent that taxpayer funds are not used to pay punitive damage claims. In contrast, the joint comment from the *ad hoc* industry working group criticized aspects of the proposed rule as described more fully below and urged that the settlement approval provisions be dropped, or alternatively, that changes be made to them in the final rule. Two other commenters provided suggested changes and clarifications to certain aspects of the proposed rule.

After review and careful consideration of all comments, Treasury has decided to promulgate a final rule with several modifications and clarifications as discussed below.

A. Exclusive Federal Cause of Action and Remedy (Section 50.80)

Section 107(a)(1) states that ''[i]f the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (b).'' Section 107(b) provides that nothing in the litigation management provisions of section 107 shall in any way limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism certified as such under the Act. Section 50.80 of the proposed rule was based on these provisions of the Act.

Section 50.80(a) of the proposed rule provided that ''[u]pon certification of an act of terrorism pursuant to section 102,'' there shall exist a Federal cause of action. The *ad hoc* industry working group raised a concern that the proposed language differed from that of the Act. The comment expressed concern that the proposed rule's use of the word ''upon'' instead of ''if'' could be interpreted to mean that the exclusive Federal cause of action accrues at the time of certification rather than at the time of occurrence of the event later certified.

In response to this comment Treasury is slightly modifying section 50.80 of the final rule to clarify intent and to more closely mirror the statutory language by changing the word ''upon'' to ''if'' in section 50.80(a) of the final rule.

The *ad hoc* industry working group also addressed section 50.80(b) of the proposed rule, which was based on section 107(e). Section 107(e) provides that the litigation management provisions of section 107 only apply to actions for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program. Section 50.80(b) of the proposed rule described the effective period of the Program ''as set forth in section 108 of the Act.'' Section 108(a) establishes only the Program's termination date and not the ''effective period.'' The *ad hoc* industry working group expressed concern that the proposed rule may create uncertainty as to whether the Secretary has authority to certify after the termination date an act that occurs on or before the termination of the Program. After considering this comment, Treasury made a technical correction to section 50.80(b) of the final rule to conform to the precise language of the Act.

B. Preemption of State Causes of Action (Section 50.81)

Section 107(a)(2) preempts all State causes of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law, except as provided in paragraph (b) of the Act (*i.e.*, not affecting the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism). The *ad hoc* industry working group pointed out that the language of the proposed rule differed from that in the Act. Section 107(a)(2) states that ''[a]ll State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, * * *.'' Tracking the time at which the exclusive Federal cause of action comes into existence, section 50.81 of the proposed rule stated that ''upon certification'' of an act of terrorism, all State causes of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism were preempted. The comment explained that the Act itself preempts State causes of action.

Treasury agrees that the Act preempts all State causes of action for property damage, personal injury, or death ''arising out of or resulting from an act of terrorism,'' but such causes of action can only be identified as ''arising out of or resulting from an act of terrorism'' after an act is certified by the Secretary as an ''act of terrorism.'' Because the certification is inextricably linked to the classification of the causes of action to which the preemption applies, the proposed rule described the preemption as being dependent upon the certification of an act of terrorism by the Secretary. After considering the comment, Treasury determined to revise section 50.81 to mirror the language in section 107(a)(2).

C. Program Procedures for Notifying the Judicial Panel on Multidistrict Litigation

Section 107(a)(4) provides that for each act of terrorism certified by the Secretary pursuant to section 102, the Judicial Panel on Multidistrict Litigation (Judicial Panel) shall designate one district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism. The Act also provides that the Judicial Panel is to designate the district court or courts not later than 90 days after the occurrence of an act of terrorism.

In the proposed rule, Treasury recognized that it is the Secretary's certification of an act of terrorism that triggers the existence of the exclusive Federal cause of action and the need for the Judicial Panel to designate a district court or courts for the consolidation of actions. Treasury expressed an intent to notify the Judicial Panel as soon as practicable following any certification of an act of terrorism and invited comments on other appropriate operational procedures.

On June 1, 2004, the Judicial Panel issued a Procedural Order in *In re Terrorism Risk Insurance Act of 2002 Litigation,*—F.R.D.—, 2004 WL 1252476 (Jud. Pan. Mult. Lit. June 1, 2004) (also accessible at *http://www.treasury.gov/trip*). As reflected in its Order, the Panel stated that the 90-day period for the Judicial Panel to designate the court or courts, as prescribed in section 107(a)(4) of the Act, begins on the date the Secretary certifies the act of terrorism. Also, pursuant to its cited rulemaking authority under 28 U.S.C. 1407(f) and in response to the proposed rule, the Judicial Panel adopted procedures for litigation under the Act. The Order directs all interested parties to notify the Judicial Panel of their suggestions regarding what district court or courts should be designated within 20 days of

the date of certification. In addition, the Judicial Panel orders the Secretary, on the date the Secretary certifies an act of terrorism, to notify: (1) The public about the Judicial Panel's Order (through general media channels, such as Internet and press releases to broadcast and print media, ''augmented by direct notice to the parties in any already existing litigation known to the Treasury Secretary'') and (2) the Clerk of the Judicial Panel that such public notice has occurred.

As the Judicial Panel's Order establishes the procedures Treasury and others are to follow once an act is certified as an act of terrorism, there is no need for Treasury to set out procedural requirements in the final rule.

D. Failure To Litigate in Federal Court Pursuant to the Act

In implementing the section 107(a) provisions concerning exclusive jurisdiction, Treasury solicited comment in the preamble to the proposed rule on whether it would be appropriate or necessary to promulgate a rule to facilitate the filing and transfer of civil actions involving Federal causes of action to the Federal district court(s) designated by the Judicial Panel. Such a rule could provide that any amounts awarded in any civil action relating to or arising out of an act of terrorism that are not awarded by the district court or courts designated by the Judicial Panel would be ineligible for compensation under the Program, regardless of whether the amounts awarded would otherwise be insured losses covered by commercial property and casualty insurance issued by an insurer.

The *ad hoc* industry working group commented that such a rule was unnecessary and suggested that cases pending in non-designated courts would be removed to Federal court or dismissed and any awards by non-designated courts would be a legal nullity. Another commenter representing a market of London-based insurers and reinsurers suggested that if such a rule where adopted, an exception be made for court awards made (and paid by insurers) prior to the certification of an act of terrorism and presumably before a Federal district court is designated. After considering the issue and comments, Treasury has decided not to address this issue at this time, but will continue to study the issue to determine if any further clarification or procedures are needed.

E. Treasury's Advance Approval of Settlements (Section 50.82)

Sections 50.82 and 50.83 of the proposed rule provided for the advance approval of settlements of certain Federal causes of action arising out of or resulting from certified acts of terrorism. As noted earlier, Treasury received a memorandum from the President related to this issue. The President's Memorandum directed the Secretary to propose a rule requiring insurers to obtain the advance approval of Treasury of any proposed settlements of causes of action described in section 107 of the Act arising out of or resulting from an act of terrorism.

The proposed rule required advance approval by Treasury of proposed settlements of certain causes of action described in section 107, to the extent liability for such causes of action is covered by or paid, in whole or in part, by an insurer pursuant to coverage for insured losses under the Program. As proposed, such settlements were only required to be submitted for advance approval if the insurer intends to submit the settlement as part of its claim for federal payment under the Program.

A real estate industry association supported the rule as proposed, which it described as important procedures for scrutinizing proposed settlements and ''excellent rules for implementing Congress's charge that TRIA funds are not used to fund punitive damage claims.'' As described below, other commenters disagreed.

1. Rulemaking Authority

As a threshold matter, the *ad hoc* industry working group contended that the advance approval of settlements requirement exceeded Treasury's rulemaking authority. They provided no specific support for this position. The working group comment advocated elimination of the settlement pre-approval requirements in their entirety or other alternatives described below.

For the reasons stated in the preamble to the proposed rule, Treasury believes that it has the requisite legal authority to promulgate this rule, including the settlement approval provisions. *See* 69 FR 25341, 25344. The Act authorizes Treasury to administer the Program, investigate and audit claims, and pay the Federal share of compensation for insured losses. (*see* section 104(a)). Under section 104(a)(2) the Secretary is authorized to prescribe regulations to administer and implement the Program effectively. More specifically, under section 103(b)(3), Treasury is authorized to prescribe reasonable procedures concerning insurers' processing of claims for insured losses. Treasury believes that the procedures that this rule adds to the insurers' claims process are necessary in order to administer and implement the Program effectively. Pursuant to its administrative authority under the Act and to protect the interests of the United States, Treasury is finalizing sections 50.82 and 50.83 of the proposed rule, but with modifications as described below.

2. General Objections to the Rule

One insurer that commented criticized the proposed rule (and the claims regulations found in Subpart F) generally as being a departure from the more traditional ''follow the fortunes'' (sometimes also referred to as ''follow the settlements'') approach employed by reinsurers. The *ad hoc* industry working group raised this point as well. That group stated that through the proposed rule, Treasury would be substituting its judgment for that of the insurer in settling claims while introducing tremendous complexities into the claims process and that the regulations governing claims procedures (Subpart F) provide sufficient safeguards and already expose insurers to the risk of having an already settled cause of action denied.

To fulfill the purposes of the Act and its role as administrator, Treasury expects to be notified of covered settlements, to review them, and to make its objections (if any) known to the insurer. Treasury has tried to tailor its review and requests for information, as much as possible and with some exceptions, to the type of information typically gathered by the insurer as part of the claims adjustment process.

The *ad hoc* industry working group also stated that the rule does not reflect reinsurance best practices and is not modeled after the customary business practices of insurers and reinsurers. As we have often stated, Treasury seeks to administer the Program in a manner consistent with procedures insurers use in the normal course of business to the extent possible within statutory constraints. Given the unique characteristics of this Federal Program, the settlement approval aspects of this rule are appropriate. Though the Program is often thought of as being similar to an excess-of-loss quota share reinsurer, the Program is truly a Federal financial backstop funded by public monies which, unlike a traditional reinsurer, does not share in premiums and can recoup its payments as prescribed in section 103(e)(7) of the Act. Reinsurers evaluate and choose the insurers they reinsure, consider the claims handling and loss experience of

their reinsureds, and reassess those relationships during renewal audits. Treasury does not have a similar private market relationship with insurers. Moreover, Treasury does not believe that it has strayed inappropriately from reinsurance practices. Treasury is aware that some reinsurance treaties contain claims-cooperation clauses that allow reinsurers to receive early notification and the discretionary right to associate in the control, defense, and litigation of claims.

The *ad hoc* industry working group comment also stated that the proposed rule would expose insurers to bad faith claims and/or violations of State unfair claims practices standards which generally require them to promptly settle claims. The working group comment contends that the rule as proposed could expose insurers to liability for extra-contractual obligations (*i.e.*, punitive or exemplary damages) and/or damages in excess of policy limits if imposed by a court due to the insurer's delay or failure to settle because of Treasury's actions under this rule. The comment also pointed out that, by operation of sections 50.50(a) and 50.5(e)(4)(ii) and (iii) of the claims procedures regulations, Treasury does not share in extra-contractual or excess of policy limits type damages. If Treasury promulgates a final rule, the *ad hoc* industry working group suggested that Treasury should also share in these damages; pay one hundred percent of any liability of the insurer above the amount the insurer proposed settling the cause of action; or grant insurers qualified immunity from state law claims standards.

Treasury believes the hypothetical scenario suggested by the *ad hoc* industry working group in its comment may be overstated. First, the rule envisions a settlement approval process that normally will occur within 30 days. The information sought is that typically assembled by the insurer's claim professionals in handling and adjusting claims and should not delay settlements. Settlements can still be effectuated promptly and the additional processes required by this rule seem unlikely to lead to the types of inordinate delays typically associated with bad faith damages being awarded or State regulatory actions being brought. Insurers could inform the State regulatory officials and court that they are following Federal regulation and nothing in this rule prevents an insurer from settling a cause of action without or despite Treasury's pre-approval, doing so only precludes compensation under the Program. Treasury declines to adopt the *ad hoc* working group's suggestions.

3. Thresholds for Pre-Approval of Certain Proposed Settlements

The proposed rule required an insurer to seek Treasury's advance, written approval where an insurer (directly or through its insured) intends to settle a Federal cause of action involving third-party claims (by a third-party against an insured and/or the insurer) for property damage, personal injury, or death arising out of or resulting from an act of terrorism when—

- All or part of the settlement amount is expected to be part of the insurer's claim for federal payment under the Program; and
- Any portion of the proposed settlement amount that is attributable to liability for personal injury or death is $1 million or more, or that is attributable to liability for property damage (including loss of use) is $5 million or more, regardless of the number of third-party claims being settled.

In the preamble to the proposed rule, Treasury specifically requested comments on these monetary thresholds. The real estate industry association supported the thresholds as proposed. Another suggested that the thresholds were too low and that they should be raised to $10 million for both property and casualty claims. Upon consideration of the views of the commenters and Treasury's further assessment of the administrative costs and operational issues associated with the advance approval of too large a number of settlements, Treasury has decided to adjust the monetary thresholds set out in paragraphs (a)(1) and (2) of section 50.82 of the final rule. As now finalized, insurers will be required to submit for advance approval by Treasury settlements where the amount attributable to the insured's liability for personal injury or death is $2 million or more, or that is attributable to liability for property damage is $10 million or more.

Treasury is setting these monetary thresholds (below which an insurer is not required to seek pre-approval by Treasury) pursuant to section 104(a)(2) of the Act which authorizes the Secretary to prescribe regulations to administer and implement the Program effectively. In balancing between the need to protect the interests of the United States with the effective administration of the Program, Treasury believes it appropriate to raise the thresholds. In addition, Treasury notes that settlements that are reviewed and approved (or deemed approved), or that are not required to be submitted for prior approval, are all still subject to later Treasury review, like any other claim, at the point of claim submission by the insurer or at the time of any audit (*see* Subparts F and G).

In raising the settlement thresholds in section 50.82(a) of the final rule, Treasury expressly retains the right to require insurers to submit for pre-approval any settlement of a Federal cause of action that comes to its attention, on a case-by-case basis, even if the settlement amount attributable to liability for property damage, personal injury, or death is below the applicable threshold. Accordingly, Treasury is modifying section 50.82 of the final rule to add a new paragraph (b) which states that Treasury may request that an insurer submit for review and advance approval proposed settlements of Federal causes of action for property damage, personal injury, or death, where the settlement amounts are below the monetary thresholds identified in section 50.82(a)(1) and (2).

Several commenters asked for clarification covering different, but related aspects concerning what is included in calculating the thresholds. In response, Treasury provides the following additional clarifications:

- Any portion of the proposed settlement amount that is attributable to an insured loss or losses is aggregated per third-party claimant, regardless of the number of causes of action or insured losses being settled (section 50.82(a)(1) and (2) are being revised to reflect the ''per third-party claimant'' qualification);
- The thresholds include self-insured retentions (no change to the rule is necessary);
- Defense costs are not included in the thresholds. They are reviewed as loss adjustment expenses under sections 50.50(a) and 50.5(e)(4) of the regulations; and
- The pre-approval process does apply to Federal causes of action settled before the insurer has exceeded its insurer deductible under the Act. *See* section 102(7); 103(e)(1)(A). This is because under the claims procedures rule, insured losses are submitted on an aggregate basis without identification as to which insured losses are assigned to meeting the insurer deductible. *See* section 50.51(a) of Subpart F.

One commenter, representing a market of London-based insurers and reinsurers commented that it read the proposed settlement pre-approval requirements as being limited to settlements of filed legal actions. As Treasury stated in the preamble to its proposed rule (69 FR at 25344–45), the

settlement pre-approval requirements, which are now being finalized, apply to Federal causes of action regardless of whether a lawsuit has actually been filed or an arbitration commenced with respect to the claim. This is because, as we explained in the preamble to the proposed rule, ''a 'cause of action' is a group of operative facts giving rise to one or more bases for one person to sue and obtain a remedy in court from another person.''

Commenters generally favored the proposed rule's limitation on the pre-approval requirements to causes of action brought by third-party claimants against insureds. As stated in the preamble to the proposed rule, the prior approval requirement extends only to settlements for insured losses arising from third-party claims against an insured for property damage, personal injury or death against a commercial insured. Coverage disputes involving contract rights are not included in the scope of the causes of actions requiring advanced settlement approval by Treasury. Such disputes involve causes of action that are based on contract law, not on property damage, personal injury, or death, and are not subject to prior approval by Treasury. Several commenters suggested that Treasury include this important distinction in the rule itself. After consideration of these comments, Treasury has clarified in section 50.82(a) of the final rule that the advance approval requirements apply to any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured.

4. Factors To Be Reviewed by Treasury

In determining whether to approve a proposed settlement, section 50.82(b) of the proposed rule (now being re-designated in the final rule as subparagraph (c)) identified the factors (in addition to those listed in section 50.50 of Subpart F) that Treasury would consider. These factors included the nature of the insured loss, the facts and circumstances surrounding the loss, and, as applicable, other related factors, as well as any other information requested by Treasury. The real estate industry association stated that the proposed rule ''provides commendable detail in requiring specific information to be communicated in submissions of proposed settlement for pre-approval by Treasury.''

The *ad hoc* industry working group suggested that if the proposed rule is adopted, Treasury should limit the pre-approval of proposed settlements to a review that only would consider whether punitive damages were included in the settlement. Alternatively, the working group comment suggested eliminating section 50.83 and modifying section 50.82 to require insurers to provide Treasury ''notice'' that the settlement is not an *ex gratia* payment (*i.e.*, a payment not required under the terms of the insurance policy); does not include settlement of a claim for punitive damages; and is not the result of fraud, collusion, bad faith, or dishonesty. In addition, the working group comment suggested the insurer notify Treasury that the insurer has complied with applicable State laws governing claims practices; determined that liability of the insured is clear; and has agreed to settlement based on merits and terms and conditions of the policy, without regard to the submission as part of its claim for the Federal share of compensation. These factors are generally covered through application of the claims procedures rule. *See* section 50.50(a). Accordingly, Treasury has decided to not revise the rule as suggested.

The real estate industry association wanted the factors expanded to include all information considered by the insurer's claims adjuster; that settlements also are reviewed for ''excessiveness''; and that Treasury should receive detailed statement explaining how any proposed settlement ensures that punitive damages are not included. Treasury believes the listed factors are sufficient. In addition, section 50.82(c)(5) allows Treasury to consider any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement. The commenter's suggestions are the type of additional information that could be requested (pursuant to 50.83(d)(12) of the final rule) and evaluated in certain circumstances, but certainly not all, and therefore, Treasury declines to add them by specific reference at this time.

Other comments were directed specifically to some of the factors, described below.

a. Ensuring That the Settlement Is an Insured Loss Covered Under the Insurance Policy (Section 50.82(c)(1))

Among the factors the proposed rule listed as relevant to Treasury's consideration of proposed settlements, section 50.82(c)(1) stated that Treasury would consider whether the proposed settlement compensates for a loss that is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy. The *ad hoc* industry working group pointed out that this is already part of the claims review process under the claims procedures rule in Subpart F and doing a coverage analysis at the pre-approval stage may cause delay in insurers paying claims.

In consideration of this comment, Treasury is revising the final rule to state that Treasury will review whether the ''proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.83(d)(2).'' As a result, Treasury is changing section 50.83(d)(2) of the final rule to require the insurer to provide to Treasury as part of the approval submission process a certification by the insurer that the settlement is for a third-party's loss, the liability of which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy. The revisions clarify that the loss is that of a third-party, the liability for which is an insured loss, as suggested by an insurer who commented that the rule, left unchanged, could be misread to capture first-party settlements.

b. Ensuring That Settlement Amounts Shared With the Program Do Not Include Payment of Punitive Damages (Section 50.82(c)(2))

Section 107(a)(5) provides that any amounts awarded in actions under section 107(a)(1) of the Act (exclusive Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism) that are attributable to punitive damages shall not count as insured losses under the Act. Because section 107(a)(5) of the Act does not consider punitive damages ''insured losses'' under the Act, the Federal Government will not compensate an insurer for such damages. See also sections 50.5(e)(4)(i) of Subpart A (definition of ''insured loss'') and 50.50(a) of Subpart I.

Consistent with the claims procedures rule, this proposed rule stated that a factor Treasury would consider in approving a proposed settlement is whether the settlement excludes punitive damages, regardless of how the parties to the settlement agreement characterize the payment. An insurer shall be required to identify any portion of a proposed settlement amount that is attributable to punitive damages, or that is intended to compromise a claim or demand for punitive damages in a cause of action for which punitive damages

could be awarded. And Treasury will review proposed settlements to determine whether all or part of the settlement amount is intended to compromise an actual or threatened claim for punitive or exemplary damages, even if the settlement does not indicate that the payment includes punitive or exemplary damages.

The real estate industry association stated that, ''[o]ne of the best elements of the NPRM [Notice of Proposed Rulemaking] is its detailed discussion of steps that will be taken to ensure that settlements do not include indemnity for punitive damages claims.'' The *ad hoc* industry working group suggested that the proposed rule be modified to require the review of amounts ''attributable to an award of punitive or exemplary damages,'' presumably following the literal language of section 107(a)(5) of the Act. The working group stated that while claims for punitive damages are made routinely, actual awards are rare. Without the modification, the working group comment suggested, Treasury's review would be highly subjective, involve substantial legal and factual analysis, and create inordinate delay, yet would promise little value. After review of these comments, Treasury is finalizing the rule as proposed in order to ensure that punitive damages are not awarded through settlements.

Several commenters requested that Treasury explain how it would determine what portion of a proposed settlement might be attributable to a claim for punitive damages when the settlement does not indicate that the payment includes such damages. No methods of review were suggested by these comments. The real estate industry association, however, suggested that Treasury could require and receive a detailed statement from the insurer (under section 50.83) explaining how any proposed settlement ensures that punitive damages are not included. Treasury considered the comments and decided that a requirement for the insurer to identify any portion of a proposed settlement amount that is attributable to punitive damages (or that is intended to compromise a claim or demand for punitive damages) is sufficient.

c. Ensuring That Settlement Amounts Shared With the Program Have Accounted For Compensation Received by Third-Parties From Other Federal Programs (Section 50.82(c)(3))

Section 50.82(b)(3) of the proposed rule (now re-designated as paragraph (c)(3) in the final rule) stated that a factor Treasury would consider in approving a proposed settlement is whether the settlement amount offset amounts received from the United States pursuant to any other Federal program. Section 103(e)(1)(B) of the Act states, ''The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses. See also section 50.51(b) of Subpart I. The *ad hoc* industry working group objected to Treasury's consideration of this as part of the settlement approval process because, as explained by the working group, an insurer generally does not have the ability under the terms and conditions of a property and casualty insurance policy to reduce the value of a claim by such collateral source amounts. Treasury is adopting this requirement in the final rule because it is required under the Act to adjust the Federal share of compensation by these amounts, Treasury is in effect asking, as a practical versus contractual matter, whether the insurer has already taken collateral source payments into consideration in arriving at the settlement amount (*i.e.*, would the settlement have been higher but for the compensation from the other Federal Program?). Section 50.82(c)(3) of the final rule is finalized as proposed, without change.

d. Review of Impact of Professional Fees and Expenses on Settlement Amount (50.82(c)(4))

Another factor Treasury proposed to take into account in reviewing proposed settlements was the amount of attorneys' fees and other legal expenses paid out of the settlement proceeds. The proposed rule was based on Treasury's concern about inflated, unsupported insured losses. In order to address this concern, Treasury proposed to evaluate whether attorneys' fees and expenses in connection with the settlement were unreasonable or inappropriate, in whole or in part, and whether they caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated.

Another commenter asked if review of attorneys' fees included review of defense attorneys' fees and expenses? Such costs would not be reviewed at the pre-approval stage but would be reviewed as part of the insurer's claim for loss adjustment expenses. See sections 50.50(a) and 50.5(e)(3).

In the preamble to our proposed rule, we described how Treasury would examine the appropriateness of attorneys' fees and expenses, generally by considering such factors as those weighed by Federal courts regarding the reasonableness of attorneys' fees and expenses. The real estate industry association praised this approach.

Many of the comments addressed this section of the proposed rule. The ad hoc industry working group contended that the review of attorneys' fees contained in the proposed rule was unnecessary because bar association ethics rules (prohibiting unreasonable fees) and procedural review by courts (presumably over settlements of filed legal actions) are a sufficient check on legal fees that may inflate the settlement amounts paid by insurers.

In light of some of the comments and upon further consideration, Treasury has decided to revise section 50.82(c)(4) of the final rule to more clearly focus on the issue of whether insured losses have been inflated. Under the final rule, Treasury will consider whether the settlement amount has been inflated by such things as unjustified professional fees and expenses of attorneys, experts, and other professionals. The intent is to focus on whether such fees or other expenses have caused the settlement amount to exceed the value of the insured loss as compared to similar losses. In order to apply this revision to the pre-approval submission and in response to a request for clarification by a commenter, Treasury is also making a related revision to section 50.83(d)(7) to clarify that insurers are to submit to Treasury the net amount to be received by the third-party after the payment of professional fees and expenses. Section 50.83(d)(7) is revised to now require that insurers inform Treasury of ''[t]he amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment.''

Some commenters explained that insurers might not always be able to obtain this information. Treasury understands the possible difficulty in obtaining information but believes the insurer is in the best position to obtain this information and it is hoped that a third-party would provide such information to the insurer knowing that it is a requirement upon which Treasury's approval, and in turn the insurer's eventual agreement to finalize the settlement, may depend. Insurers should recognize that the factors listed in section 50.82(c) will be viewed as a whole, with different emphasis on different factors depending on the particulars of the cause of action. If an

insurer cannot obtain the information required by section 50.82(c)(4), it should simply indicate that fact to Treasury, as well as what attempts it made to discover the information. An insurer could also provide its best estimate based on its prior business experience of what professionals charge under the circumstances of the particular claim. Having provided such guidance, Treasury has decided to not change the rule.

5. Settlement Without Treasury's Approval

Under section 50.82(d) of the rule, if an insurer settles a cause of action after Treasury has rejected the proposed settlement, or if an insurer settles a cause of action without seeking Treasury's approval in advance, as required by section 50.82(a), the insurer will not be entitled to the Federal share of the amount paid as part of its claim for federal payment unless the insurer can demonstrate, to the satisfaction of the Treasury, extenuating circumstances. Also, the insurer shall not be entitled to include the paid settlement amount as an insured loss in its aggregate insured losses (whether or not those aggregate insured losses exceed the insurer deductible) for purposes of calculating the Federal share of compensation due to the insurer under the Program.

In its proposed rule, Treasury requested comments on how frequently claims are received by commercial property and casualty insurers under commercial liability policies where the insured settles directly with a claimant and then notifies the insurer after the settlement has been consummated. No one commented on the frequency of such situations or the size of claims usually involved. The ad hoc industry working group cited situations under the law of three states that may allow an insured to settle causes of action without the knowledge or consent of their insurer. The working group comment suggested one possible approach to address these situations is to specifically state in the rule that settlements without insurer consent are ''extenuating circumstances'' that will not preclude Federal compensation of the insurer's payment of the settlement or indemnification of the insured.

Although there may be situations where this does occur, perhaps under relevant State law, Treasury prefers to evaluate each situation when it occurs, based on the particular circumstances as presented by the insurer. Accordingly, Treasury is not changing the rule and adopts section 50.82(d), as proposed, as final.

F. Procedures for Requesting Approval of Settlements (Section 50.83)

Section 50.83 of the proposed rule set out a procedure for an insurer to submit proposed settlements for advance approval by Treasury. Generally, within 30 days after Treasury's receipt of a complete notice of the proposed settlement and an insurer's request that the proposed settlement be approved, Treasury may issue a written response and either approve or disapprove the proposed settlement, in whole or in part. If Treasury does not issue a written response within 30 days after its receipt of a complete notice (or within the time as extended in writing by Treasury), the request for advance approval of the settlement will be deemed approved under section 50.83(c). (The settlement will still be subject to review under the claims procedures rule.)

The majority of the comments either supported or did not object to the within 30-day pre-approval review process. The ad hoc industry working group suggested that 30 days is too long. Treasury emphasizes that the rule anticipates a decision by Treasury within 30 days, and through the ''deemer'' provision, no later than 30 days. While it is true, as a comment noted, that the ''deemer'' provision allows Treasury to extend the 30-day period, Treasury expects such instances to not be common. Treasury is aware of its responsibility to manage the Program effectively and efficiently and will employ its best efforts to administer the pre-approval process in an expedient manner. For reasons stated previously in the proposed rule preamble, Treasury is not changing the 30-day time period in the rule. See 69 FR 25341, 25346.

Several commenters pointed out that the process does not envision any type of expedited review of settlements where the agreements in principal may be reached shortly before a Federal cause of action is about to be tried. The commenters suggest Treasury consider approaches to accommodate such situations. Treasury has made no change to the proposed rule. Treasury expects that attorneys representing the insureds will advise the Federal district court about Treasury's approval role.

Section 50.83 of the proposed rule also outlined minimum information Treasury thought might be relevant and useful in considering whether to approve a proposed settlement. One comment was supportive of the proposed rule. Others, primarily representing or themselves insurers, believed the rule requested too much information which would be burdensome on insurers and cause substantial delay. Comments were received on the various items, some of which have resulted in some modifications, which are now discussed.

In careful consideration of the insurer's comments, Treasury has changed the section 50.83(d) of the final rule in the following ways in order to ensure that Treasury is preliminarily only seeking the minimum information required by Treasury:

- As explained earlier in the discussion of section 50.82(c)(1) (ensuring that the settlement is of an insured loss under the terms and conditions of the insurance policy), the final rule now adds a revised requirement at paragraph (d)(2) to 50.83, requiring a certification by the insurer that the settlement is for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy. This revision is being made because Treasury needs less information since it will no longer be performing a complete review of the insurer's coverage analysis as part of the pre-approval process, as originally proposed;
- Paragraph (d)(4) of section 50.83 of the final rule now requires a statement from the insurer or its attorney in support of the settlement rather than a more onerous one recommending the settlement and requiring the basis for the recommendation;
- As explained earlier in the discussion of section 50.82(c)(4) and the proposed review of attorneys' fees and expenses, paragraph (d)(7) of section 50.83 of the final rule is revised to call for the amount to be paid out of the settlement proceeds that in turn will compensate professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party claimant. In addition to conforming to the changes made to 50.82(c)(4), this paragraph now combines (and clarifies) section 50.82(d)(6) and (7) of the proposed rule;
- Relevant agreements called for in the proposed rule are now, under section 50.83(d)(10) of the final rule, only required to be submitted if requested by Treasury; and
- Paragraph (d)(12) of section 50.83 is clarified to assure insurers that Treasury will request and require only such other information that is related to the insured loss and that it deems necessary to evaluate the proposed settlement.

Treasury has decided not to adopt several of the other suggestions by the commenters, such as: Treasury receive the same information submitted to a

claims officer who approves the settlement on behalf of the insurer; a statement of risks and disadvantages of settlement with an assessment of the strengths and weaknesses of the claim; and a disclosure whether coverage is disputed and other coverage issues. It was also suggested that the submissions for approval be verified under oath. For the reasons stated earlier, Treasury declines to adopt the suggestions except that, for the reasons stated earlier, it will require certification of the insurer's coverage determination under section 50.83(a)(2) of the final rule.

Finally, the *ad hoc* industry working group commented that the proposed rule did not include provisions to protect confidential or privileged information submitted to Treasury under section 50.83. Any issues relating to the protection or disclosure of confidential or privileged information are adequately addressed through the procedures and exceptions (*e.g.*, exception (b)(4) and (5)) applicable under the Freedom of Information Act, 5 U.S.C. 552, and Treasury's FOIA regulations at 31 CFR part 1, subpart A. Insurers wishing to protect such information should follow those procedures, including labeling the information pursuant to those regulations.

G. Right of Subrogation (Section 50.84)

Section 107(c) provides that the United States shall have the right of subrogation with respect to any payment or claim paid by the United States under the Act. In section 50.85 of the proposed rule, Treasury proposed a requirement that insurers take steps to preserve the Federal Government's rights of subrogation under section 107(c).

The *ad hoc* industry working group claimed that the requirement to preserve the subrogation rights of the United States conflicts with claims procedures rule that allows insurers to use business judgment in deciding whether to pursue subrogation opportunities. See Section 50.51(a). Treasury believes there is no conflict. Under the claims procedures rule, when an insurer pursues subrogation opportunities, the outcome inures to the benefit of the United States through an adjustment to the Federal share of compensation. As we stated at 60 FR 39296, 39300 (June 29, 2004), if an insurer decides to forego subrogation, the United States itself can pursue those opportunities. This does not conflict with section 50.84 of the final rule, which is designed to ensure that insurers do not waive subrogation rights and to prevent the very situation the working group identified when it stated, ''waiver of subrogation rights often takes place in settlement.'' Treasury is not changing the rule on the basis of this comment. Given the language in section 107, insurers are prohibited from negotiating away the Federal Government's subrogation rights.

The group of London-based insurers and reinsurers pointed out that the proposed rule required insurers to ''take all steps necessary to preserve the subrogation rights of the United States.'' The commenter explains that it is not clear what affirmative steps insurers must take to preserve these rights. The commenter suggested revising the rule to instead require that insurers avoid taking action that would prejudice the Federal Government's right of subrogation. Treasury is accepting this commenter's suggestion and is changing the language of section 50.84 accordingly.

H. Management of Pre-Certification Litigation and Related Issues

Several commenters pointed out that the proposed rule does not address causes of action settled and/or paid after the occurrence of an event not yet, but later certified by the Secretary pursuant to section 102 of the Act as an ''act of terrorism.'' The comments raised issues that may warrant further study and consideration and Treasury has decided not to address this issue at this time.

I. Time Between Occurrence and Certification of an Event as an Act of Terrorism

The *ad hoc* industry working group raised the issue of the time it may take for the Secretary to certify an event as an act of terrorism pursuant to section 102 of the Act. As previously explained in the preamble to other regulations, Treasury believes it unwise and inappropriate to establish a set time frame within which the Secretary would be required to make a certification that an ''act of terrorism'' had occurred. See 68 FR 41250, 41252 (July 11, 2003). The ad hoc industry working group comment requested that Treasury promulgate a rule allowing for: (1) A ''conditional'' determination if the facts strongly lead to a conclusion of foreign or domestic involvement; or (2) a regulatory provision acknowledging the possibility of a delayed certification and urging state regulatory consideration of that possibility; or (3) qualified immunity where there is a delay in the certification process. Treasury declines to adopt these suggestions.

III. Procedural Requirements

Executive Order 12866, ''Regulatory Planning and Review''

This rule is a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The rule establishes requirements for advance approval of settlements when claims are to be submitted for insured losses. There is no impact on small insurers unless an act of terrorism occurs and federal compensation is sought by small insurers entitled to reimbursement for their insured losses. If an act of terrorism occurs and Federal payment is sought through a claim, the rule's impact on small insurers is likely to be minimal because most of the information that would have to be submitted in connection with Treasury approval of settlements largely duplicates information already contained in an insurer claim file or an attorney case file. Moreover, the $2 million and $10 million thresholds for the submission of settlements to Treasury for approval is likely further to minimize burdens on small insurers.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the OMB in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d) and assigned OMB Control Number 1505–0196. 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 control number assigned by OMB.

The collection of information is the notice of proposed settlement in section 50.83 that insurers must submit to implement the settlement approval process prescribed by section 50.82. The information will be used by Treasury to evaluate the reasonableness of proposed settlements in order to approve them in advance. The submission of specified information in connection with a proposed settlement is mandatory for any insurer that seeks payment of a Federal share of compensation.

The burden associated with this collection of information is estimated to

be 4 hours with respect to each claim. Comments on the accuracy of this estimate and suggestions on how to reduce this burden should be sent to the Terrorism Risk Insurance Program, Room 2100, 1425 New York Avenue, NW., Washington, DC 20220 and to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Subpart I of part 50 is added to read as follows:

Sec.
50.80 Federal cause of action and remedy.
50.81 State causes of action preempted.
50.82 Advance approval of settlements.
50.83 Procedure for requesting approval of proposed settlements.
50.84 Subrogation.

Subpart I—Federal Cause of Action; Approval of Settlements

§ 50.80 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to section 102 of the Act, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (c) of this section.

(b) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

(c) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.81 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.82 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* An insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a), Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.83(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.83.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.83 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.83 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at *http://www.treasury.gov/trip* following any

certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury response or deemed approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.50.

(d) *Notice format.* A notice of a proposed settlement should be entitled, ''Notice of Proposed Settlement—Request for Approval,'' and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the insured's underlying claim, the insured's loss, the amount of the claim, the operative policy terms, defenses to coverage, and all damages sustained;

(2) A certification by the insurer that the settlement is for a third-party's loss the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(3) An itemized statement of all damages by category (*i.e.*, actual, economic and non-economic loss, punitive damages, etc.);

(4) A statement from the insurer or its attorney in support of the settlement.;

(5) The total dollar amount of the proposed settlement;

(6) Indication as to whether the settlement was negotiated by counsel;

(7) The amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment;

(8) The amount received from the United States pursuant to any other Federal program for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) If requested by Treasury, other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to specific policy, coverage and/or aggregate limits; and

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer;

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.84 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy and preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the United States' right of subrogation.

Dated: July 23, 2004.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 04–17235 Filed 7–26–04; 9:22 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA78

TRICARE; Individual Case Management Program; Program for Persons With Disabilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), which terminates the Individual Case Management Program. The Department withdraws its proposed rule published at 66 FR 39699 on August 1, 2001, regarding the Individual Case Management Program. This rule also implements section 701(b) of the NDAA–02 which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations governing the Program for Persons with Disabilities. The Program for Persons with Disabilities is now called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

DATES: Termination of the Individual Case Management Program (§ 199.4(i)) became effective December 28, 2001. The remainder of this rule is effective July 1, 2004.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: Michael Kottyan, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3520. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

The Individual Case Management Program (ICMP). Under the provisions of section 704(3) of the NDAA–93 [Pub. L. 102–484], 10 U.S.C. 1079(a)(17) was enacted which allowed the DoD to establish the ICMP, also known as the Individual Case Management Program for Persons with Extraordinary Conditions (ICMP–PEC). This allowed a reasonable deviation from the restrictive statutory coverage of health services for patients who had exceptionally serious, long-range, costly and incapacitating conditions. The ICMP was officially implemented in March 1999 as a waiver program that provided coverage for care and services that were normally restricted from coverage under the Basic Program. Specifically, when a beneficiary was determined to meet the TRICARE definition of custodial care, coverage under the Basic Program was limited to one hour of skilled nursing care per day, twelve physician visits per year related to the custodial condition, durable medical equipment and prescription medications. The Department recognized that the exclusion of coverage when a family member is deemed to be a custodial care patient is both a financial and emotional burden. Consequently, the Department used the ICMP/ICMP–PEC authority to cover medically necessary care and to

enable TRICARE case managers to maximize available resources for these beneficiaries.

Repeal of the ICMP. Section 701(g) of the NDAA–02 repealed 10 U.S.C. 1079(a)(17), the statutory authority for the ICMP. However, section 701(d) allows the Department to continue to provide payment for home health care or custodial care services not otherwise authorized under the Basic Program as if the ICMP were still in effect. Payment may occur when a determination is made that discontinuation of payment would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to the beneficiary. Eligible beneficiaries are defined in section 701(d)(3) as covered beneficiaries who were regarded as custodial care patients under the ICMP/ICMP–PEC and received medically necessary skilled services for which the Secretary provided payment before December 28, 2001.

Custodial Care. Section 701(c) of the NDAA–02 provides a statutory definition of custodial care that is more consistent with other federal programs. The change also results in the narrowing of the statutory exclusions of custodial care that has the effect of eliminating current program restrictions on paying for certain medically necessary care.

Note: The statutory definition of custodial care under section 701(c) began on December 28, 2001, the effective date of the NDAA–02. Public notice of the substitution of the new statutory definition of the former custodial care definition in 32 CFR 199.2 was published in the **Federal Register** at 67 FR 40597 on June 13, 2002.

Program for Persons with Disabilities (PFPWD). This program is now renamed the Extended Health Care Option (ECHO). The PFPWD was established by Congress in 1966 and was originally called the Program for the Handicapped (PFTH). The name was changed to PFPWD in 1997 to reflect the national shift away from the label of handicapped and in an effort to be more sensitive to our beneficiaries with special needs. The program was established to provide financial assistance for active duty family members who are moderately or severely mentally retarded or have a serious physical disability. The purpose of the program was to help defray the cost of services not available either through the Basic Program or through other public agencies as a result of state residency requirements. Section 701(b) of the NDAA–02 strikes 10 U.S.C. 1079(d), (e), and (f), which were the statutory authority for the PFPWD, and re-authorizes the program with new subsections (d), (e), and (f). These new subsections add an extraordinary physical or psychological condition as a qualifying condition and limits the requirement to use public facilities to the extent that they are available and adequate to certain benefits under subsection (e). They also include discretion to increase the monthly Government cost-share for allowable services from a maximum of $1,000 per month and expand the benefit to allow for coverage of ECHO home health care and services beyond the Basic program. Section 701(e) also includes the discretion to allow coverage for custodial care and respite care.

II. The Extended Care Health Option (ECHO)

Purpose. The primary purpose of the ECHO is to provide extended benefits to eligible beneficiaries that assist in the reduction of the disabling effects of an ECHO qualifying condition and that are not available through the Basic Program. Under 10 U.S.C. 1079(e), ECHO benefits may be provided only to the extent such service, supply or equipment is not a covered benefit under the Basic Program. This may include comprehensive health care services, including services necessary to maintain, minimize or prevent deterioration of, function of an eligible beneficiary.

Eligibility. Participation in the ECHO is voluntary and is available only for TRICARE-eligible family members of active duty service members who have a qualifying condition. Qualifying conditions are limited under 10 U.S.C. 1079(d)(3)(B) to beneficiaries who have

(a) Moderate or severe mental retardation; or

(b) A serious physical disability, as defined in 32 CFR 199.2; or

(c) An extraordinary physical or psychological condition, as defined in 32 CFR 199.2.

ECHO Benefits. ECHO benefits established herein include diagnostic procedures to establish a qualifying condition, inpatient, outpatient, and comprehensive home health care supplies and services, training, habilitative or rehabilitative services, special education, assistive technology devices, institutional care within a State when a residential environment is required, transportation under certain circumstances, certain other services such as assistive services of a qualified interpreter or translator for deaf or blind beneficiaries in conjunction with receipt of other allowed ECHO benefits, equipment adaptation and maintenance, and respite care, and ECHO home health care.

ECHO Respite Care. Under 10 U.S.C. 1079(e)(6), the Department may provide respite care under the ECHO program. Respite care is defined in 32 CFR 199.2 as short term care for a patient in order to provide rest and change for those who have been caring for the patient at home, usually the patient's family. DoD recognizes that caring for a special needs beneficiary poses special challenges, especially for active duty families. This rule establishes an ECHO benefit to provide a maximum of 16 hours per month of respite care. The respite care benefit is available for ECHO beneficiaries in any month during which the beneficiary receives ECHO benefits other than respite care under the ECHO Home Health Care benefit. Respite care services will be provided by a TRICARE-authorized home health agency and will provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit is not cumulative, that is, any respite care hours not used in one-month will not be carried over or banked for a subsequent month(s). The Government's cost-share incurred for the ECHO respite care services accrue to the ECHO maximum monthly benefit of $2,500.

Government Cost-share Liability for ECHO. The Government's monthly cost-share of all benefits provided to a beneficiary in a particular month under the PFPWD was statutorily limited to $1,000 by 10 U.S.C. 1079(e)(2). The Government's monthly cost-share of any benefits provided under ECHO is now statutorily limited to $2,500 by section 701(b) of the NDAA–02 (10 U.S.C. 1079(f)(2)(A)) for benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. Because the NDAA–02 provided no statutory limitation concerning the amount of the Government's monthly cost-share for all other benefits under ECHO, the Department has discretion to determine the maximum monthly Government cost-share. Therefore, this rule increases the monthly Government cost-share from $1,000 to $2,500 for all benefits under ECHO, except for the new ECHO Home Health Care (EHHC) benefit as established herein. The primary reason for this increase is that the maximum government cost-share has not been adjusted since 1980. We will continue to review this issue to insure that the

government's cost-share reasonably meets the needs of beneficiaries.

ECHO Home Health Care (EHHC). Under 10 U.S.C. 1079(e), extended benefits may be provided to eligible beneficiaries to the extent such benefits are not provided under provisions of chapter 55, title 10, United States Code, other than under this section. Under 10 U.S.C. 1079(e)(2), the ECHO may include ''comprehensive home health care supplies and services which may include cost effective and medically appropriate services other than part-time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act).'' Section 701(a) of the NDAA–02 requires home health care services under the Basic Program be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act. Therefore, this rule establishes an ECHO Home Health Care (EHHC) benefit for qualifying beneficiaries.

EHHC Eligibility. To qualify for EHHC, the beneficiary must meet all general ECHO program eligibility requirements and must

(a) Physically reside within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam; and

(b) Be homebound, as defined in § 199.2 and as modified in this rule; and

(c) Require medically necessary skilled services that exceed the maximum level of coverage provided under the Basic Program's home health care benefit, or

(d) Require frequent interventions, other than skilled medical services, by the primary caregiver(s) (as ''primary caregiver'' is defined in § 199.2) such that EHHC services are necessary to allow primary caregiver(s) the opportunity to rest; and

(e) Be case managed (as ''case management'' is defined in § 199.2), including a periodic assessment of needs, and receive services as outlined in a written plan of care; and

(f) Receive home health care services from a TRICARE-authorized home health agency as described in § 199.6(b)(4)(xv).

EHHC Benefit. Covered TRICARE-authorized home health agency services are the same as, and provided under the same conditions as, those services provided under the TRICARE Basic Program under § 199.4(e)(21), with the exception that the EHHC benefit is not limited to part-time or intermittent home health care. Therefore, this rule sets out that TRICARE beneficiaries who are eligible for the ECHO and require home health care services beyond the coverage limits under the Basic Program will receive all home health care services under EHHC and no portion will be provided under the Basic Program.

EHHC Plan of Care. The level of ECHO home health care services authorized will be based on a written plan of care that supports the medical necessity of those services in excess of what can be authorized by the Basic Program, or, in the case of a beneficiary who requires frequent interventions, the need for EHHC in order to allow the primary caregiver(s) the opportunity to rest. The plan of care must include identification of the professional qualifications or skill level of the person required to provide the care. Reasonable justification for the medical necessity of the level of provider must be included in the plan of care, otherwise, reimbursement will not be authorized for that level of provider.

EHHC Respite Care. This rule establishes respite care within the EHHC benefit specifically tailored for families with a beneficiary who has a medical condition(s) that requires frequent interventions by the primary caregiver. For the purpose of this respite care, the term ''frequent'' means ''more than two interventions during the eight-hour per day period that the primary caregiver would normally be sleeping.'' The service performed during the interventions may have been taught to the primary caregiver by a medical professional, but the services performed by the primary caregiver are such that they can be performed safely and effectively by the average non-medical person without direct supervision of a licensed nurse or other health care provider. Therefore, when an eligible beneficiary's care plan reflects a need for frequent interventions by the primary caregiver, the beneficiary is eligible for EHHC respite care services in lieu of the ECHO respite care benefit. EHHC beneficiaries in this situation are eligible for eight hours per day for five (5) days per week of respite care by a TRICARE-authorized home health agency. The home health agency will provide health care services for the covered beneficiary so that the primary caregiver is relieved of his/her responsibility for providing such care for the duration of that period of respite care in order that the primary caregiver(s) may rest. The TRICARE-authorized home health agency will not provide baby-sitting or child care services for other members of the family. The benefit is not cumulative, that is, respite care hours not used in a given day will not be carried over or banked for use on another occasion. Also, EHHC respite care periods will not be provided consecutively, that is, a respite care period on one day will not be immediately followed by an EHHC respite care period the next day, thus prohibiting a continuous sixteen hour period of respite care. The government's cost-share incurred for these services accrue to the fiscal year maximum ECHO Home Health Care benefit.

Government Cost-share Liability for EHHC. TRICARE-authorized home health agencies who provide services under the Basic Program are reimbursed under § 199.14(h) using the same methods and rates as used under the Medicare home health agency prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1385fff) and 42 CFR part 484, subpart E, except for children under age ten and except as otherwise necessary to recognize distinct characteristics of TRICARE beneficiaries and as described in instructions issued by the Director, TRICARE Management Activity. However, the Medicare home health agency prospective payment system is designed to reimburse providers who provide part-time or intermittent services; it is not designed to reimburse providers for services that exceed those limits. Therefore, this rule set outs that the Department will reimburse home health agencies the allowable charges or negotiated rates. The maximum annual fiscal year cap for EHHC services is what the highest locally wage-adjusted maximum Medicare Resource Utilization Grouping (RUG–III) category cost to the Department would be if such services were provided in a TRICARE-authorized skilled nursing facility. (*See* **Federal Register** 67 FR 40597, June 13, 2002, concerning the TRICARE Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers). Because the highest RUG–III category is used to determine the EHHC fiscal year cap, the Department will not attempt to determine what RUG–III category would apply to the beneficiary if such beneficiary were in fact admitted for care into a TRICARE-authorized skilled nursing facility. The fiscal year cap will be recalculated each year following publication of the ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice'', or similar, by the Centers for Medicare and Medicaid Services in the **Federal Register**.

The maximum monthly Government cost-share to be paid to the home health agency for ECHO home health care will

be the allowable charges or negotiated rates, but in no case will such payment exceed one-twelfth of the fiscal year cap calculated as above.

When EHHC beneficiaries move within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam, the annual fiscal year cap will be recalculated as above to reflect the correct wage-adjusted maximum RUG–III category cost for the beneficiary's new location and will apply for the remaining portion of that fiscal year.

EHHC Reimbursement. A TRICARE-authorized home health agency must bill for all authorized ECHO home health care services through established TRICARE claims mechanisms. No special billing arrangements will be authorized in coordination with coverage that may be provided by Medicaid (subject to any State Agency Billing Agreements), or other Federal, State, community or private programs.

For authorized ECHO home health care and respite care, TRICARE will reimburse the allowable charges or negotiated rates.

Beneficiary Cost-share Liability for ECHO, including EHHC. Under 10 U.S.C. 1079(f), members are required to share in the cost of any benefits provided to their dependents under ECHO. ECHO benefits are not subject to a deductible amount. Regardless of the number of ECHO eligible family members, the sponsor's monthly cost-share for allowed ECHO benefits is based upon the rank of the uniformed service member. Under 10 U.S.C. 1079(f)(1)(A), members with a rank of E–1 are required to pay the first $25 incurred per month, and members with a rank of O–10 are required to pay the first $250 incurred per month. This rules sets out the cost-share for members with ranks in-between such that the majority will pay less than $100 per month, with the most senior enlisted member paying less than $50 per month.

Sponsor rank-based cost-sharing (refer to Table 1, 32 CFR 199.5) applies to benefits covered by the ECHO and these cost-shares do not apply toward the Basic Program's catastrophic cap under 10 U.S.C. 1079(b)(5). Also, the waiver of cost-shares for active duty family members enrolled in TRICARE Prime does not apply to ECHO as the statutory basis for the ECHO program and its cost-shares is separate and distinct from the Basic Program, including TRICARE Prime.

Other Requirements. Other ECHO requirements are as follows:

Registration. Sec 701(b) of the NDAA–02 (10 U.S.C. 1079(d)(1)) requires registration to receive ECHO benefits. Sponsors of potentially qualifying beneficiaries will seek to register their family member(s) for ECHO benefits through the applicable Managed Care Support Contractor (MCSC). The MCSC will determine eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) to reflect the beneficiary's ECHO eligibility. No ECHO benefits may be authorized unless the beneficiary is registered in DEERS as ECHO-eligible.

EFMP Enrollment. Each of the Military Services has its own Exceptional Family Member Program (EFMP). Although the EFMPs can interface with the Military Health System, they are actually military personnel programs. The purpose of those programs is to require military personnel offices to evaluate the ability of a military and civilian community to provide appropriate medical and/or educational services to service members' dependents who have special medical or educational needs before the Service re-assigns the member to a new location. Although each Service requires its members who have family members with special needs to enroll in the EFMP, some members do not comply with this requirement. The result is that some members arrive at assignment locations that are unable to accommodate the special medical and/or educational needs of their dependent(s). Dependents of members required to be enrolled in EFMP are similar if not identical to those who qualify for the ECHO program. The Services do not routinely provide EFMP enrollments to TRICARE, therefore, to provide a greater degree of coordination of services for TRICARE beneficiaries, this rules sets out that members will be required to provide evidence they are enrolled in their Services' Exceptional Family Member Program when registering for ECHO benefits. This requirement will enhance the probability that personnel are assigned to locations where there are sufficient qualified individual or institutional providers to provide the ECHO benefit to their dependents.

Use of Public Facilities. For ECHO benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilitates, the statute expressly requires use of public facilities to be the extent such facilities are available and adequate as determined under this regulation.

III. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** at 68 FR 46526 on August 6, 2003. Two individuals provided several comments, summarized below.

Comment: The first commentor questioned the Department's decision regarding where the ECHO, in particular ECHO Home Health Care and respite care, will be available.

Response: The ECHO will generally be available wherever there are TRICARE beneficiaries eligible for the ECHO and appropriate TRICARE-authorized providers.

The focus of the ECHO Home Health Care benefit is to provide ECHO beneficiaries with the same benefit structure as provided by the Basic Program's Home Health Agency Prospective Payment System (HHA–PPS) but without its limitation that the services be provided on a ''part-time or intermittent'' basis. In order to assure the quality of care for TRICARE beneficiaries, the HHA–PPS provides that only Medicare-authorized Home Health Agencies are eligible for designation as TRICARE-authorized providers. Likewise, the Department also elected to utilize those same home health agencies to provide the ECHO respite care. Consequently, ECHO respite care and the ECHO Home Health Care benefits are limited to locations where there are Medicare-authorized home health agencies. Currently that is limited to the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

Comment: That commentor also remarked about the cost of transportation to receive ECHO-authorized benefits.

Response: This rule sets out that costs for public and private transportation necessary to receive authorized ECHO benefits will be reimbursed subject to the limits herein.

Comment: The second commentor requested the Department provide the ECHO respite care benefit to multiple TRICARE beneficiaries within group settings, such as a day care center, and prorate the allowable cost among those receiving the respite care.

Response: The Department has identified several issues regarding the comment. First, other than when allowed by specific exceptions to its policies, TRICARE professional outpatient benefits are provided one-on-one, that is, one patient with one provider per episode of care. Consequently, there is no general provision for ''group'' type episodes-of-care or settings.

Second, the regulatory language at 32 CFR 199.2 defines respite care as '' * * * short-term care for a patient in order to provide rest and change for those who have been caring for the patient at home, usually the patient's family.'' Although there is no statutory restriction on where respite care services are provided, it is the Department's decision that such care be provided in the beneficiary's primary residence.

Last, as set out in this rule, both the ECHO respite care and the ECHO Home Health Care respite care benefits will be provided by TRICARE-authorized home health agencies. These providers will be reimbursed on the basis of allowable charges or negotiated rates, neither of which provides pro-rated assignment of TRICARE benefits nor pro-rated payments based on multiple TRICARE beneficiaries receiving care in a group setting.

IV. Summary of Regulatory Modifications

The following modifications were made as a result of developing the implementing instructions:

(1) We clarified that TRICARE reimbursement for ECHO home health care and respite care will be the allowable charges or negotiated rates.

V. Regulatory Procedures

Executive Order (EO) 12866

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive order 12866 and has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing DoD information systems to include the Defense Enrollment Eligibility Reporting System (DEERS) will be upgraded to reflect ECHO registration.

List of Subjects in 32 CFR part 199

Case management, Claims, Custodial care, Health insurance, Individuals with disabilities, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2 is amended in paragraph (b) by removing the definitions of ''*Program for Persons with Disabilities (PFPWD)*'' and ''*Extraordinary condition*'', by revising paragraph (v) of the definition of ''*Double coverage plan*'', by revising the definitions of ''*Durable equipment*'', ''*Homebound*'', and ''*Primary caregiver*'', and by adding the definitions of ''*Duplicate equipment*'', ''*Extended Care Health Option (ECHO)*'', and ''*Extraordinary physical or psychological condition*'' in alphabetical order to read as follows:

§ . 199.2 Definitions.

* * * * *

(b) * * *

Double coverage plan. * * *

(v) Part C of the Individuals with Disabilities Education Act for services and items provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individual Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Extended Care Health Option (ECHO).

* * * * *

Duplicate equipment. An item of durable equipment or durable medical equipment, as defined in this section that serves the same purpose that is served by an item of durable equipment or durable medical equipment previously cost-shared by TRICARE. For example, various models of stationary oxygen concentrators with no essential functional differences are considered duplicate equipment, whereas stationary and portable oxygen concentrators are not considered duplicates of each other because the latter is intended to provide the user with mobility not afforded by the former. Also, a manual wheelchair and an electric wheelchair, both of which otherwise meet the definition of durable equipment or durable medical equipment, would not be considered duplicates of each other if each is found to provide an appropriate level of mobility. For the purpose of this part, durable equipment or durable medical equipment that are essential to provide a fail-safe in-home life support system or that replaces in like kind an item of equipment that is not serviceable due to normal wear, accidental damage, a change in the beneficiary's condition, or has been declared adulterated by the U.S. FDA, or is being or has been recalled by the manufacturer, is not considered duplicate equipment.

Durable equipment. A device or apparatus which does not qualify as durable medical equipment and which is essential to the efficient arrest or reduction of functional loss resulting from, or the disabling effects of a qualifying condition as provided in § 199.5.

* * * * *

Extended Care Health Option (ECHO). The TRICARE program of supplemental benefits for qualifying active duty family members as described in § 199.5.

* * * * *

Extraordinary physical or psychological condition. A complex physical or psychological clinical condition of such severity which results in the beneficiary being homebound as defined in this section.

* * * * *

Homebound A beneficiary's condition is such that there exists a normal inability to leave home and, consequently, leaving home would require considerable and taxing effort. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment or in an adult day-care program certified by a state, or accredited to furnish adult day-care services in the state shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not disqualify an individual if the absence is infrequent or of relatively short duration. For the purposes of the preceding sentence, any absence for purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. Also, absences from the home for non-medical purposes, such as an occasional trip to the barber, a walk around the block or a drive, would not necessarily negate the beneficiary's homebound status if the absences are undertaken on an

infrequent basis and are of relatively short duration. In addition to the above, absences, whether regular or infrequent, from the beneficiary's primary residence for the purpose of attending an educational program in a public or private school that is licensed and/or certified by a state, shall not negate the beneficiary's homebound status.

* * * * *

Primary caregiver. An individual who renders to a beneficiary services to support the activities of daily living (as defined in § 199.2) and specific services essential to the safe management of the beneficiary's condition.

* * * * *

§ 199.3 [Amended]

■ 3. Section 199.3 is amended by revising the term ''Program for Persons with Disabilities'' or the acronym ''PFPWD'' to read ''Extended Care Health Option'' or the acronym ''ECHO,'' respectively, in paragraphs (b)(2)(iii)(A)(*1*), (c)(2)(i)(C), (c)(2)(ii)(B), (c)(2)(iii)(B), (c)(3)(i)(C), (c)(3)(ii)(B), (c)(4)(i)(B), (c)(4)(ii)(B), (c)(4)(iii)(B), (c)(5)(i)(C), (c)(5)(ii)(B), (c)(5)(iii)(B), (c)(5)(iv)(C)(*2*), (c)(6)(ii), (c)(7)(i)(C), (c)(7)(ii)(B), (c)(8)(ii), (c)(9)(i)(B), (c)(9)(ii)(B), and (c)(10)(ii) wherever they appear.

■ 4. Section 199.4 is amended by removing and reserving paragraph (e)(20); adding paragraph (g)(59); revising paragraph (g)(73); and removing paragraph (i) Case management program in its entirety; to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(59) *Duplicate equipment.* As defined in § 199.2, duplicate equipment is excluded.

* * * * *

(73) *Economic interest in connection with mental health admissions.* Inpatient mental health services (including both acute care and RTC services) are excluded for care received when a patient is referred to a provider of such services by a physician (or other health care professional with authority to admit) who has an economic interest in the facility to which the patient is referred, unless a waiver is granted. Requests for waiver shall be considered under the same procedure and based on the same criteria as used for obtaining preadmission authorization (or continued stay authorization for emergency admissions), with the only additional requirement being that the economic interest be disclosed as part of the request. The same reconsideration and appeals procedure that apply to day limit waivers shall also apply to decisions regarding requested waivers of the economic interest exclusion. However, a provider may appeal a reconsidered determination that an economic relationship constitutes an economic interest within the scope of the exclusion to the same extent that a provider may appeal determination under § 199.15(i)(3). This exclusion does not apply to services under the Extended Care Health Option (ECHO) in § 199.5 or provided as partial hospital care. If a situation arises where a decision is made to exclude CHAMPUS payment solely on the basis of the provider's economic interest, the normal CHAMPUS appeals process will be available.

* * * * *

■ 5. Section 199.5 is revised to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

(a) *General.* (1) The TRICARE ECHO is essentially a supplemental program to the TRICARE Basic Program. It does not provide acute care nor benefits available through the TRICARE Basic Program.

(2) The purpose of the ECHO is to provide an additional financial resource for an integrated set of services and supplies designed to assist in the reduction of the disabling effects of the beneficiary's qualifying condition. Services include those necessary to maintain, minimize or prevent deterioration of function of an ECHO-eligible beneficiary.

(b) *Eligibility.* (1) The following categories of TRICARE/CHAMPUS beneficiaries with a qualifying condition are eligible for ECHO benefits:

(i) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a member of one of the Uniformed Services; or

(ii) An abused dependent as described in § 199.3(b)(2)(iii); or

(iii) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a member of one of the Uniformed Services who dies while on active duty. In such case the child or spouse remain eligible for benefits under the ECHO for a period of three years from the date the active duty sponsor dies; or

(iv) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a deceased member of one of the Uniformed Services, who, at the time of the member's death was receiving benefits under ECHO, and the member at the time of death was eligible for receipt of hostile-fire pay, or died as a result of a disease or injury incurred while eligible for such pay. In such case the child or spouse remain eligible through midnight of the beneficiary's twenty-first birthday.

(2) *Qualifying condition.* The following are qualifying conditions:

(i) *Mental retardation.* A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the ''Diagnostic and Statistical Manual of Mental Disorders'' published by the American Psychiatric Association.

(ii) *Serious physical disability.* A serious physical disability as defined in § 199.2.

(iii) *Extraordinary physical or psychological condition.* An extraordinary physical or psychological condition as defined in § 199.2.

(iv) *Infant/toddler.* Beneficiaries under the age of 3 years who are diagnosed with a neuromuscular developmental condition or other condition that is expected to precede a diagnosis of moderate or severe mental retardation or a serious physical disability, shall be deemed to have a qualifying condition for the ECHO. The Director, TRICARE Management Activity or designee shall establish criteria for ECHO eligibility in lieu of the requirements of paragraphs (b)(2)(i), (ii) or (iii) of this section.

(v) *Multiple disabilities.* The cumulative effect of multiple disabilities, as determined by the Director, TRICARE Management Activity or designee shall be used in lieu of the requirements of paragraphs (b)(2)(i), (ii) or (iii) of this section to determine a qualifying condition when the beneficiary has two or more disabilities involving separate body systems.

(3) *Loss of ECHO eligibility.* Eligibility for ECHO benefits ceases as of 12:01 a.m. of the day following the day that:

(i) The sponsor ceases to be an active duty member for any reason other than death; or

(ii) Eligibility based upon the abused dependent provisions of paragraph (b)(1)(ii) of this section expires; or

(iii) Eligibility based upon the deceased sponsor provisions of paragraphs (b)(1)(iii) or (iv) of this section expires; or

(iv) Eligibility based upon a beneficiary's participation in the Transitional Assistance Management Program ends; or

(v) The Director, TRICARE Management Activity or designee determines that the beneficiary no longer has a qualifying condition.

(4) *Continuity of eligibility.* A TRICARE beneficiary who has an outstanding Program for Persons with Disabilities (PFPWD) benefit authorization on the date of

implementation of the ECHO program shall continue receiving such services for the duration of that authorization period provided the beneficiary remains eligible for the PFPWD. Upon termination of an existing PFPWD authorization, or if the beneficiary seeks benefits under this section before such termination, the beneficiary shall establish eligibility for the ECHO in accordance with this section.

(c) *ECHO benefit.* Items and services that the Director, TRICARE Management Activity or designee has determined are capable of confirming, arresting, or reducing the severity of the disabling effects of a qualifying condition, includes, but are not limited to:

(1) Diagnostic procedures to establish a qualifying condition or to measure the extent of functional loss resulting from a qualifying condition.

(2) Medical, habilitative, rehabilitative services and supplies, durable equipment and durable medical equipment that are related to the qualifying condition. Benefits may be provided in the beneficiary's home or other environment as appropriate.

(3) Training that teaches the use of assistive technology devices or to acquire skills that are necessary for the management of the qualifying condition. Such training is also authorized for the beneficiary's immediate family. Vocational training, in the beneficiary's home or a facility providing such, is also allowed.

(4) Special education as provided by the Individuals with Disabilities Education Act and defined at 34 CFR 300.26 and that is specifically designed to accommodate the disabling effects of the qualifying condition.

(5) Institutional care within a state, as defined in § 199.2, in private nonprofit, public, and state institutions and facilities, when the severity of the qualifying condition requires protective custody or training in a residential environment. For the purpose of this section protective custody means residential care that is necessary when the severity of the qualifying condition is such that the safety and well-being of the beneficiary or those who come into contact with the beneficiary may be in jeopardy without such care.

(6) Transportation of an ECHO beneficiary, and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

(7) *Respite care.* ECHO beneficiaries are eligible for 16 hours of respite care per month in any month during which the qualified beneficiary otherwise receives an ECHO benefit(s). Respite care is defined in § 199.2. Respite care services will be provided by a TRICARE-authorized home health agency and will be designed to provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit will not be cumulative, that is, any respite care hours not used in one month will not be carried over or banked for use on another occasion.

(i) TRICARE-authorized home health agencies must provide and bill for all authorized ECHO respite care services through established TRICARE claims' mechanisms. No special billing arrangements will be authorized in conjunction with coverage that may be provided by Medicaid or other federal, state, community or private programs.

(ii) For authorized ECHO respite care, TRICARE will reimburse the allowable charges or negotiated rates.

(iii) The Government's cost-share incurred for these services accrue to the maximum monthly benefit of $2,500.

(8) *Other services*—(i) *Assistive services.* Services of qualified personal assistants, such as an interpreter or translator for ECHO beneficiaries who are deaf or mute and readers for ECHO beneficiaries who are blind, when such services are necessary in order for the ECHO beneficiary to receive authorized ECHO benefits.

(ii) *Equipment adaptation.* The allowable equipment purchase shall include such services and modifications to the equipment as necessary to make the equipment useable for a particular ECHO beneficiary.

(iii) *Equipment maintenance.* Reasonable repairs and maintenance of beneficiary owned or rented durable equipment or durable medical equipment provided by this section shall be allowed while a beneficiary is registered in the ECHO.

(d) *ECHO Exclusions.* (1) *Basic Program.* Benefits allowed under the TRICARE Basic Program will not be provided through the ECHO.

(2) *Inpatient care.* Inpatient acute care for medical or surgical treatment of an acute illness, or of an acute exacerbation of the qualifying condition, is excluded.

(3) *Structural alterations.* Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment or to facilitate entrance or exit, are excluded.

(4) *Homemaker services.* Services that predominantly provide assistance with household chores are excluded.

(5) *Dental care or orthodontic treatment.* Both are excluded.

(6) *Deluxe travel or accommodations.* The difference between the price for travel or accommodations that provide services or features that exceed the requirements of the beneficiary's condition and the price for travel or accommodations without those services or features is excluded.

(7) *Equipment.* Purchase or rental of durable equipment and durable medical equipment, which are otherwise allowed by this section, are excluded when:

(i) The beneficiary is a patient in an institution or facility that ordinarily provides the same type of equipment to its patients at no additional charge in the usual course of providing services; or

(ii) The item is available to the beneficiary from a Uniformed Services Medical Treatment Facility; or

(iii) The item has deluxe, luxury, immaterial or nonessential features that increase the cost to the Department relative to a similar item without those features; or

(iv) The item is duplicate equipment as defined in § 199.2.

(8) *Maintenance agreements.* Maintenance agreements for beneficiary owned or rented equipment are excluded.

(9) *No obligation to pay.* Services or items for which the beneficiary or sponsor has no legal obligation to pay are excluded.

(10) *Public facility or Federal government.* Services or items paid for, or eligible for payment, directly or indirectly by a public facility, as defined in § 199.2, or by the Federal government, other than the Department of Defense, are excluded for training, rehabilitation, special education, assistive technology devices, institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities, except when such services or items are eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid). Rehabilitation and assistive technology services or supplies may be available under the TRICARE Basic Program.

(11) *Study, grant, or research programs.* Services and items provided as a part of a scientific clinical study, grant, or research program are excluded.

(12) *Unproven status.* Drugs, devices, medical treatments, diagnostic, and therapeutic procedures for which the safety and efficacy have not been established in accordance with § 199.4 are excluded.

(13) *Immediate family or household.* Services or items provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(14) *Court or agency ordered care.* Services or items ordered by a court or other government agency, which are not otherwise an allowable ECHO benefit, are excluded.

(15) *Excursions.* Excursions are excluded regardless of whether or not they are part of a program offered by a TRICARE-authorized provider. The transportation benefit available under ECHO is specified elsewhere in this section.

(16) *Drugs and medicines.* Drugs and medicines that do not meet the requirements of § 199.4 or § 199.21 are excluded.

(17) *Therapeutic absences.* Therapeutic absences from an inpatient facility or from home for a homebound beneficiary are excluded.

(18) *Custodial care.* Custodial care, as defined in § 199.2, is not a stand-alone benefit. Services generally rendered as custodial care may be provided only as specifically set out in this section.

(19) *Domiciliary care.* Domiciliary care, as defined in § 199.2, is excluded.

(20) *Respite care.* Respite care for the purpose of covering primary caregiver (as defined in § 199.2) absences due to deployment, employment, seeking of employment or to pursue education is excluded. Authorized respite care covers only the ECHO beneficiary, not siblings or others who may reside in or be visiting in the beneficiary's residence.

(e) *ECHO Home Health Care (EHHC).* The EHHC benefit provides coverage of home health care services and respite care services specified in this section.

(1) *Home health care.* Covered ECHO home health care services are the same as, and provided under the same conditions as those services described in § 199.4(e)(21)(i), except that they are not limited to part-time or intermittent services. Custodial care services, as defined in § 199.2, may be provided to the extent such services are provided in conjunction with authorized ECHO home health care services, including the EHHC respite care benefit specified herein. Beneficiaries who are authorized EHHC will receive all home health care services under EHHC and no portion will be provided under the Basic Program. TRICARE-authorized home health agencies are not required to use the Outcome and Assessment Information Set (OASIS) to assess beneficiaries who are authorized EHHC.

(2) *Respite care.* EHHC beneficiaries whose plan of care includes frequent interventions by the primary caregiver(s) are eligible for respite care services in lieu of the ECHO general respite care benefit. For the purpose of this section, the term ''frequent'' means ''more than two interventions during the eight-hour period per day that the primary caregiver would normally be sleeping.'' The services performed by the primary caregiver are those that can be performed safely and effectively by the average non-medical person without direct supervision of a health care provider after the primary caregiver has been trained by appropriate medical personnel. EHHC beneficiaries in this situation are eligible for a maximum of eight hours per day, 5 days per week, of respite care by a TRICARE-authorized home health agency. The home health agency will provide the health care interventions or services for the covered beneficiary so that the primary caregiver is relieved of the responsibility to provide such interventions or services for the duration of that period of respite care. The home health agency will not provide baby-sitting or child care services for other members of the family. The benefit is not cumulative, that is, any respite care hours not used in a given day may not be carried over or banked for use on another occasion. Additionally, the eight-hour respite care periods will not be provided consecutively, that is, a respite care period on one calendar day will not be immediately followed by a respite care period the next calendar day. The Government's cost-share incurred for these services accrue to the maximum yearly ECHO Home Health Care benefit.

(3) *EHHC eligibility.* The EHHC is authorized for beneficiaries who meet all applicable ECHO eligibility requirements and who:

(i) Physically reside within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam; and

(ii) Are homebound, as defined in § 199.2; and

(iii) Require medically necessary skilled services that exceed the level of coverage provided under the Basic Program's home health care benefit; or

(iv) Require frequent interventions by the primary caregiver(s) such that respite care services are necessary to allow primary caregiver(s) the opportunity to rest; and

(v) Are case managed to include a reassessment at least every 90 days, and receive services as outlined in a written plan of care; and

(vi) Receive all home health care services from a TRICARE-authorized home health agency, as described in §199.6(b)(4)(xv), in the beneficiary's primary residence.

(4) *EHHC plan of care.* A written plan of care is required prior to authorizing ECHO home health care. The plan must include the type, frequency, scope and duration of the care to be provided and support the professional level of provider. Reimbursement will not be authorized for a level of provider not identified in the plan of care.

(5) *EHHC exclusions.* (i) *General.* ECHO Home Health Care services and supplies are excluded from those who are being provided continuing coverage of home health care as participants of the former Individual Care Management Program for Persons with Extraordinary Conditions (ICMP–PEC) or previous case management demonstrations.

(ii) *Respite care.* Respite care for the purpose of covering primary caregiver absences due to deployment, employment, seeking of employment or to pursue education is excluded. Authorized respite care covers only the ECHO beneficiary, not siblings or others who may reside in or be visiting in the beneficiary's residence.

(f) *Cost-share liability.* (1) *No deductible.* ECHO benefits are not subject to a deductible amount.

(2) *Sponsor cost-share liability.* (i) Regardless of the number of family members receiving ECHO benefits or ECHO Home Health Care in a given month, the sponsor's cost-share is according to the following table:

TABLE 1.—MONTHLY COST-SHARE BY MEMBER'S PAY GRADE

E–1 through E–5	$25
E–6	30
E–7 and O–1	35
E–8 and O–2	40
E–9, W–1, W–2 and O–3	45
W–3, W–4 and O–4	50
W–5 and O–5	65
O–6	75
O–7	100
O–8	150
O–9	200
O–10	250

(ii) The sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section will be applied to the first allowed ECHO charges in any given month. The Government's share will be paid, up to the maximum amount specified in paragraph (f)(3) of this section, for allowed charges after the sponsor's cost-share has been applied.

(iii) The provisions of § 199.18(d)(1) and (e)(1) regarding elimination of copayments for active duty family members enrolled in TRICARE Prime do not eliminate, reduce, or otherwise

affect the sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section.

(iv) The sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section does not accrue to the Basic Program's Catastrophic Loss Protection under 10 U.S.C. 1079(b)(5) as shown at §§ 199.4(f)(10) and 199.18(f).

(3) *Government cost-share liability.* (i) *ECHO.* The total Government share of the cost of all ECHO benefits, except ECHO home health care and EHHC respite care, provided in a given month to a beneficiary may not exceed $2,500 after application of the allowable payment methodology.

(ii) *ECHO home health care.* (A) The maximum annual Government cost-share for ECHO home health care, including EHHC respite care may not exceed the local wage-adjusted highest Medicare Resource Utilization Group (RUG–III) category cost for care in a TRICARE-authorized skilled nursing facility.

(B) When a beneficiary moves to a different locality within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam, the annual fiscal year cap will be recalculated to reflect the maximum established under paragraph (f)(3)(ii)(A) of this section for the beneficiary's new location and will apply to the EHHC benefit for the remaining portion of that fiscal year.

(g) *Benefit payment.* (1) *Transportation.* The allowable amount for transportation of an ECHO beneficiary is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with a similar disability or to the actual cost of specialized medical transportation when non-specialized transport cannot accommodate the beneficiary's qualifying condition related needs, or when specialized transport is more economical than non-specialized transport. When transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the date the transportation is provided.

(2) *Equipment.* (i) The TRICARE allowable amount for durable equipment and durable medical equipment shall be calculated in the same manner as durable medical equipment allowable through § 199.4.

(ii) *Allocating equipment expense.* The ECHO beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for authorization of equipment, specify how the allowable cost of the equipment is to be allocated as an ECHO benefit. The entire allowable cost of the authorized equipment may be allocated in the month of purchase provided the allowable cost does not exceed the ECHO maximum monthly benefit of $2,500 or it may be prorated regardless of the allowable cost. Prorating permits the allowable cost of ECHO-authorized equipment to be allocated such that the amount allocated each month does not exceed the maximum monthly benefit.

(A) *Maximum period.* The maximum number of consecutive months during which the allowable cost may be prorated is the lesser of:

(*1*) The number of months calculated by dividing the allowable cost for the item by 2,500 and then doubling the resulting quotient, rounded off to the nearest whole number; or

(*2*) The number of months of expected useful life of the equipment for the requesting beneficiary, as determined by the Director, TRICARE Management Activity or designee.

(B) *Alternative allocation period.* The allowable equipment cost may be allocated monthly in any amount such that the maximum allowable monthly ECHO benefit of $2,500 or the maximum period under paragraph (g)(2)(ii)(A) of this section, is not exceeded.

(C) *Authorization.* (*1*) The amount allocated each month as determined in accordance with paragraph (g)(2)(ii) of this section will be separately authorized as an ECHO benefit.

(*2*) An item of durable equipment or durable medical equipment shall not be authorized when such authorization would allow cost-sharing of duplicate equipment, as defined in § 199.2, for the same beneficiary.

(D) *Cost-share.* A cost-share, as provided by paragraph (f)(2) of this section, is required for each month in which a prorated amount is authorized.

(E) *Termination.* The sponsor's monthly cost-share and the prorated equipment expense provisions provided by paragraphs (f) and (g) of this section, shall be terminated as of the first day of the month following the death of a beneficiary or as of the effective date of a beneficiary's loss of ECHO eligibility for any other reason.

(3) *For-profit institutional care provider.* Institutional care provided by a for-profit entity may be allowed only when the care for a specific ECHO beneficiary:

(i) Is contracted for by a public facility as a part of a publicly funded long-term inpatient care program; and

(ii) Is provided based upon the ECHO beneficiary's being eligible for the publicly funded program which has contracted for the care; and

(iii) Is authorized by the public facility as a part of a publicly funded program; and

(iv) Would cause a cost-share liability in the absence of TRICARE eligibility; and

(v) Produces an ECHO beneficiary cost-share liability that does not exceed the maximum charge by the provider to the public facility for the contracted level of care.

(4) *ECHO home health care and EHHC respite care.* (i) TRICARE-authorized home health agencies must provide and bill for all authorized home health care services through established TRICARE claims' mechanisms. No special billing arrangements will be authorized in conjunction with coverage that may be provided by Medicaid or other federal, state, community or private programs.

(ii) For authorized ECHO home health care and respite care, TRICARE will reimburse the allowable charges or negotiated rates.

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section.

(h) *Other Requirements.* (1) *Applicable part.* All provisions of this part, except the provisions of § 199.4 unless otherwise provided by this section or as directed by the Director, TRICARE Management Activity or designee, apply to the ECHO.

(2) *Registration.* Active duty sponsors must register potential ECHO eligible beneficiaries through the Director, TRICARE Management Activity or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) accordingly. Sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) *Benefit authorization.* All ECHO benefits require authorization by the Director, TRICARE Management Activity or designee prior to receipt of such benefits.

(i) *Documentation.* The sponsor shall provide such documentation as the Director, TRICARE Management Activity or designee requires as a prerequisite to authorizing ECHO benefits. Such documentation shall describe how the requested benefit will

contribute to confirming, arresting, or reducing the disabling effects of the qualifying condition, including maintenance of function or prevention of further deterioration of function, of the beneficiary.

(ii) *Format.* An authorization issued by the Director, TRICARE Management Activity or designee shall specify such description, dates, amounts, requirements, limitations or information as necessary for exact identification of approved benefits and efficient adjudication of resulting claims.

(iii) *Valid period.* An authorization for ECHO benefits shall be valid until such time as the Director, TRICARE Management Activity or designee determines that the authorized services are no longer appropriate or required or the beneficiary is no longer eligible under paragragh(b) of this section.

(iv) *Authorization waiver.* The Director, TRICARE Management Activity or designee may waive the requirement for a written authorization for rendered ECHO benefits that, except for the absence of the written authorization, would be allowable as an ECHO benefit.

(v) *Public facility use.* (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirement shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of pubic facility non-availability or inadequacy is limited to $2,500 per month per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

(B) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(C) Written certification, in accordance with information requirements, formats, and procedures established by the Director, TRICARE Management Activity or designee that requested ECHO services or items cannot be obtained from public facilities because the services or items are not available and adequate, is a prerequisite for ECHO benefit payment for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities.

(*1*) An administrator or designee of a public facility may make such certification for a beneficiary residing within the service area of that public facility.

(*2*) The Director, TRICARE Management Activity or designee may determine, on a case-by-case basis, that apparent public facility availability or adequacy for a requested type of service or item cannot be substantiated for a specific beneficiary's request for ECHO benefits and therefore is not available.

(*i*) A case-specific determination shall be based upon a written statement by the beneficiary (or sponsor or guardian acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, TRICARE Management Activity or designee determines to be material to the determination.

(*ii*) A case-specific determination of public facility availability by the Director, TRICARE Management Activity or designee is conclusive and is not appealable under § 199.10.

(4) Repair or maintenance of beneficiary owned durable equipment and durable medical equipment is exempt from the public facility use certification requirements.

(5) The requirements of this paragraph (i)(4)(v) notwithstanding, no public facility use certification is required for services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individual Family Services Plan and that are otherwise allowable under the ECHO.

(i) *Implementing instructions.* The Director, TRICARE Management Activity or designee shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

(j) *Implementation transition.* Pending administrative actions necessary for the effective implementation of this section on or after July 1, 2004, this section, as it existed prior to July 1, 2004, shall remain in effect. The dates on or after July 1, 2004, on which this section will be implemented in particular regions of the United States and elsewhere will be established by **Federal Register** notice(s) during 2004.

■ 6. Section 199.6 is amended by revising the section heading and paragraphs (e)(1)(ii), (e)(2) and (e)(3) to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(e) * * *

(1) *General.* * * *

(ii) A Program for Persons with Disabilities (PFPWD) provider with TRICARE-authorized status on the effective date for the Extended Care Health Option (ECHO) Program shall be deemed to be a TRICARE-authorized provider until the expiration of all outstanding PFPWD benefit authorizations for services or items being rendered by the provider.

(2) *ECHO provider categories.* (i) *ECHO inpatient care provider.* A provider of residential institutional care, which is otherwise an ECHO benefit, shall be:

(A) A not-for-profit entity or a public facility; and

(B) Located within a state; and

(C) Be certified as eligible for Medicaid payment in accordance with a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) as a Medicaid Nursing Facility, or Intermediate Care Facility for the Mentally Retarded, or be a TRICARE-authorized institutional provider as defined in paragraph (b) of this section, or be approved by a state educational agency as a training institution.

(ii) *ECHO outpatient care provider.* A provider of ECHO outpatient, ambulatory, or in-home services shall be:

(A) A TRICARE-authorized provider of services as defined in this section; or

(B) An individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as an ECHO benefit and not otherwise allowable as a benefit of § 199.4, that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which the ECHO service is rendered, or in the absence of such licensing or regulatory requirements, as determined by the Director, TRICARE Management Activity or designee.

(iii) *ECHO vendor.* A provider of an allowable ECHO item, such as supplies or equipment, shall be deemed to be a TRICARE-authorized vendor for the provision of the specific item, supply or equipment when the vendor supplies such information as the Director, TRICARE Management Activity or

designee determines necessary to adjudicate a specific claim.

(3) *ECHO provider exclusion or suspension.* A provider of ECHO services or items may be excluded or suspended for a pattern of discrimination on the basis of disability. Such exclusion or suspension shall be accomplished according to the provisions of § 199.9.

* * * * *

■ 7. Section 199.7 is amended by revising paragraphs (a)(2) and (b)(2)(xii) to read as follows:

§ 199.7 Claims submission, review, and payment.

(a) * * *

(2) *Claim required.* No benefit may be extended under the Basic Program or Extended Care Health Option (ECHO) Program without submission of an appropriate, complete and properly executed claim form.

* * * * *

(b) * * *

(2) * * *

(xii) *Other authorized providers.* For items from other authorized providers (such as medical supplies), an explanation as to the medical need must be attached to the appropriate claim form. For purchases of durable equipment and durable medical equipment under the ECHO, it is necessary also to attach a copy of the preauthorization.

* * * * *

■ 8. Section 199.8 is amended by revising paragraphs (d)(4) and (d)(5) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(4) *Extended Care Health Option (ECHO).* For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, TRICARE Management Activity or designee to be available and adequate to meet a disability related need for which an ECHO benefit was requested. Benefits eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of ECHO benefits.

(5) *Primary payer.* The requirements of paragraph (d)(4) of this section notwithstanding, TRICARE is primary payer for services and items that are provided in accordance with the Individualized Family Service Plan as required by Part C of the Individuals with Disabilities Education Act and that are medically or psychologically necessary and otherwise allowable under the TRICARE Basic Program or the Extended Care Health Option.

* * * * *

■ 9. Section 199.20 is amended by revising paragraph (p)(2)(i) to read as follows:

§ 199.20 Continued Health Care Benefits Program (CHCBP).

* * * * *

(p) * * *

(2) * * *

(i) The Extended Care Health Option (ECHO) under § 199.5.

* * * * *

■ 10. Appendix A to part 199 is amended by adding the term ''ECHO'' and removing the term ''PFPWD'' to read as follows:

Appendix A to Part 199—Acronyms

* * * * *

ECHO—Extended Care Health Option

* * * * *

Dated: July 20, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–16932 Filed 7–27–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2003–14273]

RIN 1625–AA52

Mandatory Ballast Water Management Program for U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring mandatory ballast water management practices for all vessels equipped with ballast water tanks bound for ports or places within the U.S. or entering U.S. waters. This rule will increase the Coast Guard's ability to protect U.S. waters against the unintentional introduction of nonindigenous species via ballast water discharges, which have had significant impacts on the nation's marine and freshwater resources, biological diversity, and coastal infrastructure. It will also comply with the requirements of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996. The Great Lakes ballast water management program remains unchanged.

DATES: This final rule is effective September 27, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14273 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Bivan R. Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202–267–1744, e-mail: *bpatnaik@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Legislative and Regulatory History

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Pub. L. 101–646], enacted by Congress on November 29, 1990, established the Coast Guard's regulatory jurisdiction over ballast water management (BWM). To fulfill the directives of NANPCA, the Coast Guard published a final rule on April 8, 1993, titled ''Ballast Water Management for Vessels Entering the Great Lakes'' in the **Federal Register** (58 FR 18330). This rule established mandatory BWM procedures for vessels entering the Great Lakes in 33 CFR part 151, subpart C.

A subsequent final rule titled ''Ballast Water Management for Vessels Entering the Hudson River'' was published on December 30, 1994, in the **Federal Register** (59 FR 67632). This final rule amended 33 CFR part 151 to extend the BWM requirements into portions of the Hudson River.

The National Invasive Species Act (NISA) [Pub. L. 104–332] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of nonindigenous species (NIS). NISA authorized the Coast Guard to develop a voluntary national BWM program and mandated the submission of reporting forms without penalty provisions. On

May 17, 1999, the Coast Guard published an interim rule on this voluntary program titled, ''Implementation of the National Invasive Species Act of 1996 (NISA)'' (64 FR 26672) and finalized the rule on November 21, 2001 (66 FR 5838).

NISA also instructed the Secretary of the Department in which the Coast Guard is operating (the Coast Guard was operating under the Department of Transportation when NISA was enacted) to submit a Report to Congress evaluating the effectiveness of the voluntary BWM program. Congress anticipated that the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program. The Secretary's Report to Congress, signed June 3, 2002, concluded that compliance with the voluntary guidelines, found in 33 CFR part 151, subpart D, was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary stated his intention to make the voluntary BWM guidelines mandatory. A copy of this Report to Congress can be found in the public docket (USCG–2002–13147) at *http://dms.dot.gov.*

On June 14, 2004 (69 FR 32864), we published a final rule titled ''Penalties for Non-submission of Ballast Water Management Reports'' that implemented penalties for failure to comply with the mandatory requirements found in 33 CFR part 151 and widened the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the U.S., with minor exceptions.

On July 30, 2003, we published a notice of proposed rulemaking titled ''Mandatory Ballast Water Management Program for U.S. Waters'' in the **Federal Register** (68 FR 44691). We received 38 letters commenting on the proposed rule. No public meeting was held on this rulemaking.

Background and Purpose

As directed by NISA and as stated in the Secretary of Transportation's Report to Congress in June 2002, the Coast Guard has determined that the voluntary BWM program is inadequate because sufficient compliance has not occurred. Therefore, as of the effective date of this rule, the Coast Guard has converted the voluntary BWM program into a mandatory program. This rule will increase the Coast Guard's ability to protect against introductions of NIS via ballast water discharges.

On March 1, 2003, the Coast Guard became a component of the Department of Homeland Security. As a result, the Secretary of the Department of Homeland Security assumed all duties once bestowed on the Secretary of the Department of Transportation with respect to this rule. The Secretary of Homeland Security concurs with the Coast Guard's rule regarding the mandatory BWM program.

This final rule revises 33 CFR part 151, subpart D, by requiring a mandatory BWM program for all vessels equipped with ballast water tanks bound for ports or places within the U.S. and/or entering U.S. waters. The mandatory BWM requirements for vessels entering the Great Lakes and Hudson River from outside the U.S. Exclusive Economic Zone (EEZ) remain unchanged.

The mandatory program requires all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the EEZ to employ at least one of the following BWM practices:

(a) Prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles (nm) from any shore.

(b) Retain ballast water onboard the vessel.

(c) Prior to the vessel entering U.S. waters, use an alternative environmentally sound method of BWM that has been approved by the Coast Guard.

Although the national mandatory BWM program provides vessels with the option of using one of three BWM practices, ballast water exchange is likely to be the most used practice because—

- Some vessels engaged in trade are unlikely to hold their ballast water after arriving in U.S. waters from outside the EEZ, as this would mean they would not be able to conduct cargo operations;
- Alternative environmentally sound methods of BWM are still being developed and will likely be of limited availability in the near future; and

Therefore, under this rule, the BWM practice of conducting mid-ocean ballast water exchange prior to discharging ballast water in U.S. waters will be the practice used by the majority of vessels at this time.

Mid-ocean ballast water exchange is currently the most practicable method to help prevent the introductions of NIS into U.S. waters. Water in the open ocean contains certain physical, chemical, and biological conditions (such as high salinity). Organisms contained in ballast water that is exchanged in mid-ocean will not, or are unlikely to survive in an open ocean system. Likewise organisms that are contained in ballast water after a mid-ocean exchange is conducted will not, or are unlikely to survive if introduced into a freshwater or coastal system.

As mid-ocean ballast water exchange will be the most likely used BWM practice at this time, there are those vessels with voyage and/or safety concerns that will not be able to conduct ballast water exchange. Voyage and/or safety concerns may include security concerns since these issues have increased significantly due to recent events. NISA requires us to take into consideration different operating conditions in developing the mandatory BWM program. Therefore, a vessel that cannot practicably meet the requirements of paragraph (a) above due to a voyage that does not take it into waters at least 200 nm from any shore for a sufficient length of time or due to safety concerns will retain its ballast onboard. The vessel will not be prohibited from discharging the minimum amount of its ballast water necessary to maintain the safety of the vessel in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only the amount of ballast water operationally necessary for safety concerns. An entry must be made in the ballast water records supporting the reasons that the vessel could not comply with the regulatory requirements. Ballast water records must be made available to the local Captain of the Port (COTP) upon request.

This final rule also revises the criteria for a mid-ocean exchange by removing the constraints of exchanging ballast water in waters at a depth of 2,000 meters. Currently, there is no international consensus on a water-depth criterion for ballast water exchange. For example, Australian legislation has a depth requirement of 200 meters, and Israel's ballast water exchange requirement has no depth restriction, while the International Maritime Organization (IMO) Convention for the Control and Management of Ship's Ballast Water and Sediments, recently adopted on February 9, 2004, has a criterion of 200 meters. As there is no international consensus to mid-ocean ballast water exchange criteria, at this time, we believe defining mid-ocean ballast water exchange as taking place at least 200 nm from shore allows more vessels to conduct exchange and simplifies enforceability.

The Coast Guard recognizes that there are two currently feasible methods of conducting an exchange:

- An empty/refill exchange. The tank (or pair of tanks) is pumped down to the point where the pumps lose suction, and then the tank is pumped back up to the original level.
- A flow-through exchange. Mid-ocean water is pumped into a full tank while the existing coastal or fresh water is pumped or pushed out through another opening. As defined by the Coast Guard, a volume of water equal to three times the ballast tank capacity must be pumped for a flow-through exchange.

Failure to employ at least one of the BWM practices outlined above will result in a penalty, unless the vessel is exempt due to safety or voyage constraints or specifically exempted from the regulation.

Each vessel subject to this rule (33 CFR part 151 subpart D) will be required to develop and maintain a BWM plan. The plan shall be specific to each vessel and shall fulfill two purposes: (1) Show that there is a BWM strategy for the vessel; and (2) allow any master, or other ship's officer as appropriate, serving on that vessel to understand and follow the BWM strategy for the vessel. The IMO has issued guidelines on the content of BWM plans in IMO Resolution A.868(20) Annex 1, Chapter 7. Any plan meeting these IMO guidelines will meet the regulatory requirement laid out in § 151.2035(a)(7). This Resolution is available on the IMO's Global Ballast Water Management Programme Web site [*http://globallast.imo.org*]. For your reference, we have also placed a copy of the IMO guidelines in the docket for this rule at the location listed above under **ADDRESSES.** Failure to maintain a BWM plan onboard the vessel or to make the required ballast water reporting forms available will result in penalties.

Discussion of Comments and Changes

We received 38 letters on the proposed rulemaking for BWM. Most letters contained more than one comment. These included general comments as well as specific comments. We address the general comments first and then the specific comments.

General Comments

We received 16 comments in general support of the rule. One of these commenters supported the requirement that vessels must maintain BWM plans and that they should be modeled after IMO guidelines. One commenter supported the provisions of the rule that would not require vessels to deviate from their voyages or delay their voyages in order to conduct ballast water exchange.

One commenter stated that effective BWM and reporting are critical to maintaining the ecological and economic well being of coastal Alaska.

Three commenters stated that the U.S. mandatory BWM program should be consistent with IMO guidelines and supported our removal of the depth requirement for conducting ballast water exchange. One commenter stated that the Coast Guard did not adequately explain why ballast water exchange is acceptable in waters less than 2,000 meters deep.

We agree with the commenters. We have developed the BWM program to be as consistent with IMO guidelines as practicable. For example, and as recognized by the commenters, under the voluntary BWM program, we requested that ballast water exchange take place in an area 200 nm from shore and at a depth of 2,000 meters. To be consistent with IMO guidelines, we modified the mandatory program to require that ballast water exchange take place 200 nm from shore, without regard to water depth. We believe this harmonization will help vessel operators that must follow both IMO guidelines and U.S. requirements. As stated in the proposed rulemaking (68 FR 44691), there is not consensus on water depth criterion for ballast water exchange. Because there is no scientific consensus on a specific water depth that is suitable for exchange, and for the reasons stated above, we aligned our requirements with IMO guidelines.

One commenter stated that there should be no vessels exempt from the mandatory BWM program.

We disagree with the commenter. NISA authorizes specific exemptions for crude oil tankers engaged in coastwise trade and Department of Defense and Coast Guard vessels. Therefore, we do not currently have the authority to include these vessels in the applicability for the final rule.

One commenter requested that the Coast Guard host a public meeting on the Programmatic Environmental Assessment (PEA).

The Coast Guard does not intend to hold a public meeting for the PEA. We believe that the comment period provided ample opportunity for the public to suggest other alternatives to the one examined in the PEA.

Two commenters stated that there should be a publicly accessible database for nationwide ballast water discharges.

National ballast water discharge data is publicly available and can be found at the Web site for the National Ballast Information Clearinghouse at *http://invasions.si.edu/NBIC/ballast.html.*

One commenter asked if vessels discharging ballast water should be regulated under the Environmental Protection Agency's (EPA) National Pollution Discharge Elimination System (NPDES) Program.

This comment was the subject of a petition submitted to EPA on January 13, 1999. EPA responded to this petition on September 9, 2003 to comply with a court order (68 FR 53165). The Coast Guard opined, during the legal proceedings, that regulation of vessels discharging ballast water should remain under the authority of the Coast Guard. EPA, for the reasons set out in its September 9, 2003, petition denial, does not regulate vessels discharging ballast water under the NPDES program.

One commenter asked if the Coast Guard would identify ''high-risk vessels'' and if we would encourage their owners to install ballast water treatment systems. This commenter also asked if the Coast Guard has funding to conduct research onboard vessels.

The Coast Guard does not have the ability to identify ''high-risk vessels'' with respect to NIS, nor have we defined this term in our regulations. Further, the Coast Guard does not have funding to conduct research onboard vessels; however, we have developed a Shipboard Technology Evaluation Program (STEP) that encourages owners to install and test various technologies for ballast water treatment. This program was established in January 2004, through a Navigation and Inspection Circular (NVIC 01–04) and announced in a Notice of Availability published in the **Federal Register** on January 7, 2004 (69 FR 1082).

One commenter asked how the Coast Guard, in conjunction with EPA and the States, will develop education and outreach programs for BWM.

We intend to develop guidance regarding BWM procedures and recommended practices. This guidance will take into account coordination with EPA and other Federal and State agencies. Additionally, class societies and IMO have published guidance on best practices and procedures for BWM that is specific to ship type.

One commenter stated there has been a misunderstanding among mariners on what constitutes a ''full exchange.''

As defined in § 151.2025, there are two methods of exchange, either ''flow through'' or ''empty/refill.'' Both exchange methods, as defined in this section, describe what constitutes a full exchange. A ''full exchange'' using the ''flow through'' method means that three full tank volumes of water have

been exchanged. A ''full exchange'' using the ''empty/refill'' method means that the ballast tanks are pumped down to the point where the pumps lose suction, and the tank is then refilled to the original level.

One commenter suggested we revise § 151.2030 to remove the distinction between U.S. waters and the Great Lakes. Another commenter stated that the national BWM program should be the same as the program on the Great Lakes.

We agree with these comments; however, the intent of this rule is simply to convert the voluntary national guidelines for BWM to a mandatory, national program. We intend to merge the Great Lakes program and the national program into a single program in a future rulemaking.

One commenter stated that § 151.2037 is not enforceable and is inconsistent with § 151.2035(b) and recommended removing the term ''voyage concerns.''

We disagree with this comment. If a vessel cannot comply with § 151.2035(b) because of ''voyage concerns,'' that vessel is responsible for documenting this action. If there is no documentation, the Coast Guard will assess a monetary penalty for failing to comply with § 151.2037.

One commenter stated that a minimum ballast water transfer quantity or capacity should be established and that BWM or reporting should not be required for volumes below these amounts.

We disagree with the commenter. As directed by NISA, we are required to analyze BWM operations for vessels, regardless of a vessel's ballast capacity or volume of ballast water carried on any particular voyage. Therefore, we are not establishing a minimum quantity or capacity requirement.

One commenter requested clarification on what is expected of vessels in innocent passage in terms of compliance with the rule.

As stated in § 151.2015 titled ''Is a vessel in innocent passage exempt from the mandatory requirements?'' vessels merely traversing the territorial seas of the U.S. (*i.e.*, not entering or departing a U.S. port, or not navigating the internal waters of the U.S.) are exempt from the requirements of 33 CFR part 151. Vessels merely traversing the territorial seas of the U.S. would be considered engaged in ''innocent passage.''

One commenter requested clarification on the definition of ''waters of the U.S.,'' asking if the term means ''territorial waters'' (12 nm from shore) or the U.S. EEZ (200 nm from shore).

''Waters of the U.S.,'' as stated in 33 CFR 151.2025, means waters subject to the jurisdiction of the United States as defined in 33 CFR 2.05–30, including the navigable waters of the United States. For this regulation, the navigable waters include the territorial sea as extended to 12 nautical miles from the baseline, pursuant to Presidential Proclamation No. 5928 of December 27, 1988. We are revising that definition to correct the citation from 33 CFR 2.05–30 to 33 CFR 2.38.

One commenter requested clarification on distance and depth requirements for ballast water exchange.

As stated in § 151.2035(b)(1), ballast water exchange must be performed in an area no less than 200 nm from any shore. Neither the proposed rulemaking nor the final rule for mandatory BWM contains a depth requirement for ballast water exchange.

Two commenters requested clarification for the term ''discharge only the amount operationally necessary.''

This term was intended to allow vessel operators some flexibility in their cargo operations and BWM practices, while protecting the receiving environment to the extent practicable. If ballast water exchange has not been conducted prior to entering U.S. waters, and a vessel operator must conduct cargo operations in a U.S. port, the operator may release the amount of ballast water necessary to conduct safe cargo operations. The vessel operator must make a note of the discharge into the U.S. port on the ballast water reporting form.

Four commenters expressed concern regarding the breadth of these regulations. Two commenters stated concern that some vessels are exempt from conducting ballast water exchange due to voyage constraints and suggested that these vessels employ alternative BWM methods. Two commenters stated that ballast water exchange is not an ''effective solution'' and should not be the ''default solution.'' The Coast Guard should instead focus on a ''zero discharge'' standard.

We understand that ballast water exchange is not the final answer in preventing the introduction of NIS. Currently, there are no alternative BWM methods to ballast water exchange that have been approved by the Coast Guard. We are exploring environmentally sound alternative BWM methods that are at least as effective as ballast water exchange and intend to approve those methods that meet the above criteria in the future. We are not mandating the use of alternative methods in this final rule. Additionally, the Coast Guard intends to establish ballast water discharge standards that prevent the introduction of NIS and are both environmentally protective and economically feasible. As described in the Notice of Intent for our Programmatic Environmental Impact Statement (68 FR 55559), one of the alternatives under consideration would ''result in the discharge of no detectable viable organisms larger than 0.1 microns,'' which is, in essence, a ''zero discharge'' alternative.

One commenter stated that it is premature to establish a mandatory BWM program without first establishing ballast water discharge standards.

We disagree with this commenter. The intent of this final rule is to convert the voluntary BWM program to a mandatory program if we deemed the voluntary BWM program inadequate, as required by NISA. We believe it is inefficient to develop discharge standards without first having an overarching BWM program in place. The Coast Guard is in the process of establishing ballast water discharge standards and evaluating shipboard treatment technologies that could be employed to meet these standards. Ballast water discharge standards will be the subject of a future rulemaking.

Three commenters stated that the mandatory BWM program does not address vessels with no ballast on board (NOBOBs) and that ballast water exchange is not a final answer to preventing the introduction of NIS.

While our final rule for mandatory BWM does not address NOBOBs, we believe that addressing these vessels is an important factor in the prevention of NIS introductions. As a first step, the Coast Guard now requires NOBOBs to submit ballast water reporting forms, as stated in the final rule titled ''Penalties for Non-submission of Ballast Water Management Reports'' published on June 14, 2004 (69 FR 32864). We will continue to explore the issue of NOBOBs entering U.S. waters, and these vessels may be included in a future rulemaking.

One commenter suggested removing the term ''voluntary guidelines'' in § 151.2015 and replacing it with ''mandatory program.''

We agree with the commenter and have amended § 151.2015 to reflect this change.

Three commenters suggested that the definition of ballast water tanks be clarified.

We have added the definition for ''ballast tank,'' currently found in § 151.1504 (151 subpart C) to § 151.2025 (151 subpart D). This definition will

help clarify which vessels must comply with the rule.

One commenter recommended that language regarding the BWM plan in § 151.2035(a)(7) should be changed from ''ship's officer'' to ''those responsible for its implementation.''

We agree with the commenter and have amended § 151.2035(a)(7) to clarify the specificity needed in the BWM plan.

One commenter recommended that language in § 151.2035(b)(4) should state that reception facilities be approved by the Coast Guard for receipt and treatment of ballast water.

We disagree with the commenter. The Coast Guard does not currently have the statutory authority to approve reception facilities; therefore adding the language requested by the commenter would be inappropriate. In order to eliminate the confusion created by this provision, and for the reasons discussed in greater detail in the ''Environment'' section, below, we are deleting § 151.2035(b)(4).

Comments Regarding Coastwise Trade

Two commenters recommended that the Coast Guard, in consultation with Canada and IMO, adopt a single set of national or regional ballast water exchange zones along the West Coast to address concerns regarding coastwise voyages. An additional ten commenters asked the Coast Guard to adopt regulations addressing coastwise trade and recommended that we convene a panel of experts to develop alternative ballast water exchange zones within the EEZ.

The final rule does not address coastwise trade because vessels on these voyages cannot conduct a mid-ocean ballast water exchange, due to the fact that they do not travel outside 200 nm of any shore. The Coast Guard is examining the possibility of establishing alternative ballast water exchange zones. As part of this effort, we participated in a workshop for alternative ballast water exchange zones in October 2003, and believe the ideas exchanged at this and future workshops could provide a sound, scientific basis for establishing ballast water exchange zones within the EEZ.

One commenter stated that vessels engaged in coastwise trade should be required to submit ballast water reporting forms.

We agree. As stated in the final rule titled ''Penalties for Non-submission of Ballast Water Management Reports'' (69 FR 32864), as of August 13, 2004, these vessels are required to submit ballast water reporting forms.

One commenter stated that vessels on domestic voyages that do not conduct ballast water operations outside the EEZ should be exempt from this rule.

We agree and as stated in § 151.2005(b), only those vessels equipped with ballast tanks that enter U.S. waters from beyond the EEZ must conduct BWM, with the exception of those vessels exempted in §§ 151.2010 and 151.2015.

Comments on Barges and Towing Vessels

Four commenters asked the Coast Guard to recognize the uniqueness of domestic barges and towing operations by accepting different approaches to ballast water management.

The Coast Guard appreciates the uniqueness of all types of vessels. However, if a barge or tug vessel operates outside the EEZ, it will be required to conduct ballast water management, unless it meets the requirements under § 151.2037.

Three commenters asked the Coast Guard to exempt inland towing vessels and barges from BWM requirements, as they are not equipped with ballast water tanks.

We disagree. Inland towing vessels and barges may be covered even if they are not equipped with ballast water tanks. As stated in the definition for ''ballast tank,'' any vessel that carries ballast water must comply with these regulations. NISA, while allowing for exemptions from BWM, mandates that the BWM program be based on the best scientific information possible. We do not currently have information that would allow us to make specific exemptions for inland towing vessels and barges. We note, however, that those inland towing vessels and barges that never carry ballast water do not fall within the applicability section of this regulation; therefore, no specific exemption is needed. Additionally, vessels that do not transit outside the EEZ, such as most inland towing vessels and barges, are not subject to mandatory BWM requirements.

Four commenters asked the Coast Guard not to require BWM plans for barges and towing vessels that operate within the EEZ. One of these commenters also asked the Coast Guard to provide a template to assist them in developing their plans.

We believe that if towing vessels and barges are equipped with ballast water tanks or use other tanks to ballast and deballast water, these vessels will be required to maintain a BWM plan specific to those vessels. At this time, the Coast Guard does not intend to develop a template for a BWM plan. We recommend that these vessels seek assistance from their class societies or maritime associations. We also suggest that vessel owners refer to IMO guidelines for IMO Resolution A.868(20) Annex 1, which are available in the public docket for this rule.

We received four comments regarding the ballast water reporting form. Two commenters asked the Coast Guard to develop a new ballast water reporting form specific to barges and towing vessels. One commenter expressed concern with the ballast water reporting form. One commenter recommended that the ballast water reporting form include a listing of all locations where ballast water was discharged.

Comments regarding the ballast water reporting form were addressed in the Discussion of Comments section of the final rule for ''Penalties for Non-submission of Ballast Water Reporting Forms'' [69 FR 32864]. At this time we do not intend to develop a ballast water reporting form that is specific to barges and towing vessels; however, we are exploring a potential redesign of the reporting form. Additionally, we wish to note that the locations of all ballast water discharges are already part of the ballast water reporting form. Operators are required to log the coordinates (latitude/longitude) or port where the ballast water was discharged. Ballast water sources are required to be similarly reported on the form.

Two commenters asked the Coast Guard to allow tug and barge operators that carry ballast water and serve domestic coastwise trade to submit reports every 30 days, rather than 24 hours prior to arrival at the first U.S. port. These commenters argued that monthly reporting would ease the administrative burden on the vessel operator.

We disagree with this comment. To change the submission requirements of ballast water reports for tugs and barges from 24 hours to 30 days would delay the accounting of BWM practices, thus denying the Coast Guard the means of enforcing compliance with mandatory ballast water reporting requirements. If the operators of these vessels know their destinations in advance, they may submit multiple reports of their BWM practices to the Coast Guard prior to their arrival.

One commenter stated that coastwise barges will be unable to comply with § 151.2035(b)(1 through 3) because it is ''unsafe'' for barges to conduct ballast water operations in the open sea.

As previously stated, vessels engaged in coastwise trade will not be expected to conduct mandatory BWM under this final rule. Additionally, § 151.2037 states that a vessel that cannot meet the requirements of § 151.2035(b)(1–3)

because of safety concerns will not be prohibited from discharging ballast water in areas other than the Great Lakes and Hudson River; however, the vessel must discharge only that amount that is operationally necessary and make ballast water records available to the local COTP upon request.

Comments on Compliance and Enforcement

Three commenters asked how the Coast Guard would ensure that a vessel has conducted BWM.

The vessel owner or operator must maintain accurate copies of the ballast water records onboard the vessel as required by 33 CFR 151.2045 and the forms must be readily available upon request. Additionally, we will use the ballast water reporting forms that must be submitted in advance of a vessel arriving at a U.S. port as required by 33 CFR 151.2040 to verify and ensure that the vessel has conducted BWM. We are actively pursuing ballast water exchange verification technologies, and when these technologies are available, we will employ them as appropriate.

One commenter requested a discussion on penalties, including failure to keep required records, failure to record why BWM was not conducted, and the range of potential penalties for these violations.

We addressed penalties for violations of BWM and non-submission of reporting forms at length in the preamble to the final rule titled ''Penalties for Non-submission of Ballast Water Reporting Forms'' [69 FR 32864].

Two commenters raised issues regarding penalties. One commenter asked if monetary penalties for violating these regulations would be based on a flat fee or a weighted fee based on ship size or amount of ballast water. One commenter asked that the Coast Guard assess penalties that deter inaccurate reporting or failure to report ballast water discharge information.

Monetary civil penalties associated with violations of this rule will not be based on a flat fee or based on ship size or ballast water amount. Penalties for failure to comply with any of the BWM regulations, including reporting requirements, will be assessed on a case-by-case basis. We have the discretion to issue a penalty of up to $27,500, depending on the facts of each individual case, and each day is considered a separate violation, pursuant to NISA.

One commenter urged the Coast Guard to use the existing Port State Control (PSC) program to enforce the BWM program.

We partially agree with the commenter. BWM reports will not be considered in the ''scoring matrix'' used to prioritize boardings and inspections under the Coast Guard's PSC program at this time. However, inspectors boarding vessels that arrive in U.S. ports may ask for any documentation regarding a vessel's BWM practices during the inspection process. Inspectors may also target specific vessels if they believe these vessels are not in compliance with the mandatory BWM provisions. As a result, BWM maybe become a future part of PSC. We intend to publish a NVIC that describes our intended enforcement activities for BWM. The NVIC will be available to all interested stakeholders through their local COTP or the Office of Operating and Environmental Standards at *http://www.uscg.mil/hq/gm/mso/index.html.*

Comments Beyond the Scope of This Rule

One commenter recommended that a fund be established from noncompliance fees to remediate ballast water-related impact areas.

We think this type of program is a novel concept; however, the Coast Guard does not currently have the authority to establish or administer such a program.

Five commenters stated that establishing ballast water discharge standards should be a priority for the Coast Guard.

We agree with commenters; however, ballast water discharge standards will be addressed in a future rulemaking.

One commenter stated that vessels on voyages outside the EEZ that do not perform any ballasting operations while outside the EEZ should not have to submit a ballast water reporting form.

We disagree with the commenter. As stated in the final rule titled ''Penalties for Non-submission of Ballast Water Management'' [69 FR 32864], vessels are required to submit a ballast water reporting form if they transit within U.S. waters, regardless of where they operate, with minor exceptions, such as a vessel in innocent passage.

Two commenters stated that the rule does not give any consideration to the National Aquatic Invasive Species Act (NAISA).

While introduced into Congress, NAISA has not yet been enacted. We will monitor NAISA's progress through Congress, but will not begin implementing any portions of the Act before it becomes law.

One commenter stated that the Coast Guard's highest priority should be establishing an experimental technology approval program.

On January 7, 2004, the Coast Guard published NVIC 01–04, as announced in the **Federal Register** (69 FR 1082), describing the STEP application process. We are actively reviewing and providing feedback on all applications received to date.

One commenter recommended that the Coast Guard consider a specific treatment technology.

The Coast Guard cannot recommend specific technologies without first evaluating their effectiveness and environmental soundness. We encourage any parties that believe they have shipboard technologies to prevent the introduction of NIS to participate in the Coast Guard's STEP.

One commenter suggested that the Coast Guard encourage the Canadian and Mexican governments to adopt BWM regulations similar to ours.

We agree that international coordination, particularly with Canada and Mexico, is essential for the successful prevention of NIS introductions. The U.S. is currently working with Canada under the auspices of the International Joint Commission to address the prevention of NIS. Both Canada and Mexico participate as invited observers to the Aquatic Nuisance Species Task Force. We will continue to work with all countries to address the challenges posed by invasive species.

Regulation Evaluation

This rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final Regulatory Evaluation is available in the docket as indicated under **ADDRESSES.** A summary of the Regulatory Evaluation follows and is available in the public docket for this rule.

We received 5 comments on the Regulatory Evaluation. One commenter stated that annual costs for BWM should be explained in the final rule.

We have included a summary of the annual costs for BWM in this preamble to the final rule. A detailed analysis of annual costs for BWM can be found in the final Regulatory Evaluation, which is available in the public docket for this rule.

Two commenters stated that our estimated costs for ballast water exchange were too low. One commenter stated that a single exchange for a large

bulk carrier would be several times more than our estimate. The second commenter stated that the annual cost for container ships would be higher than our estimate.

Our cost-per-exchange estimates are based on information from class societies, ballast water literature, and the U.S. Maritime Administration. We believe that the alternate estimates provided by the commenters greatly overstate, in one case by an order of magnitude, the costs of ballast water exchange. Additionally, these commenters did not provide documentation or substantiation for their alternate estimates. We have not, therefore, modified our cost estimates based on these comments.

One commenter generally agreed with the analysis, but expressed concern that costs to the environment were understated and more information should be provided. Another commenter stated that we must consider the costs to local communities and ecosystems if NIS continue to gain a foothold in Alaskan waters.

We did not estimate the annual benefit of BWM in monetary terms. Instead, we supplied a literature review providing estimated damages resulting from invasions. In this review, we discuss potential damages from NIS to local communities and ecosystems. Much of this literature revolves around the damages caused by the zebra mussel in the Great Lakes and Mississippi River basin. In our Regulatory Evaluation, we were careful to note that we do not believe that this rule will prevent a species as destructive as the zebra mussel from becoming established because the uncertainties surrounding invasions are numerous. We believe that ballast water exchange will provide a measure of protection to the environment. However, ballast water exchange is not the final answer to preventing invasions and, therefore, we do not wish to overstate the potential benefits of exchange. We will revisit environmental damages in our Regulatory Assessment and Environmental Impact Statement in a future rulemaking for ballast water discharge standards. A summary of the Regulatory Evaluation follows.

This Regulatory Evaluation identified the vessel population affected by the rule and provides cost and benefit models for the current principal option of BWM provided for under the rule-ballast water exchange. Any vessel equipped with ballast tanks entering U.S. waters from outside the EEZ must conduct BWM, with minor exceptions. The vessel population was categorized by vessel type under the assumption that vessels in different cargo services and of different sizes likely manage ballast water in different ways. We estimated that approximately 7,420 vessels will be affected and approximately 11,500 ballast water exchanges will be performed annually. Annual costs totaled approximately $15.8 million. The 10-year present value cost for this rule is $116.7 million. These costs do not account for the Great Lakes program, which was not part of this rule.

The benefit assessment expanded on the analysis conducted for costs by focusing on the probability of viable organisms being introduced into U.S. waters through ballast water discharge, both before the rule and following the implementation of mandatory BWM. A probability of a reduction in the number of invasions of NIS was calculated using data on voyages, vessel types, ballast water volumes, and exchange effectiveness, as well as order-of-magnitude assumptions about the probabilities of inoculations, introductions, and invasions resulting from ballast water discharges. The calculations indicated the rule may result in avoiding approximately 10 inoculations that result in invasions for each year the rule is in effect. While there is considerable uncertainty in these calculations and the order-of-magnitude assumptions (referred to as the ''rule of 10s'' in the Regulatory Evaluation) are admittedly an oversimplification of a complex problem, we believe their simplicity and transparency are compelling. To date, there is no national estimate of the invasion rate of NIS, and we cannot compare our baseline invasion estimate to other, more limited estimates regarding invasions. Our findings are broadly consistent, however, with other estimates of the rate of NIS invasions. One study finds that in the San Francisco Bay and Delta, invasions have increased from one new species every 55 weeks (1851–1960) to one new species every 14 weeks (1961–1995) (Cohen and Carlton, 1998). Another study posits that invasion rates may have increased in the San Francisco Bay and the Great Lakes over the past several decades (Mills, et al., 1993). Finally, some researchers believe that the increase of initial invasions is best described by an exponential function (Ruiz, et al., 2000). Using our simple methodology, we found that an invasion occurs about twice every 3 weeks somewhere in the U.S.

There is considerable difficulty in estimating monetized damages resulting from NIS invasions. Some species impose significant, long-term damages on marine industries and infrastructure. Other species may create subtle disturbances in ecosystems that are difficult to quantify. Still others may be relatively benign. There have been attempts to estimate monetized damages for a few species, most notably the zebra mussel. One study estimated costs to Great Lakes water users, mostly due to fouling of intake structures, of $120 million over the time period 1989 to 1994 (Hushak, 1996). Another estimated cumulative zebra mussel impacts of $750 million to $1 billion over the time period 1989 to 2000 (Carlton, 2001). Other species for which monetized damage estimates have been developed include the Asian clam ($1 billion per year, OTA, 1993) and European green crab ($44 million per year, CRS, 1999). Eight Federal agencies that sit on the National Invasive Species Council collectively spent $514 million in 1999 and $631 million in 2000 for the control and management of NIS (GAO, 2000).

We have not reviewed the methodologies used to produce these estimates in detail, though all of them (except expenditures by Federal agencies) involve considerable uncertainty. They are indicative, however, of the magnitude of damages that may result from particularly destructive invasions. It is likely, however, that most invasions would result in considerably lower damages than the numbers reported in these studies. Because of the lack of data on damages potentially associated with any but the most destructive invasions, we have not tried to monetize the benefits of the rule. If the rule resulted in avoiding even one invasion of this magnitude over the course of several decades, however, the benefits of the rule would most likely justify the costs.

Small Entities

We did not receive any comments on small entities. Of the affected population of all vessels arriving at U.S ports, we estimate that 21 vessels of the 171 U.S. flag vessels, are owned by 10 small businesses. Approximately 35 large companies own the remaining 150 U.S.-flagged vessels. We estimate all vessels will choose the alternative of conducting a mid-ocean ballast water exchange. The cost of complying with this rule is the cost of exchanges performed by the vessel added to the cost of additional maintenance required for the ballast water pumping system. The cost per exchange is a function of vessel type. Each vessel's costs will be a function of the cost of exchange for that vessel type multiplied by the number of trips into U.S. waters from outside the U.S. EEZ. Thus the annual

impact on the revenue for a small business will vary with the number of entries the vessel makes from outside the U.S. EEZ. In order to estimate the upper bound of that impact, we calculated the cost of exchange for the maximum number of exchanges possible for the years 1999 and 2000. We then assumed that weather conditions and transit tracks allowed exchanges for all of these entries. For the annual cost of the rule, the number of vessels owned by each small business is multiplied by the number of exchanges performed, and the resulting product is then multiplied by the cost of exchange for the particular vessel type, and added to the maintenance cost of 10 percent of the capital cost of the ballast pump. Of the 10 small businesses that own vessels affected by the rule, we found revenue for nine. For the remaining company where no revenue information was available, we assumed revenue of $1 million for the purposes of the analysis. Table 1 gives the effect of the rule on the average annual revenues for the small business affected. For more detailed information, refer to the Regulatory Evaluation in the docket.

TABLE 1.—EFFECT OF BWM ON AVERAGE ANNUAL REVENUE FOR SMALL BUSINESS ENTITIES OWNING U.S.-FLAGGED VESSELS

Percent of annual revenue that is BWM rule cost	Total small entities per impact category
0–3	8
3–5	2
> 5	0
Total	10

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Bivan Patnaik, G–MSO–4, Coast Guard, telephone 202–267–1744, e-mail: *Bpatnaik@comdt.uscg.mil*.

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

Collection of Information

This rule modifies an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We received several comments regarding general collection of information issues. These comments were addressed in the discussion of comments above.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB approved the change to the collection on September 9, 2003: OMB Control Number 1625–0069, expiring on September 30, 2006.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We received three comments pertaining to Federalism.

Two commenters asked how the Coast Guard is developing partnerships with State agencies to coordinate various BWM policies and research programs for treatment installation. A third commenter asked if States wishing to require stricter standards could issue ''supplements'' that would be enforced only in the issuing States.

As stated in the ''Federalism'' section of the proposed rulemaking, Congress clearly intended for a Federal-State cooperative regime and not for Federal preemption of State requirements. Thus, each State is authorized under NISA to develop its own regulations, including its own research programs, if it believes that Federal regulations or programs are not stringent enough.

We have analyzed this rule under Executive Order 13132. NANPCA contains a ''savings provision'' that provides States the authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any States over species of fish and wildlife.'' 16 U.S.C. 4725. It also requires that ''all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic nuisance species into U.S. waters from ships' ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, would occur.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive any comments regarding civil justice reform.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We did not receive any comments regarding Indian Tribal governments.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of a PEA is necessary and is available in the public docket for this rule. The PEA and Finding of No Significant Impact (FONSI) have been completed and are available in the public docket for inspection. We received nine comments regarding the environment.

Two commenters expressed concern regarding limitations on ballasting in areas near coral reefs, dredging operations, tidal flushing, darkness, and sediment, stating that these types of areas are where their barges load and discharge. One of these commenters also added his concern that his company will not be able to comply with the BWM options.

While we appreciate the commenters' concerns and the effects this rule will have on general operations, we believe that the requirements for ballasting and the options for BWM are necessary to protect the environment from the damages caused by NIS. In order to comply with these requirements, the commenters will have to adjust their ballasting operations accordingly.

One commenter stated that the Coast Guard should include an Essential Fish Habitat determination in the PEA, as required by the Magnuson-Stevens Fishery Act.

We agree with the commenter and have included language regarding essential fish habitat in the PEA.

Two commenters requested that we include language in § 151.2035 regarding conducting BWM near pods of whales, convergence zones, and boundaries of major currents in order to protect threatened or endangered species.

We agree and have amended § 151.2035 to reflect these changes.

Under the consultation process of the Endangered Species Act, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) recommended that the Coast Guard work with ballast water reception facilities and any relevant permitting authorities to address any potential effects to listed species or critical habitats and compliance with the Endangered Species Act.

We have consulted extensively with FWS and NMFS in regards to the issue of approval of facilities to receive ballast water. Currently, there are no ballast water reception facilities in the United States approved for the treatment of ballast water to remove NIS. The Coast Guard is not involved in the regulatory or approval process for ballast water reception facilities. Anyone wishing to establish a ballast water reception facility that would discharge to waters of the United States would need to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. Forty-five States and the U.S. Virgin Islands have been approved to issue NPDES permits, and would be the relevant permitting authority. In the remainder of the States, territories, and Indian country that have not been approved to issue NPDES permits, the NPDES permitting authority would be EPA. In the case of a ballast water reception facility that discharges into a local sewage collection system rather than directly to waters of the United States, the discharge would need to comply with local pretreatment requirements and national prohibited discharge standards under section 307 of the Clean Water Act. Non-storm water discharges into a municipal separate storm sewer system are prohibited. Because of these issues, we cannot state with certainty that allowing vessels to discharge their ballast water into a reception facility would be as effective as ballast water exchange in preventing and controlling infestations of NIS as per NISA. As a result, we are eliminating this option from § 151.2035.

The only additional comment regarding reception facilities was a request for Coast Guard approval of such entities, an act that we are not legally authorized to perform. As stated previously, there are no ballast water reception facilities in the United States approved for the treatment of ballast water to remove NIS, nor do we believe there are any applications for approval for such facilities on file. Additionally, all vessels equipped with ballast water tanks would need to be retrofitted with ballast water shore connections in order to utilize a shore-side reception facility. As stated in the Regulatory Evaluation, we do not expect any vessels to utilize the option of discharging into a shore-side facility. Accordingly, we do not believe that eliminating this option from § 151.2035 will have any immediate effect on regulated industry.

The Coast Guard will continue to work with other Federal agencies, such as FWS and NMFS, to examine and resolve issues surrounding ballast water treatment facilities.

Three commenters encouraged the Coast Guard to pursue environmentally sound alternatives to ballast water exchange.

We agree with the commenters. As required by NISA, we are working to facilitate development of alternatives to ballast water exchange that are environmentally sound. To do this, we encourage industry and others to participate in the STEP announced in the **Federal Register** on January 7, 2004 (69 FR 1082, NVIC 01–04).

In considering the environmental impact of this rule, as stated earlier in this section, we believe the PEA is necessary because this rule requires vessels with ballast tanks entering U.S. ports around the country, subject to conditions discussed above, to have completed one of the mandatory BWM practices. Although the national mandatory BWM program provides vessels with ballast tanks the option of using one of three BWM practices, ballast water exchange is likely to be the most used practice for reasons discussed earlier. However, this PEA is necessary to ensure the potential environmental effects of the three BWM practices are considered.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to this rule. Under this Act, the Coast Guard must determine whether the activities proposed by it are consistent with activities covered by Federally approved coastal zone management plans for each State, which may be affected by this federal action. A listing of 29 States and Territories with federally approved coastal zone management plans can be found in Appendix E of the PEA for this rule.

The Coast Guard has determined that the mandatory BWM program will have no effect on the coastal zones of the listed States and Territories. In addition,

we found the regulations in the final rule were consistent, to the maximum extent practicable, with the enforceable policies of the Federally-approved coastal zone management plans and submitted a consistency determination to that effect. The State Administrators for each of the listed States and Territories with coastal zone management plans responded, concurring with the Coast Guard consistency determination that implementing a mandatory BWM program would be consistent with their respective coastal zone management plans.

The Coast Guard provided the U.S. Fish and Wildlife Service and the National Marine Fisheries Service with a copy of the final rule and its environmental assessment of the rule. This information initiated an informal Section 7 Consultation per the Endangered Species Act (16 U.S.C. 1531, *et seq.*), which resulted in both agencies concurring with the Coast Guard's determination that this rule is not likely to adversely affect listed or proposed species or their critical habitats.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

■ 1. The authority citation for subpart D is revised to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 151.2015 to read as follows:

§ 151.2015 Is a vessel in innocent passage exempt from the mandatory requirements?

A foreign vessel merely traversing the territorial sea of the U.S. (i.e., not entering or departing a U.S. port, or not navigating the internal waters of the U.S.) is exempt from the requirements of this subpart.

■ 3. In § 151.2025—

■ a. Add in alphabetical order the definition of ''Ballast tank'' as set out below;

■ b. Under the definition for ''Exchange,'' redesignate paragraph (a) to (1); and

■ c. Revise the definition of ''Waters of the United States'' as set out below:

§ 151.2025 What definitions apply to this subpart?

* * * * *

Ballast tank means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

* * * * *

Waters of the United States means waters subject to the jurisdiction of the United States as defined in 33 CFR § 2.38, including the navigable waters of the United States. For this regulation, the navigable waters include the territorial sea as extended to 12 nautical miles from the baseline, pursuant to Presidential Proclamation No. 5928 of December 27, 1988.

■ 4. In § 151.2035—

■ a. Revise the section heading to read as set out below;

■ b. Revise the introductory text for paragraph (a) to read as set out below;

■ c. Add paragraph (a)(2)(vii) to read as set out below; and

■ d. Revise paragraphs (a)(7) and (b) to read as set out below:

§ 151.2035 What are the required ballast water management practices for my vessel?

(a) Masters, owners, operators, or persons-in-charge of all vessels equipped with ballast water tanks that operate in the waters of the U.S. must:

* * * * *

(2)(vii) Areas with pods of whales, convergence zones, and boundaries of major currents.

* * * * *

(7) Maintain a ballast water management plan that has been developed specifically for the vessel that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, if the vessel carries ballast water that was taken on in areas less than 200 nautical miles from any shore into the waters of the U.S. after operating beyond the Exclusive Economic Zone, you (the master, operator, or person-in-charge of a vessel) must employ at least one of the following ballast water management practices:

(1) Perform complete ballast water exchange in an area no less than 200 nautical miles from any shore prior to discharging ballast water in U.S. waters;

(2) Retain ballast water onboard the vessel;

(3) Prior to the vessel entering U.S. waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard;

■ 5. Add § 151.2036 to read as follows:

§ 151.2036 If my voyage does not take me into waters 200 nautical miles or greater from any shore, must I divert to conduct a ballast water exchange?

A vessel will not be required to deviate from its voyage, or delay the voyage, in order to conduct a ballast water exchange.

■ 6. Add § 151.2037 to read as follows:

§ 151.2037 If my vessel cannot conduct ballast water management practices because of its voyage and/or safety concerns, will I be prohibited from discharging ballast water?

(a) A vessel that cannot practicably meet the requirements of § 151.2035(b)(1) because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time and elects to retain ballast water on board, or because of the safety concerns contained in § 151.2030, will not be prohibited from the discharge of ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety of the vessels for cargo operations and make ballast water records available to the local Captain of the Port upon request.

(b) A vessel that cannot practicably meet the requirements of § 151.2035(b)(3) because its alternative environmentally sound ballast water management method is inoperable must employ one of the other ballast water management practices stated in § 151.2035(b). If the vessel cannot employ other ballast water management practices due to voyage or safety concerns, the vessel will not be prohibited from the discharge of ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety of the vessels for cargo operations and make ballast water records available to the local Captain of the Port upon request.

Dated: July 21, 2004.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 04–17096 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 255

Access of Persons With Disabilities to Postal Service Programs, Activities, Facilities, and Electronic and Information Technology

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is amending its regulations in order to add a complaint process for employees and applicants under section 508 of the Rehabilitation Act of 1973, as amended.

DATES: The rule is effective August 27, 2004.

FOR FURTHER INFORMATION CONTACT: Joan C. Goodrich, Esq., (202) 268–3047.

SUPPLEMENTARY INFORMATION: Section 508 requires Federal agencies to ensure that the electronic and information technology (EIT) they procure allows individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue hardship. The statute was amended by the Workforce Investment Act of 1998, Public Law 105–220, 112 Stat. 536 (1998), to add enforcement provisions and to require agencies to add a complaint process for section 508. A complaint process under section 508 for members of the public who are disabled was added to part 255 through a **Federal Register** publication of a proposed rule on February 25, 2002 (67 FR 8489–8493). A final rule for the section 508 complaint process for members of the public was published in the **Federal Register** on December 10, 2002. This final rule was effective January 9, 2003.

A section 508 complaint process for employees and applicants who are disabled is now being added to part 255.

Section-by-Section Analysis

Section 255.2 Definitions

A new subparagraph (3) has been added to *(h) Qualified individual with a disability* in order to give applicants and employees the definition of a ''qualified individual with a disability'' under section 501 of the Rehabilitation Act.

Section 255.6 Processing of Complaints

The title of this section has been changed to reflect that it explains how various types of complaints will be processed and to distinguish it from the complaint procedures in paragraph (d) of this section.

(a) *Section 504 complaints, employment.*

Paragraph (a) has been renamed and now provides that section 504 complaints alleging employment discrimination and brought by employees or applicants are to be processed under the procedures established for section 501 complaints.

(b) *Section 504 complaints, members of the public.*

Paragraph (b) has been renamed and now provides that section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public are to be processed under the procedures of this part.

(c) *Section 508 complaints, members of the public, employees and applicants.*

Paragraph (c) has been renamed and now provides that the procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public, employees, or applicants.

(d) *Complaint Procedures.*

Paragraph (d) has been renamed and renumbered. It was previously paragraph (c). It explains the complaint procedures for section 504 complaints brought by members of the public and section 508 complaints brought by members of the public, employees, or applicants. The actual complaint procedures are unchanged.

(e) *No retaliation.*

This paragraph was renumbered. It was previously paragraph (d). It has not been changed.

List of Subjects in 39 CFR Part 255

Civil rights, Federal buildings and facilities, Individuals with disabilities.

■ Accordingly, the Postal Service revises 39 CFR part 255 to read as follows:

PART 255—ACCESS OF PERSONS WITH DISABILITIES TO POSTAL SERVICE PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.

255.1 Purpose.
255.2 Definitions.
255.3 Nondiscrimination under any program or activity conducted by the Postal Service.
255.4 Accessibility to electronic and information technology.
255.5 Employment.
255.6 Processing of complaints.
255.7 Special arrangements for postal services.
255.8 Access to postal facilities.
255.9 Other postal regulations; authority of postal managers and employees.

Authority: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794, 794d.

§ 255.1 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies or by the Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires that executive agencies and the Postal Service ensure, absent an undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who are not disabled.

(b) The standards relating to electronic and information technology expressed in this part are intended to be consistent with the standards announced by the Architectural and Transportation Barriers Compliance Board on December 21, 2000. Those standards are codified at 36 CFR part 1194.

§ 255.2 Definitions.

(a) *Agency* as used in this part means the Postal Service.

(b) *Area/functional vice president* also includes his or her designee.

(c) *Electronic and information technology (EIT)* includes ''information technology'' and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(d) *Formal complaint* means a written statement that contains the complainant's name, address, and telephone number, sets forth the nature of the complainant's disability, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature of the alleged violation of section 504 or of section 508. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf.

(e) *Individual with a disability.* For purposes of this part, ''individual with a disability'' means any person who—

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(f) *Information technology* means any equipment, or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(g) *Postal manager.* As used in this part, ''postal manager'' means the manager or official responsible for a service, facility, program, or activity.

(h) *Qualified individual with a disability.* For purposes of this part, ''qualified individual with a disability'' means—

(1) With respect to any Postal Service program or activity, except for employment, under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, except for employment, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who can perform the essential functions of the job in question with or without reasonable accommodation.

(i) *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended. Section 501 is codified at 29 U.S.C. 791.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is codified at 29 U.S.C. 794.

(k) *Section 508* means section 508 of the Rehabilitation Act of 1973, as amended. Section 508 is codified at 29 U.S.C. 794d.

(l) *Undue burden* means significant difficulty or expense.

(m) *Vice President and Consumer Advocate* also includes his or her designee.

§ 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity conducted by the Postal Service.

§ 255.4 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the Postal Service shall ensure, absent an undue burden, that the electronic and information technology the agency procures allows—

(1) Individuals with disabilities who are Postal Service employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by Postal Service employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Postal Service to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board would pose an undue burden, the Postal Service shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 255.5 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment with the Postal Service. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973, as established by the Equal Employment Opportunity Commission in 29 CFR part 1614 shall apply to employment within the Postal Service.

§ 255.6 Processing of complaints.

(a) *Section 504 complaints, employment.* The Postal Service shall process complaints of employees and applicants alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791. In accordance with 29 CFR part 1614, the Postal Service has established procedures for processing complaints of alleged employment discrimination, based upon disability, in the agency's handbook, *Equal Employment Opportunity Complaint Processing.*

(b) *Section 504 complaints, members of the public.* The procedures of this part shall apply to section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public.

(c) *Section 508 complaints, members of the public, employees, and applicants.* The procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public or by employees or applicants. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(d) *Complaint Procedures.* Any individual with a disability who believes that he or she has been subjected to discrimination prohibited by this part or by the alleged failure of the agency to provide access to electronic and information technology may file a complaint by following the procedures described herein. A complainant shall first exhaust informal administrative procedures before filing a formal complaint.

(1) *Informal complaints relating to Postal Service programs or activities and to EIT.* (i) A complainant initiates the informal process by informing the responsible postal manager orally or in writing of the alleged discrimination or inaccessibility of Postal Service programs, activities, or EIT. Postal managers or employees who receive informal complaints that they lack the authority to resolve must promptly refer any such informal complaint to the appropriate postal manager, and at the same time must notify the complainant of the name, address, and telephone number of the person handling the complaint.

(ii) *Resolution of the informal complaint and time limits.* Within 15 days of receipt of the informal complaint, the responsible postal manager must send the complainant a written acknowledgement of the informal complaint. The written acknowledgment will include the date the complaint was filed and a description of the issue(s). If the matter cannot be resolved within 30 days of its receipt, the complainant must be sent a written interim report which explains the status of the informal complaint and the proposed resolution of the matter. On or before the 60th day from the agency's receipt of the informal complaint, the appropriate area/functional vice president within the

Postal Service shall send a written decision to the complainant detailing the final disposition of the informal complaint and the reasons for that disposition. The decision shall contain the notice that the complainant may challenge an informal decision which denies relief either by proceeding in any other appropriate forum or by filing a formal complaint with the Vice President and Consumer Advocate. The notice will give the address of the Vice President and Consumer Advocate. The notice shall also state that if the complainant chooses to file a formal complaint, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(iii) *Automatic review.* The responsible postal manager's proposed disposition of the informal complaint shall be submitted to the appropriate district/program manager for review. The district/program manager shall forward the proposed disposition to the area/functional vice president for review and issuance of the written decision. This automatic review process shall be completed such that the written decision of the area/functional vice president shall be sent to the complainant no later than the 60th day from the agency's receipt of the informal complaint.

(2) *Formal complaints.* If an informal complaint filed under paragraph (d)(1) of this section denies relief, the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate in accordance with the following procedures. If the complainant files a formal complaint with the Vice President and Consumer Advocate, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(i) *Where to file.* Formal complaints relating to programs or activities conducted by the Postal Service or to access of Postal Service EIT may be filed with the Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

(ii) *When to file.* A formal complaint shall be filed within 30 days of the date the complainant receives the decision of the area/functional vice president to deny relief. For purposes of determining when a formal complaint is timely filed under paragraph (d)(2)(ii) of this section, a formal complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other formal complaint shall be deemed filed on the date it is received by the Vice President and Consumer Advocate.

(iii) *Acceptance of the formal complaint.* The Vice President and Consumer Advocate shall accept a timely filed formal complaint that meets the requirements of § 255.2(d), that is filed after fulfilling the informal exhaustion procedures of § 255.6(d)(1), and over which the agency has jurisdiction. The Vice President and Consumer Advocate shall notify the complainant of receipt and acceptance of the formal complaint within 15 days of the date the Vice President and Consumer Advocate received the formal complaint.

(iv) *Resolution of the formal complaint.* Within 180 days of receipt and acceptance of a formal complaint over which the agency has jurisdiction, the Vice President and Consumer Advocate shall notify the complainant of the results of the investigation of the formal complaint. The notice shall be a written decision stating whether or not relief is being granted and the reasons for granting or denying relief. The notice shall state that it is the final decision of the Postal Service on the formal complaint.

(e) *No retaliation.* No person shall be subject to retaliation for opposing any practice made unlawful by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, or for participating in any stage of administrative or judicial proceedings under the statute.

§ 255.7 Special arrangements for postal services.

Members of the public who are unable to use or who have difficulty using certain postal services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed below. No one is required to use any special arrangement offered by the Postal Service, but an individual's refusal to make use of a particular special arrangement does not require the Postal Service to offer other special arrangements to that individual.

(a) The *Postal Operations Manual* offers information on special arrangements for the following postal services:

(1) Carrier delivery services and programs.

(2) Postal retail services and programs.

(i) Stamps by mail or phone.

(ii) Retail service from rural carriers.

(iii) Self-service postal centers. Self-service postal centers contain vending equipment for the sale of stamps and stamp items, and deposit boxes for parcels and letter mail. Many centers are accessible to individuals in wheelchairs. Information regarding the location of the nearest center may be obtained from a local post office.

(b) The *Domestic Mail Manual*, the *Administrative Support Manual*, and the *International Mail Manual* contain information regarding postage-free mailing for mailings that qualify.

(c) *Inquiries and requests.* Members of the public wishing further information about special arrangements for particular postal services may contact their local postal manager.

(d) *Response to a request or complaint regarding a special arrangement for postal services.* A local postal manager receiving a request or complaint about a special arrangement for postal services must provide any arrangement as required by postal regulations. If no special arrangements are required by postal regulations, the local postal manager, in consultation with the district manager or area manager, as needed, may provide a special arrangement or take any action that will accommodate an individual with a disability as required by section 504 or by this part.

§ 255.8 Access to postal facilities.

(a) *Legal requirements and policy*—(1) *ABA Standards.* Where the design standards of the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, do not apply, the Postal Service may perform a discretionary retrofit to a facility in accordance with this part to accommodate individuals with disabilities.

(2) *Discretionary modifications.* The Postal Service may modify facilities not legally required to conform to ABA standards when it determines that doing so would be consistent with efficient postal operations. In determining whether modifications not legally required should be made, due regard is to be given to:

(i) The cost of the discretionary modification;

(ii) The number of individuals to be benefited by the modification;

(iii) The inconvenience, if any, to the general public;

(iv) The anticipated useful life of the modification to the Postal Service;

(v) Any requirement to restore a leased premises to its original condition at the expiration of the lease, and the cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*;

(vii) The availability of other options to foster service accessibility; and

(viii) Any other factor that is relevant and appropriate to the decision.

(b) *Inquiries and requests.* (1) Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the design standards of the ABA, may be made to the local postal manager of the facility involved.

(2) The local postal manager's response to a request or complaint regarding an alteration to a facility will be made after consultation with the district manager or the area manager. If the determination is made that modification to meet ABA design standards is not required, a discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local postal manager should determine if a special arrangement for postal services under § 255.7 can be provided.

§ 255.9 Other postal regulations; authority of postal managers and employees.

This part supplements all other postal regulations. Nothing in this part is intended either to repeal, modify, or amend any other postal regulation, to authorize any postal manager or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures.

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–17126 Filed 7–27–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. WY–001–0013, FRL–7784–8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Restructuring and Renumbering of Wyoming Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Wyoming on September 12, 2003. The revision restructures the Wyoming Air Quality Standards and Regulations (WAQS&R) from a single chapter into thirteen separate chapters and renumbers the provisions within each chapter. The submitted revision contains no substantive changes to the existing SIP-approved regulations. The intended effect of this action is to make federally enforceable the restructured WAQS&R. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective August 27, 2004.

ADDRESSES: EPA has established a docket for this under Docket ID No. WY–001–0013. Some information in the docket may not be publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air & Radiation Program, Mailcode 8P–AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6436, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of SIP Revision
II. Final Action
III. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Wyoming* mean the State of Wyoming, unless the context indicates otherwise.

I. Summary of SIP Revision

On May 10, 2004 (69 FR 25866), EPA published a notice of proposed rulemaking (NPR) for the State of Wyoming. The NPR proposed approval of a State Implementation Plan (SIP) revision restructuring and renumbering the Wyoming Air Quality Standards and Regulations (WAQS&R). The formal SIP revision was submitted by the State of Wyoming on September 12, 2003. The SIP revision restructures the WAQS&R from a single chapter into thirteen separate chapters and renumbers the provisions within each chapter. The revision contains no substantive changes from the prior codification that is approved into the SIP.

The following table cross references the renumbered and prior numbered SIP chapters and sections. The table identifies the renumbered SIP sections we are approving as replacing the prior numbered SIP sections.

STATE IMPLEMENTATION PLAN—TABLE OF CORRESPONDING CHAPTERS/SECTIONS

Title (renumbered SIP section)	Renumbered SIP section	Prior numbered SIP section
Authority	Chapter 1, Section 2	Chapter 1, Section 1
Definitions	Chapter 1, Section 3	Chapter 1, Section 2
Diluting and concealing emissions	Chapter 1, Section 4	Chapter 1, Section 18
Abnormal conditions and equipment malfunction	Chapter 1, Section 5	Chapter 1, Section 19
Ambient standards for particulate matter	Chapter 2, Sections 2a and 2c only.	Chapter 1, Section 3

STATE IMPLEMENTATION PLAN—TABLE OF CORRESPONDING CHAPTERS/SECTIONS—Continued

Title (renumbered SIP section)	Renumbered SIP section	Prior numbered SIP section
Ambient standards for nitrogen oxides	Chapter 2, Section 3	Chapter 1, Section 10a
Ambient standards for sulfur oxides	Chapter 2, Section 4	Chapter 1, Section 4a
Ambient standards for carbon monoxide	Chapter 2, Section 5	Chapter 1, Section 12a
Ambient standards for ozone	Chapter 2, Section 6	Chapter 1, Section 8
Ambient standards for suspended sulfates	Chapter 2, Section 8	Chapter 1, Section 6
Ambient standards for lead	Chapter 2, Section 10	Chapter 1, Section 26
Emission standards for particulate matter	Chapter 3, Section 2	Chapter 1, Section 14
Emission standards for nitrogen oxides	Chapter 3, Section 3	Chapter 1, Section 10b–c, excluding 10b(6)
Emission standards for sulfur oxides	Chapter 3, Section 4	Chapter 1, Section 4c, 4(h)
Emission standards for carbon monoxide	Chapter 3, Section 5	Chapter 1, Section 12b
Emission standards for VOCs	Chapter 3, Section 6	Chapter 1, Section 9
Existing sulfuric acid production units	Chapter 4, Section 2	Chapter 1, Section 5(a), 4b
Existing nitric acid manufacturing plants	Chapter 4, Section 3	Chapter 1, Section 10b(6)
Permit requirements for construction, modification and operation	Chapter 6, Section 2	Chapter 1, Section 21
Prevention of significant deterioration	Chapter 6, Section 4	Chapter 1, Section 24
Continuous monitoring requirements for existing sources	Chapter 7, Section 2	Chapter 1, Section 23
Sweetwater County particulate matter regulations	Chapter 8, Section 2	Chapter 1, Section 25
Conformity of general federal actions to state implementation plans	Chapter 8, Section 3	Chapter 1, Section 32
Visibility	Chapter 9, Section 2	Chapter 1, Section 28
Open burning restrictions	Chapter 10, Section 2	Chapter 1, Section 13
Wood waste burners	Chapter 10, Section 3	Chapter 1, Section 15
Air pollution emergency episodes	Chapter 12, Section 2	Chapter 1, Section 20
Motor vehicle pollution control	Chapter 13, Section 2	Chapter 1, Section 17

II. Final Action

EPA received no comments on the May 10, 2004 notice of proposed rulemaking. As proposed, EPA is approving the Restructuring and Renumbering of Wyoming Air Quality Standards and Regulations submitted by the Governor of Wyoming on September 12, 2003 as a revision to the Wyoming SIP.

The table in Section I above identifies the renumbered SIP chapters and sections we are approving as replacing the prior numbered SIP chapter and sections in the federally approved SIP. The renumbered provisions were adopted September 13, 1999 and effective October 29, 1999.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the Wyoming SIP revision that is the subject of this document will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State is merely restructuring and renumbering its SIP and the State's revision is no less stringent than the requirements currently contained in their SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2004.

Aundrey Wilkins,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart ZZ—Wyoming

■ 2. Section 52.2620 is amended by adding paragraph (c)(30) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(30) On September 12, 2003, the Governor of Wyoming submitted a revision to the State Implementation Plan. The revision restructures the Wyoming Air Quality Standards and Regulations (WAQS&R) from a single chapter into thirteen separate chapters and renumbers the provisions within each chapter. The submitted revision contains no substantive changes to the existing SIP-approved regulations. The provisions listed in paragraph (c)(30)(i)(A) are approved into the SIP and supersede and replace the prior codification of the corresponding provisions of the SIP.

(i) Incorporation by reference.

(A) Wyoming Air Quality Standards and Regulations: Chapter 1: Section 2—Authority, Section 3—Definitions, Section 4—Diluting and concealing emissions, Section 5—Abnormal conditions and equipment malfunction; Chapter 2: Section 2—Ambient standards for particulate matter, paragraphs 2(a) and 2(c) only, Section 3—Ambient standards for nitrogen oxides, Section 4—Ambient standards for sulfur oxides, Section 5—Ambient standards for carbon monoxide, Section 6—Ambient standards for ozone, Section 8—Ambient standard for suspended sulfates, Section 10—Ambient standards for lead; Chapter 3: Section 2—Emission standards for particulate matter, Section 3—Emission standards for nitrogen oxides, Section 4—Emission standards for sulfur oxides, Section 5—Emission standards for carbon monoxide, Section 6—Emission standards for volatile organic compounds; Chapter 4: Section 2—Existing sulfuric acid production units, Section 3—Existing nitric acid manufacturing plants; Chapter 6: Section 2—Permit requirements for construction, modification and operation, Section 4—Prevention of significant deterioration; Chapter 7: Section 2—Continuous monitoring requirements for existing sources; Chapter 8: Section 2—Sweetwater County particulate matter regulations, Section 3—Conformity of general federal actions to state implementation plans; Chapter 9: Section 2—Visibility; Chapter 10: Section 2—Open burning restrictions, Section 3—Wood waste burners; Chapter 12: Section 2—Air pollution emergency episodes; Chapter 13: Section 2—Motor vehicle pollution control; all adopted September 13, 1999 and effective October 29, 1999.

(ii) Additional Material.

(A) Remainder of the September 12, 2003 State submittal.

(B) January 12, 2004 letter from Dan Olson, Wyoming Department of Environmental Quality (DEQ), to Richard Long, EPA Region VIII, to address typographical errors and incorrect cross references identified in the September 12, 2003 submittal.

(C) March 22, 2004 letter from Richard Long, EPA Region VIII, to John Corra, Wyoming DEQ, requesting clarification on the State's commitment to submit substantive SIP revisions following EPA's approval of the restructured and renumbered WAQS&R provisions. In this letter, EPA also asked DEQ to indicate time frames in which DEQ would submit substantive SIP revisions.

(D) March 29, 2004 letter from John Corra, Wyoming DEQ, to Richard Long, EPA Region VIII, addressing the concerns expressed in Mr. Long's March 22, 2004 letter.

[FR Doc. 04–17167 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL223–1a; FRL–7784–6]

Approval and Promulgation of State Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a site-specific revision to the Illinois volatile organic compound (VOC) State Implementation Plan (SIP) for Argonne National Laboratory's (Argonne) degreasing operations. Argonne is a United States government-owned research and development facility in Argonne, DuPage County, Illinois. By its submittal dated March 11, 2004, the Illinois Environmental Protection Agency (Illinois EPA) requested that EPA approve an Adjusted Standard, from Illinois' cold cleaning regulations, for Argonne's solvent cleaning operations because its research activities require sample surface areas to be completely free of any residual contamination, necessitating the use of cleaning solvents that exceed the vapor pressure limitations of Illinois' cold cleaning regulations. EPA is approving this adjusted standard because there are

no feasible alternatives for the preparation of sample materials and associated apparatus used for research and development at Argonne's DuPage facility and also because no more than one ton per year of solvents are used for cold cleaning. The rationale for the approval and other information are provided in this rulemaking action.

DATES: This ''direct final'' rule is effective September 27, 2004, unless EPA receives written adverse comment by August 27, 2004. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. IL223 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's official hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. IL223. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal at (312) 886–6052.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information.
II. EPA Action and Review.
1. What Action Is EPA Taking Today?
2. Why Is EPA Taking This Action?
3. What Operations Are Covered by the Adjusted Standard?
4. What Information Did Illinois Submit in Support of This SIP?
5. Was a Public Hearing Held?
6. What Led to the SIP Revision and Why Is It Being Approved?
III. Final Rulemaking Action.
IV. Statutory and Executive Order Reviews.

I. General Information.

A. Does This Action Apply to Me?

This action only applies to the Argonne National Laboratory.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

II. EPA Action and Review

1. What Action Is EPA Taking Today?

In this action, EPA is approving a site-specific revision to the Illinois VOC SIP for Argonne's (a United States government-owned research and development facility in DuPage County, Illinois) degreasing operations. Specifically, EPA is approving an Adjusted Standard from 35 Ill. Adm. Code 218.182 (Illinois' cold cleaning degreasing regulations) for Argonne's solvent cleaning operations. Pursuant to this adjusted standard, the applicable vapor pressure and other associated requirements of 35 Ill. Code 218.182 do not apply to cold cleaning involving the preparation of sample materials and associated apparatus used for research and development testing and analysis at Argonne. These revised requirements were adopted in the Illinois Pollution Control Board's December 18, 2003, Adjusted Standard AS 03–4.

2. Why Is EPA Taking This Action?

The use of organic solvents that do not meet the cold cleaning vapor pressure requirements, in Section 218.182, is necessary for cold cleaning activities at Argonne involving the

preparation of sample materials and associated apparatus for testing and analysis and, typically, the cold cleaning performed at the facility is not done in a conventional cold cleaning degreasing system. The nature of VOCs with higher vapor pressures (the ability to evaporate quickly) is the characteristic needed to perform acceptable cleaning activities in certain research applications, and the use of a wiping technique would result in unacceptable residues on the item to be cleaned.

The amount of solvents used for cold cleaning is relatively small and is not expected to exceed 2000 lbs/year. Also, cold cleaning performed at Argonne is different from typical cold cleaning operations. It does not use typical cold cleaning apparatus, and uses milliliters, rather than gallons, of solvents, and laboratory beakers rather than a sink.

In summary, acceptable cleaning solvents are unavailable for Argonne's research applications and the total increase in emissions is relatively minor.

3. What Operations Are Covered by the Adjusted Standard?

Pursuant to this adjusted standard, the applicable vapor pressure and other requirements of Illinois' cold cleaning regulation do not apply to cold cleaning involving the preparation of sample materials and associated apparatus used for research and development testing and analysis activities conducted at Argonne. The research and development related cleaning activities include washing and rinsing slides, drying glassware, sample preparation, specimen cleaning, gel stain/destaining, membrane rinsing, and the cleaning of small parts and equipment associated with the preparation of sample materials for testing and analysis. The requirements of the adjusted standard do not apply where solvents meeting the vapor pressure limits of 35 Ill. Adm. Code 218.182 can be used without subsequently adversely affecting the validity of research results.

4. What Information Did Illinois Submit in Support of This SIP?

The Illinois EPA submitted the following information and supporting documentation (along with other less substantive procedural documents) in support of its request for an Adjusted Standard for Argonne's solvent cleaning operations.

(a) *Argonne's Petition for an Adjusted Standard from 35 Ill. Adm. Code 218.182 filed with the Illinois Pollution Control Board on April 17, 2003.* This petition provides a description of its research activities and the nature of the cold cleaning operations performed at Argonne and its difficulties in adequately preparing equipment for certain research applications without the use of common laboratory solvents, such as methanol, ethanol, isopropanol, hexane, and toluene, all of which have vapor pressures that exceed the vapor pressure limit in Illinois' regulation.

(b) *Written testimony and associated documents were filed by Argonne with the Illinois Pollution Control Board on September 2, 2003.* Argonne's written testimony describes the technical difficulties with wiping and solvents meeting the cold cleaning rule, administrative difficulties with the cold cleaning rule, a summary of research-related cold cleaning activities at Argonne and solvent usage information from 1999–2001.

(c) *Written testimony and associated documents were filed by Illinois EPA with the Illinois Pollution Control Board on September 2, 2003.* Illinois EPA's testimony supported the infeasibility of Argonne complying with Illinois's existing cold cleaning operation and documented the minimal effect that this adjusted standard would have on ozone air quality.

(d) *The transcript of the hearing for the Adjusted Standard held on September 16, 2003.* This transcript includes the testimony of experts from both Argonne and Illinois EPA which supports the merits of the adjusted Standard.

(e) *The December 18, 2003, Opinion and Order of the Illinois Pollution Control Board, which approved Argonne's Adjusted Standard from the cold cleaning degreasing rules in 35 Ill. Adm. Code 218.182.*

5. Was a Public Hearing Held?

A public hearing was held on September 16, 2003, in Wood Dale, Illinois. Both Wood Dale and Argonne are in DuPage County.

6. What Led to the SIP Revision and Why Is It Being Approved?

Argonne petitioned for an Adjusted Standard from Illinois' cold cleaning rule because the vapor pressure limitations in Illinois' rule prevented it from using solvents that would adequately clean the equipment for its research applications. This rule is being approved because it was adequately documented that compliance with Illinois' cold cleaning rule would interfere with the validity of Argonne's research and because the adjusted standard would have only a minimal effect on air quality.

III. Final Rulemaking Action

For the reasons given above, EPA is approving into the Illinois VOC SIP an Adjusted Standard for Argonne, from 35 Ill. Adm. Code 218.182, for its cold cleaning degreasing involving the preparation of sample materials and associated apparatus used for research and development testing and analysis activities conducted at Argonne. This Adjusted Standard (AS 03–4) was adopted by the Illinois Pollution Control Board on December 18, 2003.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective September 27, 2004 without further notice unless we receive relevant adverse written comments by August 27, 2004. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 27, 2004.

IV. Statutory and Executive Orders Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies

that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 18, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

■ 2. Section 52.720 is amended by adding paragraph (c)(173) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(173) On March 11, 2004, Illinois submitted an Adjusted Standard for Argonne National Laboratory's degreasing operations. Pursuant to this Adjusted Standard from 35 Ill. Adm. Code 218.182, the applicable vapor pressure and other associated requirements of 35 Ill. Code 218.182 do not apply to cold cleaning involving the preparation of sample materials and associated apparatus used for research and development testing and analysis at Argonne. These revised requirements were adopted in the Illinois Pollution Control Board's December 18, 2003, Adjusted Standard AS 03–4.

(i) Incorporation by reference.

(A) The Illinois Pollution Control Board's December 18, 2003, Opinion and Order which granted the Argonne National Laboratory's degreasing operations an Adjusted Standard (AS 03–4) from 35 Ill. Code 218.182 for its cold cleaning involving the preparation of sample materials and associated apparatus used for research and development testing and analysis at Argonne.

[FR Doc. 04–17165 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–67; DA 04–2061]

Reminder Regarding Upcoming Deadlines for Waivers of Telecommunications Relay Service Rules for Captioned Telephone Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; expiration of waivers.

SUMMARY: In this document, the Commission reminds Telecommunications Relay Service (TRS) providers who offer captioned telephone Voice Carry Over (VCO) service that the one-year waiver of the requirement that they offer access via

711 to captioned telephone VCO service for inbound calls made *to* a captioned telephone user expires at midnight on July 31, 2004. Providers are also reminded that the annual reports required for the various three-year waivers of TRS mandatory minimum standards set forth in the *Declaratory Ruling* are due on August 2, 2004.

DATES: One year VCO waivers expire July 31, 2004. Annual reports for various three-year waivers of TRS mandatory minimum standards are due on August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, (202) 418–0569 (voice), (202) 418–0537 (TTY), or e-mail *traci.randolph@fcc.gov.*

SUPPLEMENTARY INFORMATION: On August 1, 2003, the Commission released a *Declaratory Ruling,* published at 68 FR 55898, September 29, 2003, in CC Docket No. 98–67; FCC 03–190. In the *Declaratory Ruling,* the Commission clarified that certain TRS mandatory minimum standards do not apply to captioned telephone VCO service, and waived other TRS mandatory standards for captioned telephone VCO service, for all current and future captioned telephone VCO service providers, for the same period of time beginning on the release date of the *Declaratory Ruling.* This is a summary of the Commission's *Public Notice,* DA 04–2061, released July 9, 2004. Annual reports required to be filed pursuant to the captioned telephone VCO service *Declaratory Ruling* should be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal mail). The Commission's contractor, Natek, Inc. will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. When filing annual reports, please reference CC Docket No. 98–67.

Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *www.bcpiweb.com* or call 1–800–378–3160.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Synopsis

As background, TRS, as mandated by Title IV of the Americans with Disabilities Act of 1990, makes the telephone system accessible to individuals with hearing or speech disabilities. *See* 47 U.S.C. 225. This is accomplished through TRS facilities that are staffed by specially trained CAs using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. On August 1, 2003, the Commission released the captioned telephone Voice Carry Over (VCO) service *Declaratory Ruling* finding that: (1) Captioned telephone VCO service is a type of TRS; (2) eligible providers of such service are eligible to recover their costs in accordance with section 225 of the Communications Act; (3) certain TRS mandatory minimum standards do not apply to the provision of captioned telephone VCO service; and (4) certain TRS mandatory minimum standards are waived for captioned telephone VCO service for certain time periods.

Federal Communications Commission.

P. June Taylor,

Chief of Staff, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–17238 Filed 7–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA41

Organization and Delegation of Powers and Duties; Modification of Delegation to the Administrator, Research and Special Programs Administration, and Delegation of Authority to Director, Office of Intelligence and Security

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) modifies the currently delegated authority of the Administrator, Research and Special Programs Administration, to perform functions related to emergency preparedness and response vested in the Secretary and delegates authority to the Director of Intelligence and Security in the Office of the Secretary to review and coordinate the performance of these functions.

DATES: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–9153.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.* You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov*). On that webpage, click on ''search.'' On the next page, type in the four-digit docket number shown on the first page of this document. Then click on ''search.''

Background

Title 49 of the Code of Federal Regulations (CFR), § 1.53(e), delegates to the Administrator of the Research and Special Programs Administration the authority to carry out functions and

activities related to emergency preparedness and response vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Executive Order 12148, as amended; Executive Order 12656, as amended; Executive Order 12742, as amended; Executive Order 12919, as amended; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives that may pertain to emergency preparedness and response.

The functions related to emergency preparedness and response are currently performed by the Research and Special Programs Administration's Office of Emergency Transportation (OET). The OET's mission is to serve as the Departmental emergency coordinator and it provides leadership for emergency preparedness and response activities; develops national preparedness and response policies and procedures in coordination with other Federal, state, local, and private sector authorities; operates the Department's Crisis Management Center; and participates on behalf of the United States in international emergency preparedness and response planning and related activities with the North Atlantic Treaty Organization (NATO) and other allies.

The Secretary has determined that the functions and activities currently being performed by the OET should be coordinated with and subject to review by the Office of Intelligence and Security in the Office of the Secretary. Therefore, this final rule modifies the current delegation of Secretarial authority to the Administrator, Research and Special Programs Administration, in 49 CFR 1.53(e) to carry out the functions and activities currently relating to emergency transportation performed by the OET and gives notice that these functions and activities shall be coordinated with, reviewed by, and subject to the concurrence of the Director of the Office of Intelligence and Security.

This rule is being published as a final rule and made effective on the date signed by the Secretary. As the rule relates to Departmental management, procedures, and practices, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, the Secretary finds that there is good cause to make this rule effective upon the date of signature, July 14, 2004, pursuant to 5 U.S.C. 553(d)(2), as a change to internal policy.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a modification of authority from the Secretary, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064 (2002); Pub L. 107–296, 116 Stat. 2135 (2002).

■ 2. In § 1.23, revise paragraph (o) to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(o) *Office of Intelligence and Security.* Responsible for intelligence and security matters within the Department of Transportation that affect the safety of the traveling public, and for oversight of emergency preparedness and response functions and activities within the Department, and of operation of the Department's Crisis Management Center.

* * * * *

■ 3. In § 1.53, revise paragraph (e) to read as follows:

1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(e) *Emergency preparedness.* Carry out the functions related to emergency preparedness vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App 2061 *et seq.*; Executive Order 10480, as amended; Executive Order 12148; Executive Order 12656; Executive Order 12742; Executive Order 12919, as amended; Reorganization Plan No. 3 or 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness, subject to the coordination with, review by, and concurrence of the Director of Intelligence and Security in the Office of the Secretary.

* * * * *

■ 4. In § 1.69, add paragraph (b) to read as follows:

§ 1.69 Delegations to the Director of Intelligence and Security.

* * * * *

(b) *Emergency preparedness and response.* Coordinate with the Director, Office of Emergency Transportation, the functions related to emergency preparedness and response vested in the

Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Executive Order 12148, as amended; Executive Order 12656, as amended; Executive Order 12742, as amended; Executive Order 12919, as amended; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives that may pertain to emergency preparedness and response.

Issued this 14th day of July, 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04–16723 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 072304A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2004 halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 25, 2004, through 1200 hrs, A.l.t., September 1, 2004.

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 2004 final harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004), established the third seasonal apportionment of the halibut bycatch allowance for the trawl deep-water species fishery in the GOA for the period 1200 hrs, A.l.t., July 4, 2004, through 1200 hrs, A.l.t., September 1, 2004, as 400 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2004 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–17177 Filed 7–23–04; 3:57 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 072204F]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area 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 northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 24, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

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 2004 TAC specified for northern rockfish in the Western Regulatory Area of the GOA is 770 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for northern rockfish in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 630 mt, and is setting aside the remaining 140 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 has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in

the Western Regulatory Area of the GOA.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for northern rockfish in the Western Regulatory Area of the GOA.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–17178 Filed 7–23–04; 3:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 144
Wednesday, July 28, 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 920

[Docket No. FV04–920–1 PR]

Kiwifruit Grown in CA; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to pack and container requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would add a new size designation to the allowable size designations for packs of kiwifruit; revise the standard packaging requirements to require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit; require the quantity statement to be indicated in terms of both ''count'' and ''size'' for all kiwifruit packed into cell compartments, cardboard fillers, or molded trays; and exempt all varieties of kiwifruit from the ''tightly packed'' standard pack requirement. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, reduce handler packing costs, and to improve handler and grower returns.

DATES: Comments must be received by August 12, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, e-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will 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 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revisions to pack and container requirements currently prescribed for California kiwifruit under the order. This rule would: (1) Add a new size designation to the allowable size designations for packs of kiwifruit; (2) revise the standard packaging requirements to require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit; (3) require the quantity statement to be indicated in terms of both ''count'' and ''size'' for all kiwifruit packed into cell compartments, cardboard fillers, or molded trays; and (4) exempt all varieties of kiwifruit from the ''tightly packed'' standard pack requirement. The Committee recommended these changes at its March 10, 2004, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, reduce handler packing and costs, and to improve handler and grower returns.

Additional Numerical Count Size Designation

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations specifies pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii)(B) provides that kiwifruit packed in individual consumer packages, bags, volume filled, or bulk containers, may not vary more than ½-inch in diameter for size designations 30 or larger.

Section 920.302(a)(4)(iii) contains a table commonly referred to as the ''Size Designation Chart''. This chart specifies numerical count size designations and the maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in individual consumer packages, bags, volume filled, or bulk containers.

In 1985, the Committee recommended and the USDA approved establishment of the first numerical count size designation chart by publishing a final rule in the **Federal Register** on September 9, 1985 (50 FR 36567). This regulation established size designation 49 defined as a maximum of 64 pieces of fruit in an 8-pound sample, as the minimum size. It also established four other size designations and required that kiwifruit packed in bags, volume filled, or bulk containers be ''fairly uniform in size.'' At that time, ''fairly uniform in size'' meant that size designation 30 or larger could not vary more than ½ inch in diameter, size designations 33 and 36 could not vary more than ⅜ of an inch, and size designations 39 and smaller could not vary more than ¼ inch in diameter. Diameter was defined to mean the greatest dimension measured at right angles to a line from stem to blossom end; with some tolerances provided.

Over the years, numerical count size designations have been added, removed, and the maximum number of fruit per numerical count size designation has been revised to accommodate new packaging and changing market conditions. The Committee recommended and the USDA approved revisions to the size designation chart by publishing the following interim and final rules in the **Federal Register**: August 16, 1993 (58 FR 43243); September 2, 1994 (59 FR 45617); September 3, 1998 (63 FR 46861); December 1, 1988 (53 FR 48513); July 29, 1999 (64 FR 41010); October 29, 2001 (66 FR 1413); March 14, 2002 (67 FR 11396); and August 22, 2002 (67 FR 54327).

In recent years, many California growers have increased the size of California kiwifruit through various cultural practices. During the 2003–2004 season, growers produced a crop with unusually large sizes. Handlers experienced difficulty staying within the size variation tolerance allowed for the largest size, size 20. Kiwifruit larger than size 20 had to be blended into the size 20 designation, as there was no larger size designation established for the 2003–04 season. This blending required handlers to take special care to stay within the size variation tolerance and reduced the uniformity of the pack size. Handlers also incurred additional costs in meeting the requirements.

Thus, the Committee, at its March 10, 2004, meeting, unanimously recommended adding size designation 18, defined as a maximum of 25 pieces of fruit per 8-pound sample, to the size designation chart. This proposed change would provide handlers with a total of eleven numerical count size designations as follows:

SIZE DESIGNATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
18*	**25**
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

*New size designation is in bold.

Additionally, for clarification, the title ''Size Designation Chart'' would be added to the top of the chart.

The new size designation is expected to ease packing requirements, by allowing handlers to stay within size variances for larger sized fruit and is expected to improve handler and grower returns, as larger-sized fruit commands higher prices. This action would not affect import requirements.

Standardization of Packaging Requirement for Volume Filled Containers Designated by Net Weight

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers, or molded trays. Handlers may ship volume filled containers marked with either the appropriate count (number of pieces of fruit) or net weight (total weight of pieces of fruit in the container). Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight (59 FR 53563, October 25, 1994). At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season.

In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers; whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. With the 22-pound provisions, handlers could not meet buyer demands for other types of packaging.

In an effort to meet buyer demands for other types of packaging, the standardized packaging requirement of 22-pounds (10-kilograms) net weight for certain volume filled containers was suspended for the 2002–2003 and 2003–2004 seasons. These suspensions were implemented by an interim final rule published on August 22, 2002 (67 FR 54327); a final rule on November 21, 2002 (67 FR 76140); and another final rule published in the **Federal Register** on July 28, 2003 (68 FR 44191). The suspension published on July 28, 2003 is in effect until July 31, 2004. Additionally, the final rule published on July 28, 2003 (68 FR 44191) removed a pack requirement in § 920.302(a)(4)(iv) and paragraph (a)(4)(v) was redesignated as paragraph (a)(4)(iv).

However, during the 2002–2003 and 2003–2004 seasons, since handlers and retailers were not limited to a specific net weight for volume filled containers designated by weight, some confusion appeared in the marketplace. Without a specific net weight for volume filled containers, more than one net weight was packed by handlers.

In an effort to determine the best means of ensuring more orderly marketing, a survey of kiwifruit handlers and growers was conducted during the 2003–2004 season. The survey results clearly showed that the industry favored establishment of a standardized packaging requirement for volume filled containers of kiwifruit designated by weight to hold 19.8-pound (9-kilograms) net weight of kiwifruit, unless such containers hold

less than 15 pounds or more than 35 pounds net weight of kiwifruit.

Accordingly, the Committee, on March 10, 2004, unanimously recommended revising the standard packaging requirements for volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

This recommended change would allow the industry to compete more effectively in the market place with its foreign competition, allow continued packing of the new variety of kiwifruit in 14-pound containers, and would improve grower returns. This action would not affect import requirements.

Container Marking Requirements

Section 920.52 authorizes the establishment of pack, and container requirements for California kiwifruit.

Section 920.303 of the order's administrative rules and regulations outlines specific container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(1) provides that the quantity statement shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

Historically, the industry and buyers have associated count (number of pieces of fruit) with fruit size designations (maximum number of pieces of fruit in an 8-pound sample). Molded trays were originally designed in the early 1980's to accommodate fruit of the corresponding size from the numerical count size designation chart. For example, count 36 trays (trays that held 36 pieces of fruit) would accommodate size designation 36 fruit.

As previously mentioned, numerous changes have been made to the size designation chart over the years. Other changes have included removal of the minimum tray weight requirements (66 FR 39270; July 30, 2001), and the addition of the new molded tray inserts with smaller cup sizes. Currently, handlers can pack five sizes of fruit (33, 36, 39, 42, and 45) into three tray counts (33, 36, and 39), with the tray weighing as little as 5 pounds. These differences may cause confusion in the marketplace, especially if buyers assume that count is equivalent to size.

Thus, the Committee, at its March 10, 2004, meeting, recommended that both ''count'' and ''size'' be marked on containers with cell compartments, cardboard fillers, or molded trays. Under this recommendation, containers would be marked with the size of the fruit as specified in the size designation chart and the number of pieces of fruit in the box. For example, a tray marked with size designation 45 and could hold 36 pieces of fruit. Retailers would be able to clearly discern the number of pieces of fruit packed into the container and the size of that fruit. Of the eleven members present, ten voted for this change, and one voted against it. The sole opponent of this recommendation believes that requiring both ''count'' and ''size'' to be marked on containers of California kiwifruit would impose additional inspection requirements on California handlers. This member believes that this recommendation would place the California handler at a disadvantage in competing against imported kiwifruit, as importers do not have to comply with container marking requirements.

In its deliberations, the Committee discussed inspection requirements. Committee members mentioned that currently inspectors count the number of fruit in the container. Others mentioned that requiring the quantity statement to be indicated in terms of both ''count'' and ''size'' for all kiwifruit packed into cell compartments, cardboard fillers, or molded trays would require inspectors to also verify the size markings. An analysis of inspection costs indicates there would likely be an overall increase for the industry of 1.5 percent or about $2,529. Handlers in the industry contract with the USDA Inspection Service to perform either a block or an in-line inspection. Inspectors that perform in-line inspection inspect the fruit at the time of packing, whereas, block inspections occur after the fruit has been packed, just prior to shipment. The additional costs would be incurred by handlers who use the block inspection method for their initial inspections, and those handlers who have fruit reinspected prior to shipment. The block inspection method is used for 13 percent of initial inspections and for all reinspections. In recent seasons, in-line inspections accounted for 87 percent of all initial inspections. Reinspections are required if fruit is restyled or repacked.

The Committee believes that marking both ''count'' and ''size'' on containers would eliminate possible confusion in the market place. This action would not affect import requirements.

Standard Pack ''Tightly Packed'' Requirement

Section 920.52(a)(2) of the order authorizes the establishment of grade standards.

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the United States Standards for Grades of Kiwifruit (Grade Standards), except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for ''badly misshapen,'' and except that the ''Hort16A'' variety of kiwifruit is exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the Grade Standards.

The Grade Standards define standard pack requirements, require containers to be well filled, and require the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing for fruit packed in cell compartments, cardboard fillers, or molded trays. This is commonly referred to in the industry as the ''tight-fill'' requirement.

In 1990, these ''tight-fill'' provisions were established in § 920.302(b) to ensure that ''Hayward'' variety kiwifruit (the predominant kiwifruit variety produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Some kiwifruit handlers believe that kiwifruit packed tightly into the cups of the tray-liners are less subject to movement and therefore less damage.

A new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A,'' commonly referred to as ''gold'' kiwifruit, was recently introduced in California and is being harvested and sold commercially. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards. Therefore, on March 12, 2003, the Committee unanimously recommended and USDA subsequently approved an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. This exemption was implemented by a final rule published in the **Federal Register** on July 28, 2003 (68 FR 44191).

During the last several years, the value of the ''tight-fill'' requirement has decreased due to manufacturer changes in the shape and cuts of the molded trays.

Thus, the Committee, at its March 10, 2004, meeting, recommended eliminating the ''tight-fill'' requirement. The majority of the Committee members

agreed that the tight-fill requirement is no longer necessary, as they believe handlers would continue to pack fruit that is tightly fit into the cup of the molded tray to prevent damage to the fruit and to meet buyer demands for uniform sized kiwifruit packs. Of the eleven members present, ten voted for this change. The one member voting against this recommendation preferred keeping the ''tight-fill'' requirement, because he believes that handlers would be disadvantaged in the market place by loose packs. The Committee discussed leaving the ''tight-fill'' requirement in place, but concluded that elimination of the ''tight-fill'' pack requirement would relax handler pack and inspection requirements, and increase handler and grower returns. This action would not affect import requirements.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California kiwifruit subject to regulation under the marketing order and approximately 270 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 45 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This proposed rule invites comments on revisions to pack requirements prescribed under the California kiwifruit order. This rule would: (1) Add a new size designation to the allowable size designations for packs of kiwifruit; (2) revise the standard packaging requirements to require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit; (3) require the quantity statement to be indicated in terms of ''count'' and ''size'' for kiwifruit packed in cell compartments, cardboard fillers, or molded trays; and (4) exempt all varieties of kiwifruit from the ''tightly packed'' standard pack requirement. The Committee recommended these changes at its March 10, 2004, meeting. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

Authority for these actions is provided in § 920.52 of the order.

Additional Numerical Count Size Designation

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.302(a)(4) of the order's administrative rules and regulations specifies pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii)(B) provides that kiwifruit packed in individual consumer packages, bags, volume fill, or bulk containers, may not vary more than ½-inch in diameter for size designations 30 or larger.

Section 920.302(a)(4)(iii) contains a table commonly referred to as the ''Size Designation Chart''. This chart specifies numerical count size designations and the maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in individual consumer packages, bags, volume filled, or bulk containers.

In 1985, the Committee recommended and the USDA approved establishment of the first numerical count size designations by publishing a final rule in the **Federal Register** on September 9, 1985 (50 FR 36567). This regulation established size designation 49 defined as a maximum of 64 pieces of fruit in an 8-pound sample, as the minimum size. It also established four other size designations and required that kiwifruit packed in bags, volume filled, or bulk containers be ''fairly uniform in size.'' At that time, ''fairly uniform in size'' meant that size designation 30 or larger could not vary more than ½ inch in diameter, size designations 33 and 36 could not vary more than ⅜ of an inch, and size designations 39 and smaller could not vary more than ¼ inch in diameter. Diameter was defined to mean the greatest dimension measured at right angles to a line from stem to blossom end; with some tolerances provided.

Over the years, numerical count size designations have been added, deleted, and the maximum number of fruit per numerical count size designation has been revised to accommodate new packaging and changing market conditions. The Committee recommended and the USDA approved revisions to the size designation chart by publishing the following interim and final rules in the **Federal Register:** August 16, 1993 (58 FR 43243); September 2, 1994 (59 FR 45617); September 3, 1998 (63 FR 46861); December 1, 1988 (53 FR 48513); July 29, 1999 (64 FR 41010); October 29, 2001 (66 FR 1413); March 14, 2002 (67 FR 11396); and August 22, 2002 (67 FR 54327).

In recent years, many California growers have increased the size of California kiwifruit through various cultural practices. During the 2003–2004 season, growers produced a crop with unusually large sizes. Handlers experienced difficulty staying within the size variation tolerance allowed for the largest size, size designation 20. Kiwifruit larger than size 20 had to be blended into the size 20 designation, as there was no larger size designation established for the 2003–04 season. This blending requires handlers to take special care to stay within the size variation tolerance and reduces the uniformity of the pack size.

Thus, the Committee, at its March 10, 2004, meeting, unanimously recommended adding size designation 18, defined as a maximum of 25 pieces of fruit per 8-pound sample, to the size designation chart. This proposed change would provide handlers with a total of eleven numerical count size designations as follows:

SIZE DESIGNATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
18*	**25**
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

*New size designation is in bold.

Additionally, for clarification, the title ''Size Designation Chart'' would be added to the top of the chart.

The Committee discussed alternatives to this change including not adding size 18 to the order's administrative rules and regulations, but concluded that this change would provide an additional pack option to handlers and increase handler and grower returns. Almost 10 percent (over 4,000 tray equivalents) of the fruit packed as size 20 as of March 31, 2004, could have been packed as the new proposed size 18. Packing 4,000 tray equivalents as size 18 could have increased grower returns approximately 5 cents per pound more than size 20 kiwifruit (4000 te × 7 pounds/te equals 28,000 pounds × $.05 FOB per pound equals $1,400). This change would not affect import requirements.

Standardization of Packaging Requirement for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers, or molded trays. Handlers may ship volume filled containers marked by either the appropriate count (number of pieces of fruit) or net weight (total weight of pieces of fruit in the container). Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight (59 FR 53563, October 25, 1994). At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season.

In 2001–02, imports from the Northern Hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers; whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. With the 22-pound provisions, handlers could not meet buyer demands for other types of packaging.

In an effort to meet buyer demands for other types of packaging, the standardized packaging requirement of 22-pounds (10-kilograms) net weight for certain volume filled containers was suspended for the 2002–2003 and 2003–2004 seasons. These suspensions were implemented by an interim final rule published on August 22, 2002 (67 FR 54327); a final rule published on November 21, 2002 (67 FR 76140); and another final rule published in the **Federal Register** on July 28, 2003 (68 FR 44191). The suspension published on July 28, 2003, is in effect until July 31, 2004. Additionally, the final rule published on July 28, 2003 (68 FR 44191) removed a pack requirement in § 920.302(a)(4)(iv) and paragraph (a)(4)(v) was redesignated as paragraph (a)(4)(iv). The provisions removed required containers to hold a quantity of kiwifruit equal to 3 times the size designation marked on the container. For example, if a container was marked as ''size 33,'' the container had to hold 99 pieces of fruit.

However, during the 2002–2003 and 2003–2004 seasons, since handlers were not limited to a specified net weight for volume fill containers, some confusion appeared in the market place. Without a specific net weight for volume filled containers, more than one net weight was packed by handlers.

In an effort to determine the best means of ensuring more orderly marketing, a survey of kiwifruit handlers and growers was conducted during the 2003–2004 season. The survey results clearly showed that the industry favored establishment of standardized packaging requirement for volume filled containers of kiwifruit designated by weight to hold 19.8-pound (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

Thus, the Committee, on March 10, 2004, unanimously recommended revising the standard packaging requirements for volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

The Committee discussed alternatives to the recommended change, including removing the standardized volume fill net weight requirement from the order's administrative rules and regulations but did not adopt this alternative, as it believes that a standardized volume fill is necessary to achieve orderly marketing of California kiwifruit.

The Committee also discussed establishing a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The Committee did not adopt this suggestion, as it believes that it is important to accommodate the ''Hort16A'' variety which is packed in a 14-pound volume filled container.

Lastly, the Committee discussed reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for volume filled containers. The Committee calculated that utilizing a 19.8-pound (9-kilo) net weight standard volume fill pack would increase the cost of packaging by 10 percent, generate approximately 10 percent more total volume filled boxes than the 22-pound standard; would increase the grower return by 20 percent, thereby offsetting the 10 percent increase in packaging costs; and would better serve the industry.

This recommended change would allow the industry to compete more effectively in the market place with its foreign competition, continue packing the new variety of kiwifruit in 14-pound containers, and improve grower returns. This change would not affect import requirements.

Container Marking Requirements

Section 920.303 of the order's administrative rules and regulations outlines specific container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(1) provides that the quantity shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

Historically, the industry and buyers have associated count (number of pieces of fruit) with fruit size designations (maximum number of pieces of fruit in an 8-pound sample). Molded trays were originally designed in the early 1980's to accommodate fruit of the corresponding size from the numerical count size designation chart. For example, count 36 trays (trays that held 36 pieces of fruit) would accommodate size designation 36 fruit.

As previously mentioned, numerous changes have been made to the size designation chart over the years. Other changes have included removal of the minimum tray weight requirements (66 FR 39270; July 30, 2001), and the addition of the new molded tray inserts with smaller cup sizes. Currently, handlers can pack five sizes of fruit (33, 36, 39, 42, and 45) into three tray counts (33, 36, and 39), with the tray weighing as little as 5 pounds. These differences may cause confusion in the market

place, especially if buyers assume that count is equivalent to size.

Thus, committee at its March 10, 2004, meeting recommended that both ''count'' and ''size'' be marked on containers with cell compartments, cardboard fillers, or molded trays. The Committee discussed several alternatives to this change. The first alternative considered was to reinstitute tray weights. The Committee felt this requirement would be too restrictive as it would dictate what size fruit had to be packed into a specific tray and that this might result in handlers having to repack kiwifruit that did not meet established minimum tray weight requirements. They were concerned that reinstituting minimum tray weights might result in increased handler costs.

The second alternative discussed by the Committee was to regulate the size of the molded cup. However, the Committee determined that regulating the size of the molded cup would not be feasible at this time and could result in higher packing costs.

Lastly, the Committee discussed not changing the container marking requirements to include both ''count'' and ''size'' for kiwifruit packed in cell compartments, cardboard fillers, or molded trays. However, the Committee agreed that it was important to specify both ''count'' and ''size'' to ensure that fruit size was clearly specified. Under this recommendation, containers would be marked with the size of the fruit as specified in the size designation chart and the number of pieces of fruit in the box. For example, a tray marked with size designation 45 and could hold 36 pieces of fruit. Retailers would be able to clearly discern the number of pieces of fruit packed into the container and the size of that fruit. Of the eleven members present, ten voted for this change. The one member voting against this recommendation believes that requiring both ''count'' and ''size'' to be marked on containers of California kiwifruit would result in additional inspection requirements and increased inspection costs for California handlers. This member believes that this recommendation would place California handlers at a disadvantage in competing against imported kiwifruit, as importers do not have to comply with container marking requirements.

In its deliberations, the Committee discussed inspection requirements. Committee members mentioned that currently inspectors count the number of fruit in the container. Others mentioned that requiring the quantity statement to be indicated in terms of both ''count'' and ''size'' for all kiwifruit packed into cell compartments, cardboard fillers, or molded trays would require inspectors to also verify the size markings.

An analysis of inspection costs indicates that there would likely be an overall increase for the industry of 1.5 percent or about $2,529. Handlers in the industry contract with the USDA Inspection Service to perform either a block or an in-line inspection. Inspectors that perform in-line inspection inspect the fruit at the time of packing, whereas, block inspections occur after the fruit has been packed, just prior to shipment. The additional costs would be incurred by handlers who use the block inspection method for their initial inspections, and those handlers who have fruit reinspected prior to shipment. The block inspection method is used for 13 percent of initial inspections and for all reinspections. In recent seasons, in-line inspections accounted for 87 percent of all initial inspections. Reinspections are required if fruit is restyled or repacked.

Additionally, the Committee mentioned that the recommended change does not mandate that the ''count'' and the ''size'' be the same, as a tray marked with size designation 45 could still hold count 36 fruit and still weigh as little as 5 pounds.

This change is expected to eliminate possible confusion in the marketplace and would not affect import requirements. Standard Pack ''Tightly Packed'' Requirement.

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for badly misshapen fruit and except that the ''Hort16A'' variety of kiwifruit is exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the Grade Standards.

The Grade Standards define standard pack requirements, require containers to be well filled, and require the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing for fruit packed in cell compartments, cardboard fillers, or molded trays. This is commonly referred to in the industry as the ''tight-fill'' requirement.

These ''tight-fill'' provisions were established under the order to ensure that the ''Hayward'' variety (the predominant kiwifruit variety produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Some kiwifruit handlers believe that kiwifruit packed tightly into the cups of the tray-liners are less subject to movement and therefore less damage.

A new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A,'' commonly referred to as ''gold'' kiwifruit, was recently introduced in California and is being harvested and sold commercially. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards. Therefore, on March 12, 2003, the Committee unanimously recommended an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. This recommendation was implemented by USDA through a final rule published in the **Federal Register** on July 28, 2003 (68 FR 44191).

During the last several years, the value of the ''tight-fill'' requirement has decreased due to manufacturer changes in the shape and cuts of the molded trays.

Thus, the Committee, at its March 10, 2004, meeting, recommended that the ''tight-fill'' requirement be eliminated. The majority of the Committee members agreed that the tight-fill requirement is no longer necessary, as they believe handlers would continue to pack fruit that is tightly fit into the cup of the molded tray to prevent damage to the fruit and to meet buyer demands for uniform sized kiwifruit packs. Of the eleven members present, ten voted for this change. The one member voting against this recommendation preferred keeping the ''tight-fill'' requirement, because he believes that handlers would be disadvantaged in the market place by loose packs.

The Committee discussed leaving the ''tight-fill'' requirement in place, but concluded that handlers would continue to pack fruit that is tightly fit into the cup of the molded tray to prevent damage to the fruit and to meet buyer demands for uniform sized kiwifruit packs without the ''tight-fill'' pack requirement. This change would relax handler pack and inspection requirements, and increase handler and grower returns. This recommended change would not impact import regulations, as pack and container requirements are not regulated under import regulations.

This proposed rule would relax pack and container requirements under the

kiwifruit order. Accordingly, these actions would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, California kiwifruit must meet the ''tight-fill'' requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen-days is deemed appropriate because this rule should be in place by September 10, 2004, as the shipping season is expected to begin early this season and these changes, if adopted, should be made as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.302 [Amended]

2. In § 920.302, paragraphs (a)(4)(iii), (a)(4)(iv), and (b) are revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

* * * * *

(4) * * *

(iii) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used:

SIZE DESIGNATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
18	25
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

(iv) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that all varieties of kiwifruit are exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

3. In § 920.303, paragraph (c)(1) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(c) * * *

(1) The quantity shall be indicated in terms of count and size for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

Dated: July 23, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–17271 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40, 41, and 145

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing to revise its regulations to specify which portions of an application for registration as a derivatives transaction execution facility (DTEF), derivatives clearing organization (DCO), or designated contract market (DCM) will be public. The Commission also proposes to implement a procedure requiring registered entities to submit a cover sheet for all rule submissions. Additionally, the Commission proposes to amend its regulations under the Freedom of Information Act (FOIA) to implement the 1996 amendments to the FOIA. The proposed rules implement expedited processing and increased time limits; update the schedule of fees for FOIA requests; and correct certain provisions concerning publicly available records.

DATES: Submit comments on or before August 27, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*.
- Mail/Hand Deliver: Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- E-mail: *secretary@cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Assistant Secretary to the Commission for FOIA Matters, (202) 418–5096, electronic mail: *edonovan@cftc.gov*, or David Steinberg, Attorney Advisor, (202) 418–5102, electronic mail: *dsteinberg@cftc.gov*, Office of the Secretariat, Commodity

Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background—Need for Revisions

A. Appendix D—Submission Cover Sheet and Instructions and Public Availability of Rule Submissions

On August 4, 2003, the Commission circulated a letter to all registered entities advising them of the Commission's new policy of posting rules submitted by DTEFs, DCOs, and DCMs on the Commission's Web site. In this letter, the Commission requested that a Commission-generated rule submission cover sheet accompany all self-certified rules,[1] self-certified products,[2] rules submitted for Commission approval,[3] products submitted for Commission approval,[4] notifications of rule amendments,[5] and non-material agricultural rule changes.[6] The Commission proposes to incorporate this policy into parts 40 and 41 of the Commission's regulations.

Specifically, the Commission proposes adding the phrase ''A copy of the submission cover sheet in accordance with the instructions in Appendix D'' to all of the applicable sections of the part 40 and 41 regulations.[7] Appendix D has been added to part 40 to include a copy of the cover sheet along with step-by-step instructions for completing and returning the form to the Commission. This cover sheet will assist Commission staff in preparing and maintaining the accuracy of the submissions being published on the Commission's Web site. Publishing these submissions on the Commission's website is consistent with the Commission's history of making certified rules and products and other rule submissions public.[8] Therefore, making these submissions available on the Commission's Web site will continue the policy of providing the public with access to industry information.

B. Public Availability of DTEF, DCO, and DCM Applications

The Commission proposes designating the current text in § 40.8 of the Commission's regulations as paragraph (b) and adding paragraph (a) to specify that certain portions of DTEF, DCO, and DCM applications are publicly available.[9] The proposed addition to § 40.8 is intended to address the absence in the Commission's regulations of any guidance to applicants or the public about the availability of the applications.

Commission staff have consistently determined that the release of the following documents does not cause any competitive harm to the applicant and that they should be made publicly available: transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status (*e.g.*, corporate charters), and documents setting forth the applicant's governance structure.[10] Consequently, this list of documents has been incorporated into the proposed changes to § 40.8(a).

C. Expedited Processing of FOIA Requests

The FOIA, 5 U.S.C. 552 (2000), requires Federal agencies to promulgate regulations providing for expedited processing of requests for records. 5 U.S.C. 522(a)(6)(E)(i). Under the Commission's proposed regulation, to receive expedited processing a requester must demonstrate either (1) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety, or (2) if the request is from a person primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged federal government activity. The requester will receive a decision within ten days after the date of the request and, if expedited processing is denied, may appeal the decision to the Office of General Counsel.

D. Appendix A—Compilation of Commission Records Available to the Public

Appendix A to 17 CFR Part 145 lists documents available, upon request, directly from the Commission offices indicated. Under the current Commission regulations, the Office of the Secretariat can provide terms and conditions of proposed contracts after the publication of notice of availability in the **Federal Register**, as well as exchange section 5a(a)(12) rule amendment proposals and Commission responses.

The Commission is amending Appendix A (b)(2) to reflect that terms and conditions of proposed contracts and products are now publicly available at the time of their submission to the Commission, in accordance with § 40.2 of the Commission's regulations for certified products and § 40.6 for certified rules.[11] In Appendix A (b)(3), the reference to § 5a(a)(12) is being removed, as § 5a(a)(12) has been deleted from the CEA. The term ''exchange'' is being replaced with ''registered entity'' as defined by § 1a(29) of the CEA to include submissions filed by a DCM, DTEF, or a DCO, and a reference to § 40.1 is being added to define the rules available under this provision.

The Commission also proposes adding Appendix A (b)(13) to reflect that certain portions of applications submitted by entities seeking to become designated as a DCM or registered as a DTEF or DCO are publicly available. The proposed list of publicly available material in paragraph (b)(13) is identical to the proposed list in § 40.8(a). The Commission proposes placing this list in Appendix A (b)(13) and § 40.8(a) to ensure that applicants are fully aware at the time of filing which sections are public and the public will be on notice that this information is available.

E. Appendix B—Schedule of Fees

The FOIA requires Federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with guidelines issued by the Office of Management and Budget (OMB). 5 U.S.C. 552(a)(4)(A)(i). Agencies' fee schedules can provide for the recovery of only the direct costs of searching for, reviewing, and duplicating records, and OMB's Uniform Freedom of Information Act

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[1] Commission Regulations 40.6(a) and 41.24.

[2] Commission Regulations 40.2 and 41.23.

[3] Commission Regulations 40.4(a) and 40.5.

[4] Commission Regulation 40.3.

[5] Commission Regulation 40.6(c).

[6] Commission Regulation 40.4(b).

[7] Commission Regulations 40.3(a)(4) and (a)(5), 40.5(a)(1)(vi) and (a)(1)(vii), 40.6(a)(3)(iv) and (a)(3)(v), 41.23(a)(4) and (a)(5), and 41.24(a)(3) and (a)(4) are being revised to accommodate the addition of a new paragraph to the respective sections that will require the submission of the cover sheet. (*See, e.g.*, 40.3(a)(3) with deletion of ''and'' at the end of the paragraph and 40.3(a)(4) by replacing the '';'' with ''.'' at the end of the paragraph).

[8] Previously, rule submissions were only available in the Commission's reading room. Commission staff had consistently determined that submissions filed pursuant to section 5a(a)(12) of the Commodity Exchange Act (CEA) were public. *See* 7 U.S.C. 1 *et seq.* (2000). Section 5a(a)(12) was removed from the CEA with the passage of the Commodity Futures Modernization Act of 2000. The Commission believes these submissions filed under new sections of the CEA should continue to be made publicly available, as they do not cause any competitive harm to the applicant. *See, e.g.*, sections 5c(c)(1) and 5c(c)(2) of the CEA.

[9] In addition to posting applications for designation and registration, the Commission will post proposed amendments to applications on the Commission's Web site. The Commission also will post requests for relief pursuant to part 30 of the Commission's regulations.

[10] The identical sections of applications seeking designation or registration as a DCM or DTEF under section 6(a) of the CEA will be publicly available.

[11] Notification of rule amendments under Commission Regulation 40.6(c) will also be available at the time of submission.

Fee Schedule and Guidelines define the direct costs of search and review as the salary rate (basic pay plus 16 percent to cover benefits) of the employee performing the task. 52 FR 10018 (Mar. 27, 1987).

On May 22, 1987, the Commission published its FOIA fee schedule at 52 FR 19306, based on the average salary rates for professional and clerical staff under the General Schedule effective January 1987. The Commission is now revising its fee schedule to correspond with modifications in the rate of pay since the fee schedule was established. Using the General Schedule currently in effect, the Commission has calculated its direct costs for search and review of records by professional staff (average salary rate of GS–13, Step 4) as $41.75 per hour and by clerical staff (average salary rate of GS–7, Step 4) as $19.79 per hour. After rounding, the current quarter-hourly fee increases from $4.50 to $10.25 for professional search and review, and from $3.00 to $4.75 for clerical search and review. The Commission will continue to charge $0.15 per page for photocopying.

The FOIA also requires agencies to waive any fee for which the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. 5 U.S.C. 552(a)(4)(A)(iv). Due to increased costs, the Commission is increasing its waiver amount from $5.00 to $10.00.

In addition, the Commission is revising Appendix B (a)(3) to remove a description of fees for searches of records stored on the Commission's mainframe computer, which is no longer in use.

F. Other Changes

The Commission is removing the reference to § 145.0(c) from § 145.6(a), which pertains to Commission records available to the public. Section 145.0(c) does not exist.

The Commission is also revising § 145.9(e)(2), which allows the Assistant Secretary to grant an extension of time for submission of a detailed written justification of a request for confidential treatment ''only under exceptional circumstances'', to be consistent with § 145.9(d)(7), which allows an extension to be granted ''upon request and for good cause shown.''

Finally, the Commission is removing Appendix D to 17 CFR part 145 because the Commission no longer charges for publication of its weekly advisory calendar. This information is now available on the Commission's Web site, and paragraph (a)(2) of Appendix A to 17 CFR part 145 is being amended to reflect this change.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (2000), requires that agencies, in proposing regulations, consider the impact of those regulations on small entities. The regulations discussed herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations in accordance with the RFA.[12] In its previous determinations, the Commission has concluded that DCMs, DTEFs, and DCOs are not small entities for purposes of the RFA.[13]

The Commission has previously determined, pursuant to 5 U.S.C. 605(b), that part 145 regulations do not have a significant economic impact on a substantial number of small entities. Because they do not impose regulatory obligations on commodity professionals and small commodity firms and because, if instituted, the changes will improve public access to Commission records and information, the Commission does not expect the proposed regulations to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the changes proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites the public to comment on the significance of the economic impact of the proposed regulations, if any, on small entities.

B. Paperwork Reduction Act

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3504(h)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to Part 40, Provisions Common to DCMs, DTEFs, and DCOs, OMB Control Number 3038–0022.

The expected effect of the proposed amended rules will be to increase the burden previously approved by OMB for this collection of information by 20.625 hours as it will result in the filing of one additional page for each submission under Commission regulations 40.2, 40.3, 40.4, 40.5, and 40.6.

The estimated burden was calculated as follows:

Estimated number of respondents: 16.

Annual responses by each respondent: 39.0625.

Total annual responses: 625.

Estimated average hours per response: .033.

Annual reporting burden: 20.625.

Collection of Information: Rules Relating to Part 41, Security Futures Products, OMB Control Number 3038–0059.

The expected effect of the proposed amended rules will be to increase the burden previously approved by OMB for this collection of information by 2.475 hours as it will result in the filing of one additional page for each submission under commission regulations 41.23 and 41.24.

Estimated number of respondents: 3.

Annual responses by each respondent: 25.

Total annual responses: 75.

Estimated average hours per response: .033.

Annual reporting burden: 2.475.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, usefulness, and clarity of the information to be collected; and (4) minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

[12] 47 FR 18618–21 (Apr. 30, 1982).

[13] 47 FR 18618, 18619 (April 30, 1982) (discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTEFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. The proposed rulemaking consists of several amendments requiring registered entities to attach a submission cover sheet with all rule filings. The Commission is considering the costs and benefits of these proposed rules in light of the specified provisions of section 15(a) of the Act:

1. Protection of market participants and the public. The proposed amendments should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition. The proposed amendments are expected to benefit efficiency by making rule submissions available to the public on the Commission's Web site. The Commission anticipates that the costs of compliance with the proposed filing requirements will be minimal and the submission cover sheet will assist in maintaining the accuracy of publishing the rule filings on the Commission's Web site. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

3. Financial integrity of futures markets and price discovery. The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. Sound risk management practices. The amendments being proposed herein should have no effect on the risk management practices of the futures and options industry.

5. Other public considerations. No additional public considerations could be determined.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 41

Security futures.

17 CFR Part 145

Freedom of information.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 40, 41, and 145 as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

1. The authority for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Section 40.2 is revised to read as follows:

§ 40.2 Listing products for trading by certification.

To list a new product for trading, to list a product for trading that has become dormant, or to accept for clearing a product (not traded on a designated contract market or a registered derivatives transaction execution facility), a registered entity must file with the Secretary of the Commission at its Washington, DC, headquarters no later than the close of business of the business day preceding the product's listing or acceptance for clearing, either in electronic or hard copy form, a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part, a copy of the product's rules, including its terms and conditions, or the rules establishing the terms and conditions of products that make them acceptable for clearing, and a certification by the registered entity that the trading product or other instrument, or the clearing of the trading product or other instrument, including any rules establishing the terms and conditions of products that make them acceptable for clearing, complies with the Act and regulations thereunder.

3. Section 40.3 is amended by revising paragraphs (a)(4) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(4) The submission identifies with particularity information in the submission, except for the product's terms and conditions which are made publicly available at the time of submission, that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification;

(5) The submission includes the fee required under Appendix B to this part; and

(6) The submission includes a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

4. Section 40.5 is amended by revising paragraphs (a)(1)(vi) and (a)(1)(vii) and by adding paragraph (a)(1)(viii) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(1) * * *

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation;

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification; and

(viii) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

5. Section 40.6 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(v) and adding paragraph (a)(3)(vi) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) * * *

(3) * * *

(iv) A brief explanation of any substantive opposing views not incorporated into the rule;

(v) A certification by the entity that the rule complies with the Act and regulations thereunder; and

(vi) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

6. Section 40.8 is amended by redesignating the current paragraph as paragraph (b) and by adding new paragraph (a) to read as follows:

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a registered entity will be public: transmittal letter, proposed rules (as defined in § 40.1 of this chapter), the applicant's regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's governance structure, and any other part of the application not covered by a request for confidential treatment.

* * * * *

6a. Appendix C to part 40 is added and reserved.

Appendix C to Part 40 [Reserved]

7. Appendix D is added to part 40 to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

A properly completed submission cover sheet must accompany all rule submissions submitted by a designated contract market, registered derivatives clearing organization, or registered derivatives transaction execution facility and forwarded either in hard copy form or electronically to the Secretary of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 or electronically to *submissions@cftc.gov* in a format specified by the Secretary of the Commission. Each submission should include the following:

1. *Identifier Code (optional)*—If applicable, the exchange or clearing organization Identifier Code at the top of the cover sheet. Such codes are commonly generated by the exchanges or clearing organizations to provide an identifier that is unique to each filing (*e.g.*, NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (*e.g.*, CBOT).

4. *Filing as a*—Check the appropriate box for a designated contract market (DCM), derivatives clearing organization (DCO), or derivatives transaction execution facility (DTEF).

5. *Type of Filing*—Indicate whether the filing is a rule amendment or new product and the applicable category under that heading.

6. *Rule Numbers*—For rule filings only, identify rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings only, enter a brief description of the new rule or rule amendment. This narrative should describe the substance of the submission with enough specificity to characterize all essential aspects of the filing.

A sample of the required submission cover sheet follows.

BILLING CODE 6351–01–P

SUBMISSION COVER SHEET

Exchange Identifier Code (optional) _____ **Date** _____

ORGANIZATION	

FILING AS A: ☐ **DCM** ☐ **DCO** ☐ **DTEF**

TYPE OF FILING

- **Rule Amendments**
  - ☐ Self-Certification Under Reg. 40.6(a) or 41.24
  - ☐ Commission Approval Requested Under Reg. 40.5 or 40.4 (a)
  - ☐ Notification of Rule Amendment Under Reg. 40.6(c)
  - ☐ Non-Material Agricultural Rule Change Determination Under Reg. 40.4(b)
- **New Products**
  - ☐ Self-Certification Under Reg. 40.2 or 41.23
  - ☐ Commission Approval Requested Under Reg. 40.3

RULE NUMBERS

DESCRIPTION (Rule Amendments Only)

BILLING CODE 6351–01–C

PART 41—SECURITY FUTURES PRODUCTS

8. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

9. Section 41.23 is amended by revising paragraphs (a)(4) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) * * *

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25;

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act or a registered derivatives transaction execution facility pursuant to section 5a of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder; and

(6) Includes a copy of the submission cover sheet in accordance with the instructions in Appendix D of Part 40.

* * * * *

10. Section 41.24 is amended by revising paragraphs (a)(3) and (a)(4) and by adding paragraph (a)(5) to read as follows:

§ 41.24 Rule amendments to security futures products.

(a) * * *

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required;

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder; and

(5) Includes a copy of the submission cover sheet in accordance with the instructions in Appendix D of Part 40.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

11. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207, Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

12. Section 145.7 is amended by revising the first sentence of paragraph (h)(3), by redesignating paragraph (j) as paragraph (i)(7), and by adding a new paragraph (j) to read as follows:

§ 145.7 Requests for Commission records and copies thereof.

* * * * *

(h) * * *

(3) The Assistant Secretary, or his or her designee, will issue an initial determination with respect to a FOIA request within twenty business days after receipt by the Assistant Secretary. * * *

* * * * *

(j) *Expedited processing.* A request may be given expedited processing if the requester demonstrates a compelling need for the requested records. For purposes of this section, the term ''compelling need'' means: That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity. A requester who seeks expedited processing must demonstrate a compelling need by submitting a statement that is certified by the requester to be true and correct to the best of that person's knowledge and belief. The Assistant Secretary, or his or her designee, will determine whether to provide expedited processing, and notice of the determination will be provided to the requester, within ten days after the date of the request. If the request for expedited processing is denied, the requester may file an appeal with the Office of General Counsel within ten days of the date of the denial by the Assistant Secretary. The Office of General Counsel will respond to the appeal within ten days after the date of the appeal.

13. Section 145.9 is amended by revising paragraph (e)(2) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(e) * * *

(2) The period for filing a detailed written justification may be extended upon request and for good cause shown.

* * * * *

14. Appendix A to part 145 is amended by revising paragraph (a)(2), the heading of paragraph (b), paragraphs (b)(2) and (b)(3), and adding paragraph (b)(13) to read as follows:

Appendix A To Part 145—Compilation of Commission Records Available to the Public

* * * * *

(a) * * *

(2) Weekly Advisory (solely available on the Commission's Web site at *www.cftc.gov/cftc/cftcpressoffice.htm*).

* * * * *

(b) *Office of the Secretariat (Public reading area with copying facilities available).* * * *

(2) Terms and conditions of proposed contracts.

(3) Registered entity filings relating to rules as defined in § 40.1 of this chapter, unless covered by a request for confidential treatment.

* * * * *

(13) Publicly available portions of applications to become a registered entity including the transmittal letter, proposed rules, proposed bylaws, corporate documents, any overview or similar summary provided by the applicant, any documents pertaining to the applicant's legal status and governance structure, including governance fitness information, and any other part of the application not covered by a request for confidential treatment.

* * * * *

15. Appendix B to part 145 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6) and (b) to read as follows:

Appendix B to Part 145—Schedule of Fees

(a) * * *

(1) $4.75 for each quarter hour spent by clerical personnel in searching for or reviewing records.

(2) When a search or review cannot be performed by clerical personnel, $10.25 for each quarter hour spent by professional personnel in searching or reviewing records.

(3) When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at $10.25 per quarter hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using the workstation as set forth in paragraph (a) of this appendix.

* * * * *

(5) For copies of materials other than paper records, the requester will be charged the actual cost of materials and reproduction, including the time of clerical personnel at a rate of $4.75 per quarter hour.

(6) When a request has been made and granted to examine Commission records at an office of the Commission other than the office in which the records are routinely maintained, the requester:

(i) Will reimburse the Commission for the actual cost of transporting the records; and

(ii) Will be charged at a rate of $4.75 for each quarter hour spent by clerical personnel in preparing the records for transit.

* * * * *

(b) *Waiver or reduction of fees.* Fees will be waived or reduced by the Commission if:

(1) The fee is less than or equal to $10.00, the approximate cost to the Commission of collecting the fee; or,

(2) If the Commission determines that the disclosure of the information is likely to

contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

16. Appendix D to part 145 is removed.

Issued in Washington, DC, on July 21, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–17051 Filed 7–27–04; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–50056; International Series Release No. 1279; File No. S7–26–04]

RIN 3235–AJ28

Regulation B

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: On June 17, 2004, the Securities and Exchange Commission (''Commission'') issued and requested comment on proposed Regulation B (69 FR 39682, June 30, 2004). Regulation B proposes a number of new exemptions for banks from the definition of the term ''broker'' under Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Gramm-Leach-Bliley Act (''GLBA''). The proposal would broaden a number of exemptions already available to banks, savings associations, and savings banks that effect transactions in securities. It also would define certain terms used in the GLBA. The Commission is extending the comment period on the Regulation B until September 1, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments should be received on or before September 1, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–26–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number S7–26–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identify information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Linda Stamp Sundberg, Attorney Fellow, or Brice Prince, Special Counsel at (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: On June 17, 2004, the Commission requested comment on its proposed Regulation B concerning the securities activities of banks, savings associations, savings banks and credit unions.[1] Proposed Regulation B would establish a number of new exemptions for banks from the definition of the term ''broker'' under Section 3(a)(4) of the Exchange Act, as amended by the GLBA. The proposal would broaden a number of exemptions already available to banks, savings associations, and savings banks that effect transactions in securities. It also would define certain terms used in the GLBA.

Several trade associations that represent banks, savings associations, and savings banks have requested that the Commission extend the public comment period for the proposed Regulation B for an additional 30-day period. The trade associations have indicated that such an extension would enable them and their members to better analyze and address the substantive, operational and legal issues associated with the proposed Regulation B.

In light of these requests, the Commission is providing the public additional time until September 1, 2004 to comment on the proposed Regulation B.

Dated: July 22, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17112 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–M

[1] Exchange Act Release No. 49879, International Series Release No. 1278 (June 17, 2004); 69 FR 39682 (June 30, 2004).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208246–90]

RIN 1545–BD47

Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking published on March 12, 1991 (the 1991 proposed regulations), relating to the allocation and apportionment of charitable deductions. In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations providing that the deduction for a charitable contribution (as defined in section 170(c)) is to be allocated to all of the taxpayer's gross income and apportioned on the basis of income from sources within the United States. The text of the temporary regulations also serves as the text of these proposed regulations. Further, regulations are proposed in this document, without cross-reference to temporary regulations, with respect to deductions for charitable contributions that are provided by an income tax treaty rather than by sections 170, 873(b)(2), and 882(c)(1)(B). This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 26, 2004. Outlines of topics to be discussed at the public hearing scheduled for December 2, 2004, at 10 a.m. must be received by November 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–208246–90), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–208246–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–208246–90). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the withdrawal of the 1991 proposed regulations and the proposed regulations, Teresa Burridge Hughes, (202) 622–3850 (not a toll-free number); concerning the submission of comments, the hearing, and/or placement on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 1.861–8(e)(9) provides that the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B) is generally considered as not definitely related to any gross income and therefore is ratably apportioned to all of a taxpayer's gross income. On March 12, 1991, Treasury and the IRS published in the **Federal Register** (56 FR 10395) a notice of proposed rulemaking (INTL–116–90, REG–208246–90) that would have modified the allocation and apportionment of the deduction for charitable contributions. The 1991 proposed regulations generally would have provided for the allocation and apportionment of a deduction for a charitable contribution to sources within or without the United States based on where the contribution was used. Where the deduction for a charitable contribution would not have been allocable to United States or foreign source gross income based on the new test, it would have been ratably apportioned to all gross income. Written comments were received and a public hearing on the 1991 proposed regulations was held on August 1, 1991. In response to comments received, and after further consideration of the issue, the 1991 proposed regulations are withdrawn.

Contemporaneously with the withdrawal of the 1991 proposed regulations, the Treasury Department and the IRS are issuing a Treasury decision containing temporary regulations that are published in the Rules and Regulations section in this issue of the **Federal Register**. The temporary regulations provide for the allocation and apportionment of the deduction for charitable contributions to U.S. source income. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations discusses the comments received on the 1991 proposed regulations, the reasons for the withdrawal of the 1991 proposed regulations, and the approach of the temporary regulations.

This document also proposes a rule for the allocation and apportionment of deductions for charitable contributions that are allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)) that limits the amount of the deduction based on a percentage of income that arises from sources within the treaty partner. In such case, these proposed regulations would provide that the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction would be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping This rule is proposed to be effective for taxable years beginning on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking 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) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 2, 2004, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by October 26, 2004, and an outline of the topics to be discussed the time to be devoted to each topic (signed original and eight (8) copies) by November 12, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this document is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of a Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, § 1.861–8(e) and (g) of the notice of proposed rulemaking (INTL–116–90) published in the **Federal Register** on March 12, 1991, (56 FR 10395) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.861–8(e)(12) is added to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(e)(12)(i) and (ii) [The text of the proposed addition of § 1.861–8(e)(12)(i) and (ii) is the same as § 1.861–8T(e)(12)(i) and (ii) published elsewhere in this issue of the **Federal Register**.]

(e)(12)(iii) *Treaty provisions.* (A) *In general.* If a deduction for charitable contributions not otherwise permitted by sections 170, 873(b)(2) and 882(c)(1)(B) is allowed under a U.S. income tax treaty, and such treaty limits the amount of the deduction based on a percentage of income arising from sources within the treaty partner, the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(iii) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping.

(B) The rules of this paragraph (e)(12)(iii) are applicable for charitable contributions made on or after the date of publication of this document as a final regulation in the **Federal Register**.

(e)(12)(iv)(A) [The text of the proposed addition of § 1.861–8(e)(12)(iv)(A) is the same as § 1.861–8T(e)(12)(iv)(A) published elsewhere in this issue of the **Federal Register**.]

(e)(12)(iv)(B) [Reserved]

Par. 4. Section 1.861–14(e)(6) is revised to read as follows:

§ 1.861–14 Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations.

* * * * *

(e) * * *

(e)(6) [The text of the proposed revision of § 1.861–14(e)(6) is the same as § 1.861–14T(e)(6) through (e)(6)(ii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–17080 Filed 7–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 25, 32, 33, 34 and 37

RIN 0790–AH75

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to amend the DoD Grant and Agreement Regulations (DoDGARs) to implement four Office of Management and Budget (OMB) policy directives, to conform the DoDGARs with several statutory and regulatory revisions, and to make other administrative changes. The four OMB directives that are being implemented: Require Federal agencies to use a new standard format for announcements of funding opportunities; require Federal agencies to electronically post synopses of those announcements at a government-wide Internet site; require government-wide use of the Data Universal Numbering System (DUNS) number as the universal identifier for recipient organizations; and amend OMB Circular A–133 to raise the threshold of Federal funding at which recipients must obtain single audits. The statutory and regulatory changes with which the DoDGARs are being conformed concern matters such as nonprocurement debarment and suspension, drug-free workplace requirements for grants, and campus access for military recruiters and Reserve Officer Training Corps.

DATES: Comments are due on or before September 27, 2004.

ADDRESSES: Forward comments to ODUSD (LABS), ATTN: Mark Herbst, 3040 Defense Pentagon, Washington, DC 20301–3040.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Laboratories and Basic Sciences), 3040 Defense Pentagon, Washington, DC 20301–3040.

SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) proposes to update the DoD Grant and Agreement Regulations (DoDGARs), the regulations that provide uniform policies and procedures for DoD Components' award and administration of grants and agreements. The updates involve amendments to seven DoDGARs parts—32 CFR parts 21, 22, 25, 32, 33, 34 and 37. The amendments are needed to conform those parts with government-wide and DoD policy changes and with DoD organizational and administrative changes. The following paragraphs describe the changes addressed by the proposed amendments to the six parts.

Government-wide standard format for program announcements. OMB issued a policy directive, ''Format for Financial Assistance Program Announcements'' [68 FR 37370, June 23, 2003], that requires Federal agencies to use a standard format for announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The policy directive further requires that announcements, with a few exceptions, be posted on the Internet. The DoD is proposing to revise paragraphs (a), (a)(1) and (2) of 32 CFR 22.315 to implement this OMB policy directive (see proposed amendment number 7 following this preamble).

Electronic posting of synopses of program announcements. A second OMB policy directive, ''Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format'' [68 FR 58146, October 8, 2003], requires Federal agencies to post on the Internet a summary of each announcement. The DoD is proposing to revise paragraph (a)(3) of 32 CFR 22.315 to implement this policy directive (see proposed amendment number 7 following this preamble).

Use of Data Universal Numbering System (DUNS) numbers. A third OMB policy directive, ''Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements' [68 FR 38402, June 27, 2003], established the Data Universal Numbering System (DUNS) number as the universal identifier for Federal grant and cooperative agreement applicants and recipients. It states that applications must include the DUNS number and that Federal agency information systems that handle data on grants and cooperative agreements must be able to accept the DUNS number. The DoD is proposing a new section 32 CFR 21.565 to implement the requirement for agency information systems and a revised paragraph (a)(4) in 32 CFR 22.315 to address the requirement for including DUNS numbers in

applications (see proposed amendment numbers 2 and 7 following this preamble).

Dollar threshold for single audit requirements. The OMB also revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' to increase the threshold at which recipients are required to have single audits. The revision to the circular [68 FR 38401, June 27, 2003] increased the threshold from $300,000 per year to $500,000 per year in expenditures of Federal funds. The revision also increased the threshold (from $25 million per year to $50 million per year in expenditures of Federal funds) at which a recipient would be assigned a cognizant Federal agency for audits and made related technical changes. The DoD is proposing to revise two sections of the DoDGARs—32 CFR 33.26 for awards to State, local, and other governmental organizations and 34.16 for for-profit recipients—to replace the $300,000 threshold amount with the updated $500,000 threshold (see proposed amendment numbers 25 and 28 following this preamble).

Nonprocurement debarment and suspension and drug-free workplace requirements. The DoD recently joined with thirty-two other Federal agencies to publish [68 FR 66534, November 26, 2003] updated government-wide common rules on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. The updated common rule on nonprocurement debarment and suspension is part 25 of the DoDGARs (32 CFR part 25) and the common rule on drug-free workplace requirements is part 26 (32 CFR part 26). The DoD now is proposing to make conforming amendments to DoDGARs parts 21, 22, 32, 33, 34 and 37, to incorporate changes in policies and procedures due to the revisions of parts 25 and 26 and to correct references to sections of those two revised parts (see proposed amendment numbers 3, 5, 8, 9.a, 11.a, 15.a, 17, 18, 22, 23, 26, 29, 31, 32, and 33 following this preamble).

Campus access for military recruiters and Reserve Officer Training Corps (ROTC). Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) recodified and consolidated—in 10 U.S.C. 983—two separate statutes applicable to institutions of higher education that receive DoD grants. The first of the two statutes prohibits DoD from providing funds by grant to institutions that deny military recruiters entry to campus or access to students or student information for recruiting purposes. Before Public Law 106–65 recodified that requirement in 10 U.S.C. 983, it was in section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337). The DoD implemented that section 558 requirement, as it applied to grants, in the DoDGARs at 32 CFR 22.520.

The second of the two statutes prohibits DoD from providing funds by grant to an institution that prevents the establishment and operation of a Senior ROTC unit on campus or student enrollment in a unit at an alternate institution. That statute was originally codified in 10 U.S.C. 983 by the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106).

With the recodification and consolidation of both requirements in 10 U.S.C. 983, the DoD proposes to revise section 32 CFR 22.520 of the DoDGARs and make conforming changes in sections 32 CFR 22.420 and 32 CFR 25.425. The proposed revision of 32 CFR 22.520 addresses the requirements concerning ROTC, as well as the restrictions concerning military recruiters' access that already were addressed in 32 CFR 22.520. Among the proposed changes in 32 CFR 22.520 are: The inclusion of the requirement concerning ROTC in the award term in paragraph 22.520(f); a clarification in a new paragraph 22.520(e)(2) that the prohibition on providing funds by grant extends, by law, to obligations of additional funds for pre-existing awards (*e.g.*, incremental funding actions); and a revision to paragraph 22.520(d)(1) to apply the prohibition on use of DoD funds to an institution of higher education as a whole, as 10 U.S.C. 983 requires, when any subordinate element of the institution has a policy or practice that denies access for ROTC or military recruiters (see proposed amendment number 12 following this preamble for the changes to section 32 CFR 22.520 and proposed amendment numbers 9.a and 20 for the conforming changes to sections 32 CFR 22.420 and 32 CFR 25.425).

Other Proposed Revisions. In addition to the proposed revisions described above, the DoD is proposing to make other needed updates to the DoDGARs. Those proposed updates are: (1) A deletion of paragraph (a)(4) of section 32 CFR 22.715, to conform that section with revised procedures for oversight of single audits; (2) changes in Appendices A and B to 32 CFR part 22, to reflect revisions in regulations implementing national policy requirements; and (3) updates to office names, footnote references to sources of OMB and DoD documents, and cross references to sections within the DoDGARs (see proposed amendment numbers 6, 9.b, 10, 11.b, 13, 14, 15.b, 16, and 18 following this preamble).

Executive Order 12866

OMB has determined this rule to be significant and it has been reviewed and approved for publication.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This proposed regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

32 CFR Part 21

Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 22

Accounting, Grant programs, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 25

Accounting, Grant programs, Loan programs, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 33

Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Government property, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter B is proposed to be amended as follows:

PART 21—[AMENDED]

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

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart E—[Amended]

2. Subpart E is amended by:

a. Adding a new § 21.565 to read as set forth below; and

b. Adding a new footnote 6 to read as set forth below.

§ 21.565 Must DoD Components' electronic systems accept Data Universal Numbering System (DUNS) numbers?

The DoD Components must comply with paragraph 5.e of the Office of Management and Budget (OMB) policy directive entitled, ''Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements.'' [6] Paragraph 5.e requires electronic systems that handle information about grants and cooperative agreements (which, for the DoD, include Technology Investment Agreements) to accept DUNS numbers. Each DoD Component that awards or administers grants or cooperative agreements must ensure that DUNS numbers are accepted by each such system for which the DoD Component controls the system specifications. If the specifications of such a system are subject to another organization's control and the system can not accept DUNS numbers, the DoD Component must alert that organization to the OMB policy directive's requirement for use of DUNS numbers with a copy to: Director for Basic Sciences, ODDR&E, 3040 Defense Pentagon, Washington, DC 20301–3040.

3. Appendix A to part 21 is revised to read as follows:

Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

DoDGARs . . .	Which addresses . . .	Applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E.	The Defense Grant Agreement Regulatory System and the DoD Grant and Agreement Regulations.	''Awards,'' which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D.	Authorities and responsibilities for assistance award and administration.	Grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E.	DoD Components' information reporting requirements ..	Grants, cooperative agreements, TIAs, and other nonprocurement instruments ubject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements.	Grants and cooperative agreements other than TIAs.
Part 25 (32 CFR part 25)	Governmentwide debarment and suspension requirements.	Nonprocurement generally, which includes grants, cooperative agreements, TIAs, and other instruments that are covered transactions under 32 CFR 25.210, with the exceptions identified at 32 CFR 25.215.
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements	Grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of ''award'' at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	Grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of ''Federal grant'' and ''Federal cooperative agreement'' at 32 CFR 28.105.
Part 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.	Grants, cooperative agreements other than TIAs, and other assistance included in ''award'' as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments.	Grants, cooperative agreements other than TIAs, and other assistance included in ''grant,'' as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations.	Grants and cooperative agreements other than TIAs (''awards,'' as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs.	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.

PART 22—[AMENDED]

4. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

5. Section 22.100 is amended as follows:

a. Redesignating paragraph (b)(3) as (b)(4);

b. Redesignating paragraph (b)(2) as (b)(3);

[6] This OMB policy directive is in a **Federal Register** notice published on June 27, 2003 [68 FR 38402], which is also available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

c. Amending paragraph (b)(1) by revising ''Governmentwide rules on debarment, suspension and drug-free workplace requirements'' to read ''The Governmentwide rule on nonprocurement debarment and suspension''.

d. Adding a new paragraph (b)(2) to read as follows:

§ 22.100 Purpose, relation to other parts, and organization.

* * * * *

(b) * * *

(2) The Governmentwide rule on drug-free workplace requirements, in 32 CFR part 26.

* * * * *

§ 22.220 [Amended]

6. Section 22.220, paragraph (a) is amended as follows:

a. Paragraph (a)(1) by revising ''Director of Defense Procurement (DDP)'' to read ''Director of Defense Procurement and Acquisition Policy (DDP&AP)''.

b. Paragraph (a)(2) by revising ''DDP'' to read ''DDP&AP''.

7. Section 22.315 is amended by:

a. Revising paragraph (a) to read as set forth below; and

b. Adding new footnotes 2, 3, and 4 to read as set forth below.

§ 22.315 Merit-based, competitive procedures.

* * * * *

(a) Notice to prospective proposers. The notice may be a notice of funding availability or Broad Agency Announcement that is publicly disseminated, with unlimited distribution, or a specific notice that is distributed to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Requirements for notices are as follows:

(1) The format and content of each notice must conform with the government-wide format for announcements of funding opportunities established by the Office of Management and Budget (OMB) in a policy directive entitled, ''Format for Financial Assistance Program Announcements.'' [2]

(2) In accordance with that OMB policy directive, DoD Components also must post on the Internet any notice under which domestic entities may submit proposals, if the distribution of the notice is unlimited. DoD Components are encouraged to simultaneously publish the notice in other media (*e.g.,* the **Federal Register**), if doing so would increase the likelihood of its being seen by potential proposers. If a DoD Component issues a specific notice with limited distribution (*e.g.,* for national security considerations), the notice need not be posted on the Internet.

(3) To comply with an OMB policy directive entitled, ''Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format,'' [3] DoD Components must post on the Internet a synopsis for each notice that, in accordance with paragraph (a)(2) of this section, is posted on the Internet. The synopsis must be posted at the government-wide site designated by the OMB (currently *http://www.FedGrants.gov*). The synopsis for each notice must provide complete instructions on where to obtain the notice and should have an electronic link to the Internet location at which the notice is posted.

(4) In accordance with an OMB policy directive entitled, ''Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements,'' [4] each notice must include a requirement for proposers to include Data Universal Numbering System (DUNS) numbers in their proposals. If a notice provides for submission of application forms, the forms must incorporate the DUNS number. To the extent that unincorporated consortia of separate organizations may submit proposals, the notice should explain that an unincorporated consortium would use the DUNS number of the entity proposed to receive DoD payments under the award (usually, a lead organization that consortium members identify for administrative matters).

* * * * *

[2] This OMB policy directive is in a **Federal Register** notice published on June 23, 2003 [68 FR 37370], which is also available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[3] This OMB policy directive is in a **Federal Register** notice published on October 8, 2003 [68 FR 58146], which is also available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[4] This OMB policy directive is in a **Federal Register** notice published on June 27, 2003 [68 FR 38402], which is also available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

§ 22.405 [Amended]

8. Section 22.405, paragraph (a) is amended by revising ''32 CFR 25.115(a)'' to read ''32 CFR 25.110(a)''.

9. Section 22.420 is amended as follows:

a. Revising paragraph (c)(1) to read as set forth below; and

b. Redesignating the current footnote 2 in paragraph (b)(1) of section 22.420 as footnote 5 and revising it to read as set forth below.

§ 22.420 Pre-award procedures.

* * * * *

(c) * * *

(1) Is not identified in the government-wide Excluded Parties List System (EPLS) as being debarred, suspended, or otherwise ineligible to receive the award. (In addition to being a requirement for every new award, note that checking the EPLS also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, for pre-existing awards to institutions of higher education, as described at 32 CFR 22.520(e)(2).) The grants officer's responsibilities include (see 32 CFR 25.425 and 25.430) checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined at 32 CFR 25.995), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals or lower-tier recipients is required under the terms of the award (*e.g.,* if a subsequent change in a recipient's principal investigator or other key person would be subject to the DoD Component's prior approval under 32 CFR 32.25(c)(2), 33.30(d)(3), or 34.15(c)(2)(i)).

* * * * *

[5] Electronic copies may be obtained at Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

§ 22.505 [Amended]

10. Section 22.505 is amended by redesignating the existing footnotes 3 and 4 in paragraph (a) of section 22.505 as footnotes 6 and 7, respectively, and by revising them to read as follows:

[6] See footnote 5 to § 22.420(b)(1).

[7] See footnote 5 to § 22.420(b)(1).

11. Section 22.510 is amended by:

a. Revising paragraphs (a)(2)(ii)(A), (a)(2)(ii)(B), and (a)(2)(ii)(C) to read as set forth below; and

b. Redesignating the current footnote 5 in paragraph (b) of § 22.510 as footnote 8 and revising it to read as set forth below:

§ 22.510 Certifications, representations, and assurances.

* * * * *

(a) * * *
(2) * * *
(ii) * * *

(A) If a grants officer elects to have proposers incorporate certifications by reference into their proposals, he or she must do so in one of the two following ways. When required by statute or codified regulation, the solicitation must include the full text of the certifications that proposers are to provide by reference. In other cases, the grants officer may include language in the solicitation that informs the proposers where the full text may be found (*e.g.,* in documents or computer network sites that are readily available to the public) and offers to provide it to proposers upon request.

(B) Appendix A to this part provides language that may be used for incorporating by reference the certification on lobbying, which currently is the only certification requirement that commonly applies to DoD grants and agreements. Because that certification is required by law to be submitted at the time of proposal, rather than at the time of award, Appendix A includes language to incorporate the certification by reference into a proposal.

(C) Grants officers may incorporate certifications by reference in award documents when doing so is consistent with statute and codified regulation (that is not the case for the lobbying certification addressed in paragraph (a)(2)(ii)(B) of this section). The provision that a grants officer would use to incorporate certifications in award documents, when consistent with statute and codified regulation, would be similar to the provision in Appendix A to this part, except that it would be modified to state that the recipient is providing the required certifications by signing the award document or by accepting funds under the award.

* * * * *

[8] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''Federal Directory of Contract Administration Services (CAS) Components,'' which may be accessed through the Defense Contract Management Agency homepage at: *http://www.dcma.mil.*

12. Section 22.520 is revised to read as follows:

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

(a) *Purpose.* (1) The purpose of this section is to implement 10 U.S.C. 983 as it applies to grants. Under that statute, DoD Components are prohibited from providing funds to institutions of higher education that have policies or practices, as described in paragraph (c) of this section, restricting campus access of military recruiters or the Reserve Officer Training Corps (ROTC).

(2) By addressing the effect of 10 U.S.C. 983 on grants and cooperative agreements, this section supplements the DoD's primary implementation of that statute in 32 CFR part 216, ''Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education.'' Part 216 establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section.

(b) *Definition specific to this section.* ''Institution of higher education'' in this section has the meaning given at 32 CFR 216.3, which is different than the meaning given at § 22.105 for other sections of this part.

(c) *Statutory requirement of 10 U.S.C. 983.* No funds made available to the Department of Defense may be provided by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that the institution (or any subelement of that institution) has a policy or practice that either prohibits, or in effect prevents:

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior ROTC (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(2) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a Military Department or Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(i) Names, addresses, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(d) *Policy.* (1) *Applicability to cooperative agreements.* As a matter of DoD policy, the restrictions of 10 U.S.C. 983, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(2) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Basic Sciences, ODUSD (LABS), 3040 Defense Pentagon, Washington, DC 20301–3040.

(e) *Grants officers' responsibilities.* (1) A grants officer shall not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible on the Governmentwide Excluded Parties List System (EPLS). The cause and treatment code on the EPLS indicates the reason for an institution's ineligibility, as well as the effect of the exclusion. Note that 32 CFR 25.425 and 25.430 require a grants officer to check the EPLS prior to determining that a recipient is qualified to receive an award.

(2) A grants officer shall not consent to a subaward of DoD funds to such an institution, under a grant or cooperative agreement to any recipient, if the subaward requires the grants officer's consent.

(3) A grants officer shall include the following award term in each grant or cooperative agreement with an institution of higher education (note that this requirement does not flow down and that recipients are not required to include the award term in subawards):

As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(A) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(B) Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(C) The Secretary of a Military Department or Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(D) Access by military recruiters for purposes of military recruiting to the names

of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

(4) If an institution of higher education refuses to accept the award term in paragraph (e)(3) of this section, the grants officer shall:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Deputy Under Secretary of Defense for Military Personnel Policy (ODUSD(MPP)), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow ODUSD (MPP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(5) With respect to any pre-existing award to an institution of higher education that currently is listed on the EPLS pursuant to a determination under 32 CFR part 216, a grants officer:

(i) Shall not obligate additional funds available to the DoD for the award. A grants officer therefore must check the EPLS before approving an incremental funding action or other additional funding for any pre-existing award to an institution of higher education. The grants officer may not obligate the additional funds if the cause and treatment code indicates that the reason for an institution's EPLS listing is a determination under 32 CFR part 216 that institutional policies or practices restrict campus access of military recruiters or ROTC.

(ii) Shall not approve any request for payment submitted by such an institution (including payments for costs already incurred).

(iii) Shall:

(A) Terminate the award unless he or she has a reason to believe, after consulting with the ODUSD (MPP), 4000 Defense Pentagon, Washington, DC. 20301–4000, that the institution may be removed from the EPLS in the near term and have its eligibility restored; and

(B) Suspend any award that is not immediately terminated, as well as all payments under it.

(f) *Post-award administration responsibilities of the Office of Naval Research (ONR).* As the DoD office assigned responsibility for performing field administration services for grants and cooperative agreements with institutions of higher education, the ONR shall disseminate the list it receives from the ODUSD(MPP) of institutions of higher education identified pursuant to the procedures of 32 CFR part 216 to:

(1) ONR field administration offices, with instructions to:

(i) Disapprove any payment requests under awards to such institutions for which post-award payment administration was delegated to the ONR; and

(ii) Alert the DoD offices that made the awards to their responsibilities under paragraphs (e)(5)(i) and (e)(5)(i)(iii) of this section.

(2) Awarding offices in DoD Components that may be identified from data in the Defense Assistance Awards Data System (see 32 CFR 21.520 through 21.555) as having awards with such institutions for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (e)(5) of this section.

§ 22.605 [Amended]

13. Section 22.605 is amended by redesignating the current footnote 6 in paragraph (c)(2) as footnote 9 and revising it to read as follows:

[9] See footnote 8 to § 22.510(b).

14. Section 22.710 is amended as follows:

a. Revising the introductory text to read as set forth below; and

b. Redesignating the current footnotes 7 through 9 in the introductory text and paragraphs (a)(1) and (2) respectively as footnotes 10 through 12 and revising them to read as set forth below.

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as ''grants administration offices'') that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the ''Federal Directory of Contract Administration Services (CAS) Components''[10] for specific addresses of administration offices):

* * * * *

[10] The ''Federal Directory of Contract Administration Services (CAS) Components'' may be accessed through the Defense Contract Management Agency homepage at *http://www.dcma.mil.*

[11] See footnote 5 to § 22.420(b)(1).

[12] See footnote 5 to § 22.420(b)(1).

§ 22.715 [Amended]

15. Section 22.715 is amended as follows:

a. In paragraph (a)(3)(ii) by revising ''32 CFR part 25'' to read ''32 CFR part 26''.

b. Removing paragraph (a)(4).

§ 22.810 [Amended]

16. Section 22.810 is amended by redesignating footnote 10 to paragraph (c)(3)(i) as footnote 13 and revising it to read as follows:

[13] Electronic copies may be obtained at the Washington Headquarters Services Internet site *http://www.dtic.mil/whs/directives.* Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

17. Appendix A to Part 22 is revised to read as follows:

Appendix A to Part 22—Proposal Provision for Required Certification

Provision in proposal (or, suitably modified, in award)	Used for			Source of requirement
	Type of award	Type of recipient	Specific situation	
By signing and submitting this proposal, the recipient is providing the certification at Appendix A to 32 CFR part 28 regarding lobbying.	Any financial assistance [see 32 CFR 28.105(b) and definitions of ''Federal grant,'' ''Federal cooperative agreement,'' and ''Federal loan'' in 32 CFR 28.105(c), (d), and (e)].	All but Indian tribe or tribal organization with respect to expenditures specifically permitted by other Federal law [see 32 CFR 28.105(l)].	Any	32 CFR 28, which implements 31 U.S.C. 1352.

18. Revise Appendix B to Part 22 to read as follows:

Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements That Often Apply

Suggested award provision	Used for			Some requirement(s) the grants officer should note
	Type of award	Type of recipient	Specific situation	
Nondiscrimination—By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any	Any	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964–1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60–1.3 as ''Federally assisted construction contract''.	Any	Awards under which construction work is to be done.	The grants officer should inform recipients that 41 CFR 60–1.4(b) prescribes a clause that recipients must include in federally assisted construction awards and subawards [60–1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(l)(3) and in Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), as implemented by DoD regulations at 32 CFR part 196.	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Any [for sex discrimination, 32 CFR 196.235 excepts an entity controlled by a religious organization, if not consistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	32 CFR 196.115 requires assurance of compliance. The inclusion of subrecipients in the definition of ''recipient'' at 32 CFR 196.105 requires recipient to flow down requirements to subrecipients.
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as ''Federal financial assistance''.	Any	Any	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of ''recipient'' at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in ''Federal financial assistance'' definition at 32 CFR 56.3(b).	Any	Any	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards [''recipient,'' defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].

Suggested award provision	Used for			Some requirement(s) the grants officer should note
	Type of award	Type of recipient	Specific situation	
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, *et seq.*).	Grant or loan	Any	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
Live Organisms—By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any	Any	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1–4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131–2156), and guidelines in the National Academy of Sciences (NAS) ''Guide for the Care and Use of Laboratory Animals'' (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.	Any	Any	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1 [1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101–511).	Any	Any	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10–24) and Commerce (50 CFR parts 217–227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531–1543); Marine Mammal Protection Act (16 U.S.C. 1361–1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any	Any	Activities that may involve or impact wildlife and plants.	

Suggested award provision	Used for			Some requirement(s) the grants officer should note
	Type of award	Type of recipient	Specific situation	
Debarment and Suspension—The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 32 CFR part 25, which implements E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103–355). The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are ''covered transactions'' under Subpart B of 32 CFR part 25.	Any nonprocurement transaction [see ''covered transaction'' as specified in Subpart B of 32 CFR part 25, especially sections 25.210 and 25.215].	All but foreign governments, foreign governmental entities, and others excluded at 32 CFR 25.215(a).	Any.	
Hatch Act—The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthrop, or cultural organization.	
Environmental Standards—By signing this agreement or accepting funds under this agreement, the recipient assures that it will:				
a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. 1251, *et seq.*), as implemented by Executive Order 11738 [3 CFR, 1971–1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.	Any nonprocurement transaction [see 40 CFR 32.110].	Any	Any	Executive Order 11738 establishes additional responsibilities for grants officers.
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, *et seq.*) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (*e.g.,* physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any	Any	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500–1508. Executive Order 11514 [3 CFR, 1966–1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders 11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.

Suggested award provision	Used for			Some requirement(s) the grants officer should note
	Type of award	Type of recipient	Specific situation	
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, *et seq.*), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C.4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the FEDERAL REGISTER), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional preaward procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, *et seq.*), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504–3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, *et seq).*.	Any	Any	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h–3).	Any	Any	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h–3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Drug-Free Workplace—The recipient agrees to comply with the requirements regarding drug-free workplace in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR part 26, which implements sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*).	Any financial assistance, including any grant or cooperative agreement [see "award" as broadly defined at 32 CFR part 26.605].	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 26.110].	

Suggested award provision	Used for			Some requirement(s) the grants officer should note
	Type of award	Type of recipient	Specific situation	
National Historic Preservation—The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593 [3 CFR, 1971–1975 Comp., p. 559].	Any	Any	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit—No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other ''agreements''.	Any	Any.	
Preference for U.S. Flag Carriers—Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any	Any	Any agreement under which international air travel may be supported by U.S. Government funds.	
Cargo Preference—The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [*e.g.*, see clause at 46 CFR 381.7(b)].
Military Recruiters—[Grants officers shall include the exact award provision specified at 32 CFR 22.520].	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition—The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other ''Federal financial assistance'' [see 49 CFR 24.2(j)].	''State agency'' as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

[1] Electronic copies may be obtained at the Washington Headquarters Services Internet Site *http://www.dtic.mil/whs/directives.* Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

PART 25—[AMENDED]

19. The authority citation for part 25 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235].

20. Section 25.425 is amended by revising paragraphs (c) and (d) and adding a paragraph (e) to read as follows:

§ 25.425 When do I check to see if a person is excluded or disqualified?

* * * * *

(c) Approve a lower tier participant if agency approval of the lower tier participant is required;

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required; or

(e) Obligate additional funding (*e.g.,* through an incremental funding action) for a pre-existing covered transaction with an institution of higher education, as provided in 32 CFR 22.520(e)(2).

PART 32—[AMENDED]

21. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.2 [Amended]

22. Section 32.2 introductory text is amended by revising ''32 CFR 25.105'' to read ''32 CFR 25.1015.''

Appendix A to Part 32 [Amended]

23. Paragraph 8 of Appendix A to part 32 is revised to read as follows:

Appendix A to Part 32—Contract Provisions

* * * * *

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the government-wide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 33—[AMENDED]

24. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 33.26 [Amended]

25. Section 33.26, paragraph (b) is amended by revising ''$300,000'' to read ''$500,000''.

§ 33.35 [Amended]

26. Section 33.35 is amended by revising ''not make any award or permit any award (subgrant or contract) at any tier to'' to read ''comply with the requirements of subpart C, 32 CFR part 25, including the restrictions on entering into a covered transaction with''.

PART 34—[AMENDED]

27. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 34.16 [Amended]

28. Section 34.16, paragraph (a) is amended by revising ''$300,000'' to read ''$500,000''.

Appendix A to Part 34 [Amended]

29. Paragraph 7 of Appendix A to part 34 is revised to read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the government-wide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 37—[AMENDED]

30. The authority citation for part 37 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

31. Section 37.130 is amended by:

a. Redesignating paragraph (b)(2) as (b)(3);

b. Revising paragraph (b)(1) and adding a new (b)(2) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(b) * * *

(1) Part 25 (32 CFR part 25) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

(2) Part 26 (32 CFR part 26), on drug-free workplace requirements, which applies because it covers financial assistance in general; and

* * * * *

32. Appendix D to part 37 is revised to read as follows:

Appendix D to Part 37—What Common National Policy Requirements May Apply and Need To Be Included in TIAs?

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (*e.g.,* due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

One requirement that applies to all TIAs currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

B. Assurances That Apply to all TIAs

DoD policy is to use certifications, as described in the preceding paragraphs, only for national policy requirements that specifically require them. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the Governmentwide common rule that the DoD has codified at 32 CFR part 25. The requirements apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in the Governmentwide common rule that the DoD has codified at 32 CFR part 26. The requirements apply to all financial assistance.

3. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients

performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

4. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients. For further information, see item d. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

5. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

6. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. Other Assurances

Additional requirements listed in Appendix B to 32 CFR part 22 may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin. For further information, see item b. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

2. If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading ''Live organisms'' in Appendix B to 32 CFR part 22.

3. If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading ''Environmental Standards'' in Appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2 through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), as described under the heading ''National Historic Preservation'' in Appendix B to 32 CFR part 22.

33. Appendix E to part 37 is revised to read as follows:

Appendix E to Part 37—What Provisions May a Participant Need To Include when Purchasing Goods or Services Under a TIA?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (*e.g.*, supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists seven national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those seven, two that apply to all recipients' purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).* A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the government-wide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity.* Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in Appendix B to Part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading ''Nondiscrimination.''

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–16933 Filed 7–27–04; 8:45 am]

BILLING CODE 5001–06–P

POSTAL SERVICE

39 CFR Part 20

Discontinuance of Volume Discount Availability for IPA and ISAL Mailers

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would delete *International Mail Manual* (IMM) 292.212, 292.213, and 293.75, which authorize mailers who spend $2 million or more combined on International Priority Mail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year to receive discounted postage rates.

DATES: Comments must be received on or before August 18, 2004.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington DC. Comments may also be submitted via fax to 202–268–4955, ATTN: Rick Klutts.

FOR FURTHER INFORMATION CONTACT: Rick Klutts, 202–268–7268.

SUPPLEMENTARY INFORMATION: Current standards authorize postage discounts for mailers who spend $2 million or more combined on International Priority Mail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year. These discounts would be discontinued. This change is required due to recent USPS reviews of costs for providing these services.

These changes do not affect the standards for existing or prospective customers who participate or would like to participate in the International Customized Mail (ICM) service agreement program as defined in IMM 297.

Although the Postal Service is exempt from the advance notice requirements of the Administrative Procedures Act regarding proposed rulemaking (5 U.S.C. 553(b), (c)) by U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to the *International Mail Manual,* which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407 and 408.

2. Amend the *International Mail Manual* as set forth below:

2 Conditions for Mailing

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail Service

* * * * *

292.2 Postage

292.21 Rates

* * * * *

[Delete 292.212 and 292.213; renumber 292.214 through 292.217 as 292.212 through 292.215.]

* * * * *

293 International Surface Air Lift (ISAL) Service

* * * * *

293.7 Postage

* * * * *

[Delete 293.75; renumber 293.76 as 293.75.]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–17124 Filed 7–27–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Il223–1b; FRL–7784–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a site-specific revision to the Illinois volatile organic compound (VOC) State Implementation Plan (SIP) for Argonne National Laboratory's (Argonne) degreasing operations. Argonne is a United States government-owned research and development facility in Argonne, DuPage County, Illinois. By its submittal dated March 11, 2004, the Illinois Environmental Protection Agency (Illinois EPA) requested that EPA approve an Adjusted Standard, from Illinois' cold cleaning regulations, for Argonne's solvent cleaning operations because its research activities require sample surface areas to be completely free of any residual contamination, necessitating the use of cleaning solvents that exceed the vapor pressure limitations of Illinois' cold cleaning regulations. EPA is approving this adjusted standard because there are no feasible alternatives for the preparation of sample materials and associated apparatus used for research and development at Argonne's DuPage facility and also because no more than one ton per year of solvents are used for cold cleaning. In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 27, 2004.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in the **ADDRESS** section and the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. *bortzer.jay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052 *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 Office.)

Dated: June 18, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–17166 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 144
Wednesday, July 28, 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

Animal and Plant Health Inspection Service

[Docket No. 04–053–2]

Horse Protection Technology Meeting; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice to horse industry members and other interested persons that Animal Care will host a series of educational meetings to present current information on new technology being explored for use in the enforcement of the Horse Protection Act. This notice provides the agenda for the meetings, information on the location and dates of the second meeting, and general information on subsequent meetings.

DATES: The second meeting will be held in Murfreesboro, Tennessee, on August 4, 2004. Registration will take place from 8 a.m. to 9:30 a.m. The meeting will begin at 9 a.m. and end at 1 p.m. Additional meetings are being planned for September through October 2004, for Missouri, and the Pacific Northwest.

ADDRESSES: The meeting will be held at the James Union Building, Tennessee Room, Middle Tennessee State University, Murfreesboro, TN 37132.

FOR FURTHER INFORMATION CONTACT: Mr. James Tuck, Management Analyst, PPD, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 734–5819.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), Animal Care, is announcing a series of educational meetings on the new technology being tested to enforce the Horse Protection Act. The meetings are designed to provide a forum for information dissemination on various topics that are important for the horse industry to understand. This series of meetings will be held in various geographical locations to facilitate attendance by most of our regulated parties that maintain horses.

The second meeting will be held on Wednesday, August 4, 2004, at the Middle Tennessee State University, Murfreesboro, TN. Additional meetings are being planned for September through October 2004, for Missouri, and the Pacific Northwest.

The series of meetings have been developed to provide current information and ideas on a variety of technological innovations Animal Care is testing to assist in the enforcement of the Horse Protection Act. Each meeting will, with the exception of possible minor modifications, follow the same agenda:

8 a.m.–9:30 a.m. Registration

9 a.m.–9:45 a.m. Welcome Overview

9:45 a.m.–10:30 a.m. Thermography Technology

10:45 a.m.–11:45 a.m. Sniffer Technology

11:45 a.m.–1 p.m. Other Horse Protection Enforcement Issues

Meeting notices are also available on the Animal Care Web site at *http://www.aphis.usda.gov/ac.*

Please note that these meetings are being held to provide and disseminate information on the technology being tested by Animal Care to enforce the Horse Protection Act and are not an opportunity to submit formal comments on proposed rules or other regulatory initiatives.

Pre-registration is requested by calling (301) 734–7833, or e-mailing Animal Care at *ACE@aphis.usda.gov* and providing your name, number of attendees, phone number, e-mail address or other contact address. This information is needed in the event of any changes to the meeting schedule so we may inform registrants in a timely manner. Please pre-register for the meeting by August 3, 2004.

Done in Washington, DC, this 22nd day of July, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–17152 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resources Advisory Committee will meet in Globe, Arizona. The purpose of the meeting is to evaluate project proposals for possible funding in accordance with Public Law 106–393 (the Secure Rural Schools and Community Self-Determination Act).

DATES: The meeting will be held August 27, 2004 starting at 12:30 p.m.

ADDRESSES: The meeting will be held in the conference room at the Travelodge, 2119 West Highway 60, Globe, Arizona 85501. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Bos 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, project proponents, and Committee members. However, persons who wish to bring Public Law 106–393 related 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 August 15, 2004, will have the opportunity to address the Committee at those sessions.

Dated: July 19, 2004.

Elaine J. Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 04–17117 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on August 26, 2004, from 3:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review Minutes From the June 24, 2004, Meeting; (3) Discuss Other Business for 2004; (4) Strategy for Attending the Lake Co. Board of Supervisor's Meeting; (5) Letters to Congress on Retaining the RACs; (6) Discuss Project Cost Accounting USFS/County of Lake; (7) Set Next Meeting Date; (8) Public Comment Period; Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time. (9) Adjourn.

Dated: July 21, 2004.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 04–17190 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Community Connect Grant Program application window for funding during fiscal year (FY) 2004. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations are contained in 7 CFR 1739, subpart A published elsewhere in this issue.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than September 13, 2004 to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- Electronic copies must be received by September 13, 2004 to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.usda.gov/rus/telecom/commconnect.htm* . You may also request application guides and materials from RUS by contacting the appropriate individual listed in section VII of the Supplementary Information section of this notice.

Submit completed paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5151, STOP 1590, Washington, DC 20250–1590. Applications should be marked ''Attention: Assistant Administrator, Telecommunications Program.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 720–9554, fax: (202) 720–0810.

SUPPLEMENTARY INFORMATION

Overview

Federal: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than September 13, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.
- Electronic copies must be received by September 13, 2004, to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the Community Connect Grant Program.

II. Award Information: Available funds and minimum and maximum amounts.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide, on a ''community-oriented connectivity'' basis, broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB),

published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR 1703, subpart A).

II. Award Information

A. Available Funds

1. *General.* The Administrator has determined that the following amounts are available for grants in FY 2004 under 7 CFR 1739.2(a).

2. *Grants.*

a. $9 million is available for grants. Under 7 CFR 1739.2, the Administrator has determined that there is no minimum or maximum application amount for FY 2004.

b. Assistance instrument: RUS will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

B. Community Connect grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. *Who is eligible for grants? (See 7 CFR 1739.10.)*

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c),*

c. A state or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

B. *What are the basic eligibility requirements for a project?*

1. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of RUS financial assistance requested. Matching contributions must be used for eligible purposes of Community Connect grant assistance (see 7 CFR 1739.14).

2. To be eligible for a grant, the Project must (see 7 CFR 1739.11):

a. Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by RUS prior to the award of the grant;

b. Serve one Community recognized in the latest U.S. Census. Additional communities located in the contiguous areas outside the Community's boundaries that are not recognized (due to size) in the U.S. Census, can be included in the applicant's proposed Service Area, but must be supported by documentation, acceptable to RUS, as to their existence;

c. Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

d. Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

e. Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. *Where to get application information.* The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/commconnect.htm* , or *http://www.grants.gov* .

2. The RUS, Office of the Assistant Administrator, Telecommunications, for paper copies of these materials: (202) 720–9554.

B. *What constitutes a completed application?*

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. A completed application must include the following documentation, studies, reports and information in form satisfactory to RUS. Applications should be prepared in conformance with the provisions 7 CFR 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the RUS Application Guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form 424.

b. *An executive summary of the Project.* The applicant must provide RUS with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, *etc.*

e. *Scope of work.* The scope of work must including specific activities and services to be performed under the proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

f. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

g. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

h. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

i. *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement

with RUS and to perform the activities proposed under the grant application.

j. *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

k. *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

(viii) An environmental report, in accordance with 7 CFR 1794.

(ix) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(x) Federal Obligation Certification on Delinquent Debt.

5. DUNS Number (new for FY 2004). As required by the OMB, all applicants for grants must now supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the Community Connect Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

C. *How many copies of an application are required?*

1. Applications submitted on paper: Submit the original application and two (2) copies to RUS.

2. Electronically submitted applications: The additional paper copies for RUS are not necessary if you submit the application electronically through Grants.gov.

D. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5151, STOP 1590, Washington, DC 20250–1590. Applications should be marked ''Attention: Assistant Administrator, Telecommunications Program.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

g. New information for FY 2004 grant. The Community connect Grant Program of RUS now offers applicants the opportunity to submit grant applications online through Grants.gov (*http://www.grants.gov*). The Web site is part of the Government-wide e-Government project under the President's Management Agenda. In addition to online application submission, Grants.gov offers applicants a fully searchable database of Federal grant opportunities. All Federal grant-making organizations are required to post their grant opportunities at Grants.gov, beginning with FY 2004. You can find more information on e-grants at *http://www.usda.gov/rus/telecom/commconnect.htm* and *http://www.grants.gov.*

(i) Central Contractor Registry. In addition to the DUNS number now required of all grant applicants, submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days, so RUS strongly recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(ii) Credentialing and authorization of applicants. Grants.gov will also require some one-time credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

E. *Deadlines.*

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than September 13, 2004 to be eligible for FY 2004 grant funding. Late applications are not eligible for FY 2004 grant funding.

2. Electronic grant applications must be received by September 13, 2004 to be eligible for FY 2004 funding. Late applications are not eligible for FY 2004 grant funding.

F. *Funding Restrictions.*

1. *Eligible grant purposes.* Grant funds may be used to finance:

a. The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

b. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

c. End-User Equipment needed to carry out the Project;

d. Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction. Salary and administrative expenses will be subject to review, and may be limited by RUS for reasonableness in relation to the scope of the Project; and

e. The purchase of land, buildings, or building construction needed to carry out the Project.

2. *Ineligible grant purposes.*

a. Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

b. Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

3. Please see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes.

V. Application Review Information

A. *Criteria.*

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100) See 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

a. The rurality of the Project (up to 40 points);

b. The economic need of the Project's Service Area (up to 30 points); and

c. The ''community-oriented connectivity'' benefits derived from the proposed service (up to 30 points).

B. *Review standards.*

1. All applications for grants must be delivered to RUS at the address and by the date specified in this notice (see also 7 CFR 1739.2) to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

3. Applications conforming with this part will then be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if RUS determines that the Project is technically or financially infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

C. *Selection Process.*

Grant applications are ranked by final score. RUS selects applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. *Award Notices.*

RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. RUS generally notifies applicants whose projects are selected for awards by faxing an award letter. RUS follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. *Administrative and National Policy Requirements.* The items listed in paragraph IV.B.2.g of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. *Reporting.*

1. *Performance reporting.* All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. See 7 CFR 1739.19.

2. *Financial reporting.* All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1739.20.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/commconnect.htm.* The RUS' Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. Phone: 202–720–9554.

C. Fax: 202–720–0810.

D. Main point of contact: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture.

Dated: July 16, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–17106 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0407 19210–4210–01]

Revisions to the Unverified List—Guidance as to ''Red Flags'' Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks (''PLC'') or post-shipment verifications (''PSV'') could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. These notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would remove persons from the Unverified List. This notice removes five entities from the Unverified List based upon recently conducted PSVs. The entities are: Shaanxi Telecom Measuring Station, 39 Jixiang Road, Yanta District Xian, Shaanxi, People's Republic of China; Yunma Aircraft Mfg., Yaopu Anshun, Guizhou, People's Republic of China; Civil Airport Construction Corporation, 111 Bei Sihuan Str. East, Chao Yang

District, Beijing, People's Republic of China; Huabei Petroleum Administration Bureau Logging Company, South Yanshan Road, Ren Qui City, Hebei, People's Republic of China; and Beijing San Zhong Electronic Equipment Engineer Co., Ltd., Hai Dian Fu Yuay, Men Hao 1 Hao, Beijing, People's Republic of China.''

DATES: This notice is effective July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR Parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in export transactions where BIS officials, or other federal officials acting on BIS's behalf, were unable to perform a PLC or PSV with respect to certain export transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. The notices further stated that BIS may periodically remove names of persons from the list when warranted.

BIS has now conducted PSVs in transactions involving the following five persons included on the Unverified List: Shaanxi Telecom Measuring Station, 39 Jixiang Road, Yanta District Xian, Shaanxi, People's Republic of China; Yunma Aircraft Mfg., Yaopu Anshun, Guizhou, People's Republic of China; Civil Airport Construction Corporation, 111 Bei Sihuan Str. East, Chao Yang District, Beijing, People's Republic of China; Huabei Petroleum Administration Bureau Logging Company, South Yanshan Road, Ren Qiu City, Hebei, People's Republic of China; and Beijing San Zhong Electronic Equipment Engineer Co., Ltd., Hai Dian Fu Yuay, Men Hao 1 Hao, Beijing, People's Republic of China. This notice advises exporters that Shaanxi Telecom Measuring Station, Yunma Aircraft Mfg., Civil Airport Construction Corporation, Huabei Petroleum Administration Bureau Logging Company, and Beijing San Zhong Electronic Equipment Engineer Co., Ltd., are removed from the Unverified List, and the ''red flags'' resulting from their inclusion on the Unverified List are rescinded.

The Unverified List, as modified by this notice, is set forth below.

Dated: July 21, 2004.

Julie Myers,

Assistant Secretary for Export Enforcement.

Unverified List (as of [Insert Date of Publication])

The Unverified List includes names, countries, last known addresses of foreign persons involved in export transactions with respect to which: the Bureau of Industry and Security (''BIS'') could not conduct a pre-license check (''PLC'') or a post-shipment verification (''PSV'') for reasons outside of the U.S. Government's control, and/or BIS was not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee or other party to an export transaction. Any transaction to which a listed person is a party will be deemed by BIS to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR Part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications MSDN.BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park, Singapore.
Lucktrade International PTE Ltd.	Singapore	35 Tannery Road #01–07, Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

Name	Country	Last known address
Jetpower Industrial Ltd	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd.	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd.	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd.	Hong Kong Special Administrative Region	Unit 2208, 22/F, 118 Connaught Road West.

[FR Doc. 04–17186 Filed 7–27–04; 8:45 am]
BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

ACTION: Notice of initiation of antidumping and Countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2005.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Certain Softwood Lumber [1] A–122–838 605666 BC Ltd., Ardew Wood Products, Ltd. Atco Lumber, B & L Forest Products Ltd., BC Veneer Products, Ltd. Bowater Canadian Forest Products Inc. BW Creative Wood Canyon Lumber Company Ltd. CDS Lumber Products Deep Cove Lumber Edge Grain Forest Products Errington Cedar Products EW Marketing Forex Log & Lumber Galloway Lumber Co. Ltd. Industrial Wood Specialties J & G Logworks	05/01/03–04/30/04

	Period to be reviewed
Marine Way	
North Mitchell Lumber Co. Ltd., Saran Cedar	
Pacific Wood Specialties	
Pan West Wood Products Ltd.	
Silvermere Forest Products Inc.	
Stag Timber	
Stuart Lake Marketing Inc.	
Suncoast Lumber & Milling	
Sundance Forest Industries	
T.F. Specialty Sawmill	
Teal Cedar Products Ltd.	
Timber Ridge Forest Products	
Tolko Marketing & Sales	
Uneeda Wood Products	
Visscher Lumber Inc.	
Japan: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850	06/01/03–05/31/04
JFE Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	06/01/03–05/31/04
Liang Feng Stainless Steel Fitting Co., Ltd.	
PFP Taiwan Co., Ltd.	
Ta Chen Stainless Steel Pipe Co., Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China: Folding Metal Tables and Chairs[2] A–570–868	06/03/03–05/31/04
Feili Furniture Development Limited Quanzhou City	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
Dongguan Shichang Metals Factory, Ltd.	
DongGuan ShicChang Metals Factory Ltd.	
Lifetime Hong Kong Ltd.	
Lifetime (Xiamen) Plastic Products Ltd.	
Maxchief Investments Ltd.	
New-Tec Integration Co., Ltd.	
Wok and Pan Industry, Inc.	
The People's Republic of China: Tapered RollerBearings[3] A–570–601	06/01/03–05/31/04
China National Machinery Import & Export Corp.	
Chin Jun Industrial Ltd.	
Louyang Bearing Corp. (Group)	
Peer Bearing Company-Changshan	
Shanghai United Bearing Co., Ltd.	
Weihai Machinery Holding (Group) Company Ltd.	
Yantai Timken Company Limited	
Zhejiang Changshan Bearing (Group) Co., Ltd.	
Zhejiang Changshan Change Bearing Co.	
Zhejiang Machinery Import & Export Corp.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[1] Companies listed inadvertently from previous initiation notice.
[2] If one of the above named companies does not qualify for a separate rate, all other exporters of folding metal tables and chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.
[3] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistant with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under

administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: July 22, 2004.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. 04–17203 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of the Antidumping Duty Administrative Review.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement 2, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department of Commerce (Department) published in the **Federal Register** (69 FR 24117) a notice of opportunity to request an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil for the period May 1, 2003, through April 30, 2004.

In accordance with 19 CFR 351.213(b)(1), on May 28, 2004, the petitioners (*i.e.*, Florida Citrus Mutual; A. Duda & Sons, Inc. (a.k.a. Citrus Belle); Citrus World, Inc.; and Peace River Citrus Products, Inc.) requested a review of this order with respect to the following producers/exporters: Branco Peres Citrus, S.A. (Branco Peres) and Citrovita Agro Industrial, Ltda. and its affiliated parties Cambuhy MC Industrial Ltda. and Cambuhy Citrus Comercial e Exportadora (collectively ''Citrovita'').

The Department initiated an administrative review for Branco Peres and Citrovita and issued questionnaires to them on June 8, 2004. *See* 69 FR 39409 (June 30, 2004).

Branco Peres and Citrovita notified the Department that neither they nor any of their affiliates had any sales or exports of subject merchandise during the period of review (POR). The Department confirmed these companies' statements with the U.S. Customs and Border Protection. Accordingly, we notified the petitioners that we intended to rescind this administrative review with respect to both respondents and they did not object. *See* July 16, 2004, memorandum from Alice Gibbons to the file entitled, ''Intent to Rescind the Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil.''

Rescission of Review

Because Branco Peres and Citrovita had no shipments of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on frozen concentrated orange juice from Brazil for the period of May 1, 2003, through April 30, 2004. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 22, 2004.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–17202 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of the Seventh New Shipper Review

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

ACTION: Notice of preliminary results of seventh new shipper review.

SUMMARY: The Department of Commerce (''the Department'') is currently conducting the seventh new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') covering the period February 1, 2003, through July 31, 2003. This review covers one exporter.

We have preliminarily determined that sales have not been made at less than normal value (''NV'') with respect to the exporter who participated fully in this review. If the preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to not assess antidumping duties on entries of merchandise subject to this review.

Interested parties are invited to comment on the preliminary results. We will issue the final results no later than 90 days from the date of publication of this notice.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On August 28 and 29, 2003, the Department received timely requests from (1) Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian''); (2) Nanning Runchao Industrial Trade Company, Ltd. (''Nanning Runchao''); (3) Xiamen International Trade and Industry Company, Ltd. (''XITIC''); (4) Xiamen Zhongjia Import and Export Company, Ltd. (''Zhongjia''); (5) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., (''Minhui''); and (6) Shanghai Superlucky Import & Export Company, Ltd. (''Superlucky'') for a new shipper review in accordance with 19 CFR 351.214(c).

On September 30, 2003, the Department initiated a new shipper review of Guangxi Hengxian and Nanning Runchao only. (*See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Seventh New Shipper Antidumping Duty Review,* 68 FR 57877 (October 7, 2003) for further discussion.)

On October 15, 2003, we issued the antidumping duty questionnaire to Guangxi Hengxian and Nanning Runchao.

On October 23, 2003, the Department provided the parties an opportunity to submit publicly available information for consideration in the preliminary results.

On November 26, and December 5, 2003, Guangxi Hengxian and Nanning Runchao, respectively, submitted their questionnaire responses. On December

22, 2003, the petitioner [1] submitted comments on these questionnaire responses.

On January 7, 2004, the Department requested from CBP copies of all customs documents pertaining to the entry of certain preserved mushrooms from the PRC exported by each respondent during the period of February 1, 2003, through July 31, 2003 (*see* January 7, 2004, Memorandum from Louis Apple, Office Director, to Michael S. Craig of CBP). On January 22, 2004, we issued a supplemental questionnaire to both respondents.

On February 5, 2004, the petitioner and Guangxi Hengxian submitted publicly available information (''PAI'') to be used in the calculation of normal value. On February 17, 2004, Guangxi Hengxian submitted additional PAI for consideration in the preliminary results.

On February 13, 2004, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than July 26, 2004 (69 FR 7200).

On February 20, and 27, 2004, Nanning Runchao and Guangxi Hengxian, respectively, submitted their supplemental questionnaire responses.

On March 3, 2004, the petitioner submitted PAI comments. We issued Nanning Runchao a second supplemental questionnaire on March 12, 2004, and received its response on March 24, 2004. We issued Guangxi Hengxian a second supplemental questionnaire on March 18, 2004, and received its response on April 1, 2004.

On April 1 and 5, 2004, we notified both respondents of our intent to conduct verification of their responses and provided each company with a verification outline for purposes of familiarizing the companies with the verification process. On April 6, 2004, we received documentation from CBP regarding our January 7, 2004, request for information.

On April 7, 2004, the petitioner submitted pre-verification comments on both companies. Also on April 7, 2004, Nanning Runchao's counsel notified the Department that its U.S. shipment of subject merchandise during the period of review (''POR'') (*i.e.*, which is the basis for its new shipper review request) was being returned to the PRC because it did not comply with U.S. Food and Drug Administration regulations. As a result, the Department informed Nanning Runchao that it was cancelling the verification which was to occur in April 2004 (see April 7, 2004, Memorandum from Team Leader to the File). On April 9, 2004, Nanning Runchao withdrew its request for a new shipper review.

On April 19, 2004, the Department rescinded the new shipper review with respect to Nanning Runchao. (*See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Seventh New Shipper Review,* 69 FR 22004 (April 23, 2004).)

From April 21, through April 24, 2004, the Department conducted verification of the information submitted by Guangxi Hengxian in accordance with 19 CFR 351.307.

On April 21, 2004, Guangxi Hengxian submitted minor corrections to its responses which it presented to the Department's verifiers at the start of verification. On May 18, 2004, Guangxi Hengxian submitted additional PAI comments. On May 19, 2004, we issued the verification report for Guangxi Hengxian (''Guangxi Hengxian verification report'').

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to this order is currently classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR covers February 1, 2003, through July 31, 2003.

Verification

As provided in section 782(i) of the Tariff Act of 1930 (''the Act''), as amended, we verified information provided by Guangxi Hengxian. We used standard verification procedures, including on-site inspection of Guangxi Hengxian's facility and examination of relevant sales and financial records. Our verification results are outlined in the Guangxi Hengxian verification report.

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate (*i.e.*, a PRC-wide rate).

Guangxi Hengxian is a limited liability company registered in the PRC. Thus, a separate-rates analysis is necessary to determine whether the export activities of this respondent are independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade.

[2] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. This decision is currently on appeal.

demonstrate the absence of both de jure and de facto governmental control over export activities.

1. De Jure Control

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

In prior cases involving products from the PRC, the Department has examined the following PRC laws for purposes of determining whether there is an absence of *de jure* control with respect to a respondent's export functions: the 1994 ''Foreign Trade Law of the People's Republic of China;'' the ''Company Law of the PRC,'' effective as of July 1, 1994; and ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988. (*See* July 22, 2004, Memorandum to the File which places the above-referenced laws on the record of this proceeding segment.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of limited liability companies absent proof on the record to the contrary. (*See, e.g., 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*''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 29571 (June 5, 1995).)

2. 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 Silicon Carbide,* 59 FR at 22587, and *Furfuryl Alcohol,* 60 FR at 22544.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the 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 export prices are set by, or subject to the approval of, a governmental 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 management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide,* 59 FR at 22587 and *Furfuryl Alcohol,* 60 FR at 22545.)

Guangxi Hengxian has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. We examined documentation at verification which substantiated Guangxi Hengxian's claims as noted above (see pages 4 through 12 of the Guangxi Hengxian verification report). As a result, there is a sufficient basis to determine preliminarily that this respondent has demonstrated a de facto absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that Guangxi Hengxian has met the criteria for the application of separate rates.

Normal Value Comparisons

To determine whether the sale of the subject merchandise by Guangxi Hengxian to the United States was made at a price below NV, we compared the export price to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used export price (''EP'') methodology in accordance with section 772(a) of the Act because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

We calculated EP based on the packed U.S. port price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, international freight, U.S. brokerage and handling charges, and U.S. customs duties (including merchandise processing and harbor maintenance fees) in accordance with section 772(c) of the Act. Based on our verification findings, we revised (1) the inland freight distance Guangxi Hengxian reported from its factory to the port of exportation; and (2) the reported per-unit packed weight used to derive PRC movement expenses (see pages 3 and 16 of the Guangxi Hengxian verification report).

Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below for further discussion of our surrogate-country selection).

To value foreign inland trucking charges, we used truck freight rates published in *Indian Chemical Weekly* (''*Chemical Weekly*'') and distance information obtained from the following Web sites: *http://www.infreight.com* and *http://www.sitaindia.com/Packages/CityDistance.php.*

To value foreign brokerage and handling expenses, we relied on October 1999-September 2000 information reported in the public U.S. sales listing submitted by Essar Steel Ltd. in the antidumping investigation of *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value,* 67 FR 50406 (October 3, 2001). For international freight (*i.e.*, ocean freight), we used the reported expenses because Guangxi Hengxian used only a market-economy freight carrier and paid for those expenses in a market-economy currency (*see, e.g., Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 64 FR 9972, 9974 (March 1, 1999)).

Normal Value

A. Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. (*See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003).) None of the parties to this review has contested such treatment. Accordingly, we calculated NV in

accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India was among the countries comparable to the PRC in terms of overall economic development (*see* October 7, 2003, Memorandum from the Office of Policy to Irene Darzenta Tzafolias). In addition, based on publicly available information placed on the record (*e.g.*, world production data), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection (*see* Memorandum Re: 7th Antidumping Duty New Shipper Review on Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated July 22, 2004, for further discussion).

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by Guangxi Hengxian which produced the preserved mushrooms it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings, we revised the following data in Guangxi Hengxian's response: (1) The per-unit factors reported for labels, tape, glue, and water (used in the mushroom growing stage); (2) the per-unit factors reported for unskilled growing, harvesting, processing, and packing labor; (3) the per-unit factor reported for electricity; and (4) the supplier distances reported for straw, citric acid, cans, cartons, tape, and labels (*see* pages 3, 4, 24, and 27 of the verification report).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices (''WPIs'') published in the International Monetary Fund's *International* Financial Statistics (''*IFS*''). (*See* July 22, 2004, Memorandum Re: Factors Valuation For the Preliminary Results, from the Team Leader to the File, for a detailed explanation of the methodology used to calculate surrogate values.)

Guangxi Hengxian produced (rather than purchased) the fresh mushrooms which it used in the mushroom canning process during the POR. Therefore, we valued the inputs which this company used to produce the fresh mushrooms which were canned during the POR.

To value spawn, cow manure, and straw, we used an average price based on data contained in the 2002–2003 financial report of Flex Foods Ltd. (''Flex Foods'') and the 2002–2003 financial report of Agro Dutch Foods, Ltd. (''Agro Dutch'') (*i.e.*, two Indian producers of the subject merchandise).

Guangxi Hengxian purchased all of the cans which it used to sell preserved mushrooms to the U.S. market during the POR. Therefore, for tin cans we used can-size-specific purchase price data from the May 21, 2001 public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit, can-size-specific prices using the petitioner's methodology contained in its February 5, 2004 PAI submission.

Guangxi Hengxian reported that it resold mushroom scrap during the POR (*i.e.*, a by-product from its canned mushroom production). However, we did not make an offset deduction to the surrogate cost of production because we were unable to identify an appropriate surrogate value for this material (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China,* 64 FR 69723, 69728 (December 14, 1999)).

To value coal and tin plate scrap, we used February 2003-July 2003 average Indian import values downloaded from the *World Trade Atlas Trade Information System (Internet Version 4.3e)* (''*World Trade Atlas*''). We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

To value salt, we used an average import price based on February 2002–January 2003 data contained in the *World Trade Atlas* because we were unable to obtain a more current value.

To value citric acid and calcium carbonate, we used an average import price based on February 2003–July 2003 data contained in the *World Trade Atlas* and February 2003–July 2003 Indian domestic price data contained in *Chemical Weekly,* consistent with our past practice (*see Certain Preserved Mushrooms from the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 67 FR 46173 (July 12, 2002) and accompanying Decision Memorandum at Comment 7). For those prices obtained from *Chemical Weekly,* where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC. (*See* page 4 of the May 31, 2001, *Preliminary Results Valuation Memorandum for the Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China,* 66 FR 30695 (June 7, 2001) which has been placed on the record of this proceeding.) To value urea (*i.e.*, carbamide), we used an average price based on February 2003–July 2003 data contained in *World Trade Atlas* and *Chemical Weekly,* as well as data contained in Flex Foods' 2002–2003 financial report.

To value water, we used 1995–1996 and 1996–1997 Indian price data from the *Second Water Utilities Data Book.* Because this value was not contemporaneous with the POR, we adjusted it for inflation based on Indian WPIs published in the International Monetary Fund's *IFS.*

To value electricity, we used 2001 Indian price data from the International Energy Agency's (''IEA'') report, ''Electricity Prices for Industry,'' contained in the *2002 Key World Energy Statistics from the IEA.* Because this value was not contemporaneous with the POR, we adjusted it for inflation based on U.S. wholesale price indices published in the International Monetary Fund's *IFS.*

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value factory overhead and selling, general, and administrative (''SG&A'') expenses, we used the 2002–2003 financial data of Agro Dutch and the

2002–2003 financial data of Flex Foods, both Indian producers of the subject merchandise. To value profit, we used only the 2002–2003 financial data of Flex Foods because Agro Dutch experienced a loss during the above-mentioned period. Therefore, in accordance with the Department's practice, we have excluded the financial data of Agro Dutch from the surrogate profit calculation. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China,* 68 FR 10685 (March 6, 2003) and accompanying Decision Memorandum at Comment 1).

Guangxi Hengxian leased the farm land which it used to grow fresh mushrooms canned during the POR. Consistent with recent PRC case practice, we determined that the cost of land is an important component in the cost build-up of NV and is not specifically reflected in the surrogate financial ratios calculated from the financial statements of Agro Dutch and Flex Foods (*see Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* 69 FR 42654, 42666 (July 16, 2004) (''*Warmwater Shrimp*'')). Accordingly, for purposes of the preliminary results of this review, we applied a land-lease cost to our calculation of NV using the methodology established in the recently-completed preliminary results of new shipper review of the order on fresh garlic from the PRC covering the period November 1, 2002, through October 31, 2003 (*see Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 69 FR 40607 (July 6, 2004) (*Fresh Garlic*).

Specifically, to value land, we used cost data contained in the 2001 Punjab State Development Report administered by the Planning Commission of the Government of India (''Punjab Report''). We did not use the surrogate land value from a 1996 policy notification issued by the State of Rajasthan (in which the state government set an annual lease rent for cultivable wasteland) which was used in *Warmwater Shrimp* and *Fresh Garlic* because we found that the ''Punjab Report'' contains more relevant and contemporaneous information pertaining to the Indian land-lease market for agrarian farmland. Hence, the subject of the ''Punjab Report'' is clearly more similar to the type of land leased by the respondent during the POR. Further, the data contained within the ''Punjab Report'' is based on actual experience, whereas that contained within the 1996 policy notification was based on parameters that may not have been implemented or that may have since been amended.

Upon review of the record of this new shipper review, we found no information undermining the figure contained within the ''Punjab Report.'' As such, based on all available information, we determined that the figure contained within the ''Punjab Report'' serves as the most reliable basis for determining a surrogate value for calculating a cost of the farmland used to grow the subject merchandise.

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated by the petitioner and the respondent as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, *see* the *Preliminary Results Valuation Memorandum.*

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the April 2003–July 2003 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: *http://www.infreight.com* and *http://www.sitaindia.com/Packages/CityDistance.php.*

To value corrugated cartons, labels, tape, and glue, we used February 2003–July 2003 average import values from the *World Trade Atlas.*

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based, all or in part, on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

Preliminary Results of the Review

We preliminarily determine that the following margin exists during the period February 1, 2003, through July 31, 2003:

Manufacturer/producer/exporter	Margin percent
Guangxi Hengxian Pro-Light Foods, Inc.	0.00

We will disclose the calculations used in our analysis to the parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on September 28, 2004.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted no later than September 1, 2004. Rebuttal briefs, limited to issues raised in the case briefs, will be due no later than September 8, 2004. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue; and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of the review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after the date of issuance of the preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final

results of this review is above *de minimis*.

Cash Deposit Requirements

Upon completion of this review, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC produced and exported by Guangxi Hengxian that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from Guangxi Hengxian entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Guangxi Hengxian, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; (2) for subject merchandise exported by Guangxi Hengxian but not manufactured by Guangxi Hengxian, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise produced by Guangxi Hengxian but not exported by Guangxi Hengxian, the cash deposit rate will be the rate applicable to the exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.214.

Dated: July 22, 2004.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–17201 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 12, 2004.

ADDRESSES: Please submit nominations to Nancy Miles, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000. Nominations may also be submitted via fax to (301) 869–8972.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.nist.gov/director/vcat/vcat.htm.*

FOR FURTHER INFORMATION CONTACT: Nancy Miles, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000, telephone (301) 975–2300, fax (301) 869–8972; or via e-mail at *nancy.miles@nist.gov.*

SUPPLEMENTARY INFORMATION:

VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in

Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hour, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation in two-day meetings held each quarter, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: July 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–17100 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program (ATP) Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Advanced Technology Program Advisory Committee.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Advanced Technology Program Advisory Committee. NIST will consider nominations received in response to this notice for appointment to the Committee, in additional to nominations already received.

DATES: Please submit nominations on or before August 12, 2004.

ADDRESSES: Please submit nominations to Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700. Nominations may also be submitted via fax to (301) 869–1150.

Additional information regarding the Committee, including its charter and current membership list may be found on its electronic home page at: *http://www.atp.nist.gov/atp/adv_com/ac_menu.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700; telephone (301) 975–4644, fax (301) 869–1150; or via e-mail at *marc.stanley@nist.gov.*

SUPPLEMENTARY INFORMATION: The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs, plans, and policies.

The Committee will consist of not fewer than six nor more than twelve members appointed by the Director of NIST and its membership will be balanced to reflect the wide diversity of technical disciplines and industrial sectors represented in ATP projects.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Subpart 101–6.10.

Dated: July 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–17102 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 12, 2004.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via fax to (301) 948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.quality.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone (301) 975–2361; fax (301) 948–3716; or via e-mail at *harry.hertz@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: July 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–17098 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 12, 2004.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via fax to (301) 948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.quality.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone (301) 975–2361; fax (301) 948–3716; or via e-mail at *harry.hertz@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of at least nine, and not more than twelve, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business.

No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Judges Panel will meet four times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries, education, and health care as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: July 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–17101 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board (MEPNAB)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Manufacturing Extension Partnership National Advisory Board.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Manufacturing Extension Partnership National Advisory Board. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before August 12, 2004.

ADDRESSES: Please submit nominations to Ms. Carrie Hines, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via fax to (301) 963–6556.

Additional information regarding the Board, including its charter and current membership list may be found on its electronic home page at: *http://www.mep.nist.gov/index-nist.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Hines, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone (301) 975–3360, fax (301) 963–6556; or via e-mail at *carrie.hines@nist.gov.*

SUPPLEMENTARY INFORMATION: The Board will advise the Director of the National Institute of Standards and Technology (NIST) on MEP programs, plans, and policies.

The Board will consist of nine individuals appointed by the Director of the National Institute of Standards and Technology (NIST) under the advisement of the Director of MEP. Membership on the Board shall be balanced to represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Subpart 101–6.10.

Dated: July 18, 2004.

Hratch G. Semerjian,

Action Director.

[FR Doc. 04–17099 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program Workshop for Laboratories Interested in the Help America Vote Act

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Workshop notice.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP) will hold a public workshop on August 17, 2004, at the National Institute of Standards and Technology (NIST) in Gaithersburg, MD. The purpose of the workshop is the exchange of information among NVLAP, laboratories interested in seeking accreditation for the testing of voting systems under the Help America Vote Act, and other interested parties. The results of the workshop discussions will be used in the development of the NVLAP Voting Systems Laboratory Accreditation Program (Voting LAP).

There is no charge for the workshop but pre-registration is required. A registration form can be found at *http://vote.nist.gov.*

ADDRESSES: National Voluntary Laboratory Accreditation Program, 100 Bureau Drive/MS 2140, Gaithersburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: Jeffrey Horlick, Program Manager, NVLAP, 100 Bureau Drive/MS 2140,

Gaithersburg, MD 20899–2140, phone: (301) 975–4016 or e-mail *nvlap.voting@nist.gov.* Information regarding NVLAP and the accreditation process can also be viewed at *http://www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION:

Background

The Help America Vote Act (HAVA) of 2002 (Pub. L. 107–252) was signed into law by President Bush on October 29, 2002. Section 231 of the HAVA requires the Director of NIST to provide for the accreditation of laboratories that conduct testing on the hardware and software of voting systems. In response to the HAVA, the National Voluntary Laboratory Accreditation Program (NVLAP) is establishing a program for laboratories that test voting systems.

NVLAP accreditation criteria is established in accordance with the Code of Federal Regulations (CFR, Title 15, Part 285), NVLAP Procedures and General Requirements. Laboratories conducting this testing will be required to meet ISO/IEC International Standard 17025, General requirements for the competence of testing and calibration laboratories, the 2002 Voting System Standards, and any other criteria deemed necessary by the U.S. Election Assistance Commission (EAC). For each new laboratory accreditation program (LAP), NVLAP works with the affected testing community to develop program-specific technical requirements. These requirements tailor the general accreditation criteria referenced in Sections 4 and 5 of NIST Handbook 150 to the tests and services in the new LAP. Program-specific requirements include the details of the Scope of Accreditation, test and measurement equipment, personnel requirements, validation of test methods, and reporting of test results.

PRA Clearance

This action contains a collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995. Collection activities for the National Voluntary Laboratory Accreditation Program are currently approved by the Office of Management and Budget under control number 0693–0003. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

Executive Order 12866

This action has been determined to be not significant under Executive Order 12866.

Dated: July 22, 2004.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. 04–17103 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032404G]

Endangered Species; File No. 1444

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service, Maryland Fisheries Resource Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401 (Michael Mangold, principal investigator) has been issued a permit to take shortnose sturgeon (Acipenser brevirosturm) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 9, 2003, notice was published in the **Federal Register**(68 FR 53140) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

USFWS will be authorized to sample and track shortnose sturgeon in the Potomac River. Annually, up to 50 fish will be taken via gill nets, measured, weighed, PIT tagged, tissue sampled, and the fish subsequently released. A subset of 20 fish annually will also be T-bar and CART tagged and have a temperature/depth datalogger attached. Additionally, the researchers will use D-traps to collect up to 2500 shortnose sturgeon eggs annually. This permit will be authorized for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 22, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–17185 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.cbp.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for the

recrediting of unused carryforward applied in 2003 and for carryforward from new 2005 quotas. The U.S.-Vietnam Bilateral Textile Agreement was extended through December 31, 2005, on July 22, 2004. A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). *Also see* 68 FR 69673, published on December 15, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2004, and extends through December 31, 2004.

Effective on July 28, 2004, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	181,411 kilograms.
301	616,444 kilograms.
332	251,589 dozen pairs.
333	26,346 dozen.
334/335	747,379 dozen.
338/339	15,618,498 dozen.
340/640	2,176,849 dozen.
341/641	912,680 dozen.
342/642	625,770 dozen.
345	263,413 dozen.
347/348	7,927,471 dozen.
351/651	469,339 dozen
352/652	1,990,463 dozen
359–C/659–C [2]	311,624 kilograms.
359–S/659–S [3]	575,106 kilograms.
434	12,687 dozen.
435	43,215 dozen.
440	2,703 dozen.
447	56,222 dozen.
448	34,598 dozen.
620	3,705,052 square meters.
632	160,820 dozen pairs.
638/639	1,382,721 dozen.
645/646	162,901 dozen.
647/648	2,248,471 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 359–C:only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020,6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–17154 Filed 7–27–04; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the May 14, 2004, **Federal Register** (69 FR 26809), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) to announce the agency's intention to seek an extension of approval of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads. 16 CFR Part 1632.

The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act. 15 U.S.C. 1192. An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattress or mattress pads which they produce.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated Number of respondents: 751.

Estimated number of hours for all respondents: 19,526 per year.

Estimated cost of collection for all respondents: $477,996.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by August 27, 2004 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for an extension of an information collection requirement are available from Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671, or by e-mail to *lglatz@cpsc.gov*.

Dated: July 21, 2004.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–17109 Filed 7–27–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to, U.S. Army Corps of Engineers, 441 G Street, NW., Room 3D72, Washington, DC 20314–1000, or by e-mail to *Ellen.M.Cummings@usace.army.mil.* Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 325–8433.

Title: Estuary Habitat Restoration Program.

Needs and Uses: The Corps will solicit applications for estuary habitat restoration projects under Section 104 of the Estuary Restoration Act 2000. Requested information will include proposed project location, types and acreage of habitat to be restored, and project description including restoration techniques, project goals and expected benefits, monitoring plan, costs, and other supporting information. Project applications may be submitted either electronically or in paper format.

Affected Public: State; Local or Tribal Government.

Annual Burden Hours: 1,000.

Number of Respondents: 100.

Responses Per Respondent: 1.

Average Burden Per Response: 10 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Information will be collected by voluntary submission of estuary habitat restoration project via e-mail, or paper submissions that may be accomplished by computer disk by regular mail or hand delivery. Supplemental information may also be collected via phone interviews.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–17164 Filed 7–27–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Extension of Project Period and Waiver for the Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension and waiver.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver will enable the currently funded Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System to receive funding from August 31, 2004 until August 31, 2005.

DATES: We must receive your comments on or before August 12, 2004.

ADDRESSES: Address all comments concerning this proposal to Renee Bradley, U.S. Department of Education, 400 Maryland Avenue, SW., room 4105, Potomac Center Plaza, Washington, DC 20202–2641. Telephone: (202) 245–7277 or via Internet: *renee.bradley@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Renee Bradley, Telephone: (202) 245–7277.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this extension of project period and waiver in room 4105, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background: On March 3, 1999, the Department published a notice in the **Federal Register** (64 FR 10352) inviting applications for a new award for a Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System (Center) for fiscal year (FY) 1999. Based on that notice, the Department made one award for a period of 60 months to the University of Maryland to establish and operate the Center to provide guidance and assistance to States, schools, justice programs, families, and communities in designing, implementing, and evaluating comprehensive educational programs, based on research validated

practices, for students with disabilities at risk of involvement or involved in the juvenile justice system. The Center focuses on three broad areas: (1) Prevention programs, (2) educational programs, and (3) reintegration or transition programs. The Center addresses these three areas through research, training, and technical assistance and dissemination. The Department is seeking additional support for a competition to be held in FY 2005, which would continue the work of the Center. However, the current grant period for the Center ends on August 31, 2004.

In order to ensure that the work of the Center will continue until a new award can be made, the Secretary proposes to waive 34 CFR 75.250 and 75.261(a) and proposes to issue a continuation award to the existing grantee for an additional twelve-month period.

The Center will continue dissemination and technical assistance activities including:

(a) Preparation and dissemination of information materials designed to increase awareness of and use of research validated practices to a variety of audiences (*e.g.*, educators, justice personnel, mental health personnel, judges, policymakers, families, and other service providers).

(b) Providing for information exchanges between researchers and practitioners who direct model programs and those seeking to design or implement model programs.

The Center will continue training activities including:

Funding at least three graduate students who have concentrations in special education or criminal justice to work as project research assistants for the Center. These students will assist with project facilitation and the Center's research and evaluation of programs.

The Center will also complete additional research activities as appropriate.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entity that would be affected is the Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System.

Paperwork Reduction Act of 1995

This proposed extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

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: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: July 21, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–17104 Filed 7–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Research Center for Career and Technical Education and National Dissemination Center for Career and Technical Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of extension of project period and waivers.

SUMMARY: We hereby waive the requirements in 34 CFR 75.261(c)(2) and 75.250 as they apply to the projects funded in fiscal year (FY) 1999 under the National Research Centers authority of section 114(c)(5) and (6)(A) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Perkins Act). We waive these requirements in order to be able to extend the project periods for the two current grants awarded under the FY 1999 National Research Centers (National Center or Centers) competition.

The waivers mean that: (1) Current grants may be continued at least through 2005 (and possibly for subsequent years, depending on the availability of appropriations for the National Centers in those years under the current statutory authority for the National Centers), instead of ending in 2004, and (2) we will not announce a new competition or make new awards in FY 2004.

DATES: This notice of extension of project period and waivers is effective July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., room 11108, Potomac Center Plaza, Washington, DC 20202–7120. Telephone (202) 245–7803.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice of extension of project period and waivers in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On April 27, 2004, we published a notice in the **Federal Register** (69 FR 22772) proposing an extension of project period and waivers to continue the five-year cooperative agreements we entered into in FY 1999 with the University of Minnesota for the National Research Center for Career and Technical Education and with The Ohio State University for the National Dissemination Center for Career and Technical Education. These cooperative agreements are now in their fifth year, during which the Department typically would hold a competition for new National Centers. However, the Perkins Act, which includes authorization for the National Centers, expired at the end of FY 2003. Although the Perkins Act was automatically extended for one year under section 422 of the General Education Provisions Act (20 U.S.C. 1226a), with the uncertainties presented by the absence of authorizing legislation for the National Centers beyond 2004, we proposed not to hold a competition in FY 2004 for projects that might then operate for just one year, as grantees would not have time to establish and operate effective projects. We stated in the **Federal Register** notice that we were reluctant to announce a competition under which eligible entities would proceed through the application preparation and submission process while lacking critical information about the future of the program, and that we did not think that it would be in the public interest to do so in this case.

Accordingly, we proposed to review requests for continuation awards from

the University of Minnesota (National Research Center for Career and Technical Education) and The Ohio State University (National Dissemination Center for Career and Technical Education) and extend the currently funded projects, rather than hold a new competition in FY 2004.

Public Comment

In response to the Secretary's invitation in the notice of proposed extension of project period and waivers, 17 parties submitted comments, all of which supported our proposed actions.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). During the 30-day public comment period we did not receive any comments objecting to the proposed extension of project period and waivers. For this reason, and in order to make timely continuation grants to the entities affected, the Secretary has determined that a delayed effective date is not required.

Waivers of Education Department General Administrative Regulations

In order to provide for continuation awards after the fifth year of the National Centers' cooperative agreements, we must waive the requirements in: (1) 34 CFR 75.250, which provides that the Secretary may approve a project period of up to 60 months, and (2) 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

These waivers mean that: (1) The project period for the two National Centers grantees that received grants under the FY 1999 competition could be extended to December 31, 2005, instead of ending in December 2004, (2) continuation awards could be made for any additional year or years for which Congress appropriates funds under the existing statutory authority, (3) we will not announce a new competition in FY 2004 or make new awards in FY 2004, (4) the notice inviting applications for new awards for FY 1999 under this program, published in the **Federal Register** on May 19, 1999 (64 FR 27410) will govern any projects we extend under this notice, and (5) the approved applications submitted by the two current grantees will govern any continuation awards they receive.

Continuation of the Current Grantee Awards

We will make continuation awards for the National Centers using cooperative agreements. Therefore, we will continue to expect the Department's interaction with the National Centers to be characterized by continuing and regular participation in the project, unusually close collaboration with the grantees, and intervention or direct operational involvement in the review and approval of project activities.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, and Grant Performance Reports submitted by grantees, and on the regulations in 34 CFR 75.253.

Consistent with 34 CFR 75.253, we will award continuation grants if we determine, based on information provided by each grantee, that each grantee is making substantial progress performing approved National Center grant activities.

We do not interpret these waivers as exempting current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 1999 funds awarded to the grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that the extension of project period and waivers and the activities required to support additional years of funding will not have a significant economic impact on a substantial number of small entities. The two 1999 grantees currently receiving Federal funds are not ''small entities,'' as defined in the Regulatory Flexibility Act.

The small entities that are likely to be affected by this extension of project period and waivers are the following entities that are eligible for an award under the National Centers authority:

(1) Institutions of higher education.

(2) Public or private nonprofit organizations or agencies.

The extension of project period and waivers will not have a significant economic impact on these small entities.

Instructions for Requesting a Continuation Award

Generally, in order to receive a continuation grant, a grantee must submit an annual program narrative that describes the activities it intends to carry out during the year of the continuation award. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application approved under the FY 1999 National Research Centers competition and related cooperative agreements. A grantee must also submit a budget and budget narrative for each year for which it requests a continuation award. (34 CFR 75.253(c)(2)). A grantee should request a continuation award at least 60 days before its current grant expires. A grantee may request a continuation award for any year for which Congress appropriates funds under the current statutory authority.

Amount of New Awards Under Continuation Grant

The actual amount of any continuation award depends on factors such as: (1) The grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3)).

Paperwork Reduction Act of 1995

This notice of extension of project period and waivers does not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the notice of proposed extension of project period and waivers, published in the **Federal Register** on April 27, 2004 (69 FR 22772), we requested comments on whether the proposed extension of project period and waivers would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the notice of proposed extension of project period and waivers and our own review, we have determined that this final notice of extension of project period and waivers does not require transmission of information that any other agency or

authority of the United States gathers or makes available.

Electronic Access to This Document

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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.

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(Catalog of Federal Domestic Assistance Number 84.051 National Research Centers)

Program Authority: 20 U.S.C. 2324(c)(5) and (6)(A).

Dated: July 22, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–17173 Filed 7–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before September 27, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Joseph Konrade, U.S. Department of Energy, EE–2K/Forestal Building, 1000 Independence Ave. SW., Washington, DC 20585 or by fax at 202–586–1233 or by e-mail at *joseph.konrade@ee.doe.gov* and to Susan L. Frey, Director, Records Management Division, IM–11/Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290 or by fax, 301–903–9061 or by e-mail *susan.frey@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joseph Konrade at the address listed above.

SUPPLEMENTARY INFORMATION: This package contains:

(1) *OMB No.:* 1910–New.

(2) *Package Title:* State Energy Program.

(3) *Type of Review:* New.

(4) *Purpose:* The State Energy Program purpose is to promote the conservation of energy, to reduce the rate of growth of energy demand and to reduce dependence on imported oil through the development and implementation of a comprehensive State Energy Program and the provision of Federal financial and technical assistance to States in support of such program. The State Plan Information Worksheet Form is designed to standardize the State Plan Application in electronic format. Information collected will be stored in a database that will provide program specific information for Congressional, budgetary, and public inquiry.

(5) *Respondents:* Fifty Six States and Territories.

(6) *Estimated Number of Burden Hours:* Burden is estimated at nine hours per state/territory totaling 504 hours.

Statutory Authority: This collection of information is in accordance with 10 CFR part 420.

Issued in Washington, DC, on July 22, 2004.

Susan L. Frey,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–17160 Filed 7–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice has been issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 266,300 kg of U.S.-origin natural uranium hexafluoride, 180,000 kg of which is uranium, from Cameco Corporation, Port Hope, Ontario, Canada, to Urenco (Deutschland GmbH), Gronau, Germany. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Urenco for toll enrichment. Upon completion of the enrichment, Urenco will transfer the material to Duke Energy Corporation for use as reactor fuel. Cameco Corp. originally obtained the uranium hexafluoride under the UF6 Fee Implementing Contract Component.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Kurt Siemon,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 04–17161 Filed 7–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–378–000]

ANR Pipeline Company; Notice Of Application

July 21, 2004.

Take notice that on July 12, 2004, ANR Pipeline Company (ANR), 9 E. Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP04–378–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Commission, for authorization to abandon, due to its chronic poor performance, the Freeman 186 (Freeman 186) natural gas storage well and related facilities, located within the Lincoln-Freeman Storage Field, in Clare County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Dawn McGuire, Counsel, El Paso Corporation, 9 E. Greenway Plaza, Houston, Texas 77046, at (832) 676–5503 or by fax at (832) 676–2251 or Kathy Cash, Certificates & Regulatory Compliance, ANR Pipeline Company, 9 E. Greenway Plaza, Houston, Texas 77046 at (832) 676–3102 or by fax at (832) 676–2251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1664 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP04–377–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

July 21, 2004.

On July 12, 2004, CenterPoint Energy Gas Transmission Company (CenterPoint), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–377–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157, Subpart A of the Commission's Regulations, for any and all authorizations to construct, own and operate mainline compression facilities and appurtenances thereto, located in Arkansas. Specifically, CenterPoint proposes to construct, own and operate 6,380 horsepower of new compression by installing one additional compressor unit and appurtenant facilities at its Round Mountain Compressor Station located on CenterPoint's Line J in Conway County, Arkansas, and one additional compressor unit and appurtenant facilities at its Helena Compressor Station located on CenterPoint's Line T in Phillips County, Arkansas. Total construction costs are estimated to be approximately $9.8 million. CenterPoint states that it seeks authorization to provide year round firm service to a local distribution customer, Arkansas Western Gas Company, in northwestern Arkansas and further enhance the operational flexibility and efficiency of its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory Affairs, CenterPoint Energy Gas Transmission Company, P. O. Box 21734, Shreveport, Louisiana 71151; or call (318) 429–2804, fax (318) 429–3133.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: August 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1676 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–500–004]

Chandeleur Pipe Line Company; Notice of Negotiated Rate

July 21, 2004.

Take notice that on July 15, 2004, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 73, to become effective on July 1, 2004.

Chandeleur states that the proposed change would update Chandeleur's tariff to reflect its current conditions regarding contracts containing Negotiated Rates and requests waiver of Commission regulation in order to allow the sheet to become effective July 1, 2004.

Chandeleur further states that the principal reasons for the tariff change is that effective with the month of July, 2004, Chandeleur implemented certain Negotiated Rate Agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1666 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–404–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2004.

Take notice that on July 19, 2004, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 2004:

1st Rev Ninth Revised Sheet No. 5
1st Rev Twelfth Revised Sheet No. 6
1st Rev Eighth Revised Sheet No. 10
1st Rev Third Revised Sheet No. 286
First Revised Sheet No. 295
First Revised Sheet No. 296
First Revised Sheet No. 297
First Revised Sheet No. 298

Equitrans states that the purpose of this filing is to reflect the elimination of the GRI surcharge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1674 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–97–004]

Equitrans, L.P.; Notice of Compliance Filing

July 21, 2004.

Take notice that on July 15, 2004, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 213,with an effective date of July 1, 2004.

Equitrans states that this tariff sheet is being submitted in compliance with the Commission's June 30, 2004 order in the captioned docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1675 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–005]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

July 21, 2004.

Take notice that on July 16, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Substitute Original Sheet No. 4C, to be effective on July 1, 2004.

Iroquois states that the filing is being made to comply with the Commission's July 1 Order and clarify which surcharge rates on Sheet No. 4A apply to Eastchester secondary access service and which rates apply to Non-Eastchester shippers. Iroquois further states that it was also required to submit additional language clarifying the footnote and that the Third Substitute Original Sheet No. 4C clarifies the applicability of the Sheet 4A surcharges.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1667 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–402–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2004.

Take notice that on July 16, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective August 1, 2004:

Fifth Revised Sheet No. 5
Fourth Revised Sheet No. 200
First Revised Sheet No. 248
Second Revised Sheet No. 249
Third Revised Sheet No. 250
Fifth Revised Sheet No. 270
Fourth Revised Sheet No. 410
Fourth Revised Sheet No. 415

Midwestern states that the purpose of the filing is to remove all references to the Gas Research Institute (GRI) and related surcharges from Midwestern's Tariff, to reflect the elimination of the GRI surcharges in accordance with the terms and conditions of the GRI Settlement Agreement approved by the Commission in 1998.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1672 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–179–004]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 21, 2004.

Take notice that on July 1, 2004, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a non-conforming Service Agreement Nos. F10702, F10703, F10704, F10705, and F10706 between National Fuel and Fortuna Energy Inc. National Fuel states that the filing is being made to comply with the Commission's order issued on March 31, 2004 in Docket No. RP04–179–000.

National Fuel states that copies of the filing are being mailed to all of National Fuel's customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on July 28, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1668 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–400–000]

North Baja Pipeline, LLC; Notice of Proposed Changes; in FERC Gas Tariff

July 21, 2004.

Take notice that on July 15, 2004, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 197, to be effective July 8, 2004.

NBP states that this sheet is being submitted to update a reference to NBP's Internet Web site contained in its Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1670 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–399–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2004.

Take notice that on July 14, 2004, Viking Gas Transmission Company (Viking) tendered for filing to be part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective August 13, 2004:

First Revised Sheet No. 39A
Second Revised Sheet No. 87I
Original Sheet No. 87J

Viking is requesting to add section 33 to the General Terms and Conditions of its Tariff entitled ''Conditions for Firm Transportation Quantity Reduction'' which is designed to provide conformity between its Tariff and certain language existing in certain firm transportation agreements with local distribution companies. Viking also is submitting two potentially non-conforming

agreements for Commission review which contain a different prior written notice period than that proposed in the above-referenced section 33.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1669 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–401–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2004.

Take notice that on July 16, 2004, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to be effective August 15, 2004:

Tenth Revised Sheet No. 5
Third Revised Sheet No. 5H.01
Eighth Revised Sheet No. 5A
Fourth Revised Sheet No. 5I
Eighth Revised Sheet No.5B
Eighteenth Revised Sheet No. 39
Seventh Revised Sheet No.5C
Sixth Revised Sheet No. 63
Eighth Revised Sheet No. 5D
Sixth Revised Sheet No. 65
Eighth Revised Sheet No. 5E
Fifth Revised Sheet No. 66
Eighth Revised Sheet No. 5F
Eighth Revised Sheet No. 90
Seventh Revised Sheet No. 5G
Third Revised Sheet No. 100
Eleventh Revised Sheet No. 5H

Viking states that the purpose of the filing is to remove all references to the Gas Research Institute (GRI) and related surcharges from Viking's Tariff, to reflect the elimination of the GRI surcharges in accordance with the terms and conditions of the GRI Settlement Agreement approved by the Commission in 1998. Viking also is making minor housekeeping changes to its Statement of Rates as a result of the deletion of the GRI surcharge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1671 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–403–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 21, 2004.

Take notice that on July 16, 2004, West Texas Gas, Inc. (WTG) submitted for filing, pursuant to section 19 of the General Terms and Conditions of its FERC Gas Tariff its annual purchased gas cost reconciliation report for the period ending April 30, 2004. WTG states that under section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. WTG, according to the report indicates that WTG overcollected its actual costs by $132,651 during the reporting period.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: July 28, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1673 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–122–000, et al.]

Reliant Energy Aurora, LP, et al.; Electric Rate and Corporate Filings

June 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Aurora, LP; Reliant Energy Bighorn, LLC; Reliant Energy Choctaw County, LLC; Reliant Energy Electric Solutions, LLC; Reliant Energy Hunterstown, LLC; Reliant Energy Indian River, LLC; Reliant Energy Maryland Holdings, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy New Jersey Holdings, LLC; Reliant Energy Osceola, LLC; Reliant Energy Seward, LLC; Reliant Energy Shelby County, LP; Reliant Energy Solutions East, LLC;

[Docket No. EC04–122–000]

Take notice that on June 21, 2004, Reliant Energy Aurora, LP, Reliant Energy Bighorn, LLC, Reliant Energy Choctaw County, LLC, Reliant Energy Electric Solutions, LLC, Reliant Energy Hunterstown, LLC, Reliant Energy Indian River, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Osceola, LLC, Reliant Energy Seward, LLC, Reliant Energy Shelby County, LP, and Reliant Energy Solutions East, LLC (collectively, Applicants) have submitted an application pursuant to section 203 of the Federal Power Act, seeking authorization for the disposition of the Applicants' jurisdictional assets that would result from a proposed restructuring of Reliant Energy Retail Holdings, LLC (RERH) and Reliant Energy Power Generation, Inc. (REPG).

The Applicants have requested expedited consideration of their Application and certain waivers.

Comment Date: July 12, 2004.

2. Reliant Energy Wholesale Generation, LLC

[Docket No. EG04–77–000]

Take notice that on June 21, 2004, Reliant Energy Wholesale Generation, LLC (REWG) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act and 18 CFR 365 (2003) regulations of the Federal Energy Regulatory Commission.

REWG states that it is a limited liability company organized and existing under the laws of the State of Delaware that will acquire, own and/or operate various electricity generation facilities located across the United States. REWG further states that it will be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating all or part of one or more eligible facilities, and selling electric energy at wholesale.

Comment Date: July 12, 2004.

3. Boralex Stratton Inc.; Boralex Livermore Falls, Inc.; Boralex Ft. Fairfield Inc.; Boralex Ashland Inc.

[Docket Nos. ER98–4652–002, ER01–2569–002, ER02–1175–001, ER01–2568–002]

Take notice that on June 21, 2004, Boralex Industries Inc., on behalf of its subsidiaries Boralex Stratton Inc., Boralex Livermore Falls Inc., Boralex Ft. Fairfield Inc., and Boralex Ashland Inc., a triennial review compliance filing.

Comment Date: July 12, 2004.

4. California Independent System Operator Corporation

[Docket No. ER04–938–000]

Take notice that on June 18, 2004, the California Independent System Operator Corporation (ISO) tendered for filing an amendment to the ISO Tariff (Amendment No. 61), for acceptance by the Commission. The ISO states that the purpose of Amendment No. 61 is to clarify how the decremental reference price is calculated, how resources are shut off according to that price to manage Intra-Zonal Congestion, and how resources dispatched according to that price are settled. The ISO is requesting an effective date of August 18, 2004.

The ISO states that this filing has been served upon the Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Agreements under the ISO Tariff, and all parties listed on the official service list for Docket No. ER03–683.

Comment Date: July 9, 2004.

5. Georgia Power Company

[Docket No. ER04–939–000]

Take notice that on June 18, 2004, Georgia Power Company (Georgia Power) submitted for filing a proposed amendment to Article 18 of the Revised and Restated Coordination Services Agreement Between and Among Georgia Power Company, Oglethorpe Power Corporation, and Georgia System Operation Corporation. Georgia Power requests an effective date of August 17, 2004.

Comment Date: July 9, 2004.

6. Indiana Michigan Power Company

[Docket No. ER04–941–000]

Take notice that on June 21, 2004, Indiana Michigan Power Company (I&M) tendered for filing with the Commission a Notice of Cancellation for I&M Service Agreement No. 2 under

FERC Electric Tariff CO–OP 1 (I&M Electric Tariff No. 6), which became effective July 29, 1982. I&M requests an effective date as of May 1, 2004. I&M also requests that it be designated as First Revised Service Agreement No. 2.

I&M states that a copy of its filing was served upon the Indiana Utility Regulatory Commission and Hoosier Energy Rural Electric Cooperative, Inc.

Comment Date: July 12, 2004.

7. Olde Towne Energy Associates, LLC.

[Docket No. ER04–942–000]

Take notice that on June 21, 2004, Olde Towne Energy Associates, LLC., a Minnesota limited liability company (OTEA), submitted for filing for acceptance of OTEA Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. OTEA states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. OTEA further states that it is not in the business of generating or transmitting electric power. OTEA requests an effective date of June 28, 2004

Comment Date: July 12, 2004.

8. New York Independent System Operator, Inc.

[Docket No. ER04–943–000]

Take notice that on June 21, 2004, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners filed a joint filing to eliminate export charges on exports to the New England Control Area.

The NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: July 12, 2004.

9. Reliant Energy Wholesale Generation, LLC

[Docket No. ER04–944–000]

Take notice that on June 21, 2004, Reliant Energy Wholesale Generation, LLC (REWG) submitted for filing an application requesting acceptance of REWG's FERC Electric Tariff, Original Volume No. 1; approval of certain blanket authorizations; and waiver of certain Commission's Regulations.

Comment Date: July 12, 2004.

10. Reliant Energy Solutions West, LLC

[Docket No. ER04–945–000]

Take notice that on June 21, 2004, Reliant Energy Solutions West, LLC (Solutions West) submitted for filing a Notice of Cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its FERC Electric Tariff, Original Volume No. 1. Solutions West requests an effective date of June 21, 2004.

Comment Date: July 12, 2004.

11. Reliant Energy Desert Basin, LLC

[Docket No. ER04–946–000]

Take notice that on June 21, 2004, Reliant Energy Desert Basin, LLC (Desert Basin) submitted for filing a Notice of Cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its FERC Electric Tariff, Original Volume No. 1, and Service Agreement No. 1 under that tariff. Desert Basin requests an effective date of June 21, 2004.

Desert Basin states that it has served copies on Reliant Energy Services, Inc., the customer under the service agreement.

Comment Date: July 12, 2004.

12. Indianapolis Power & Light Company

[Docket No. ES04–38–000]

Take notice that on June 15, 2004, Indianapolis Power & Light Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority under section 204 of the Federal Power Act, to issue, from time to time, not to exceed $500 million of short-term debt instruments from the date of the Order, through July 29, 2006, and which will have maturity dates of one year or less from the date of issuance.

Comment Date: July 22, 2004.

13. Fong Wan

[Docket No. ID–4066–000]

Take notice that on June 4, 2004, Fong Wan submitted to the Commission an Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act and Part 45 of the Commission's Regulations.

Comment Date: July 6, 2004.

14. El Paso Corporation

[Docket No. TS04–267–000]

Take notice that on June 7, 2004, El Paso Corporation (El Paso) filed a petition for a declaratory order holding that, following a planned merger, neither Enterprise Products Partners L.P., Enterprise Products GP, LLC, nor any subsidiaries or affiliates of either of those companies will be Energy Affiliates of El Paso or any of its regulated Transmission Provider affiliates under the Order No. 2004 Standards of Conduct.

Comment Date: July 23, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1661 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1413–032 Idaho]

Fall River Rural Electric Cooperative, Inc.; Notice of Availability of Environmental Assessment

July 2, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for new license for the continued operation of the Buffalo River Hydroelectric Project, located on the

Buffalo River near its confluence with the Henry's Fork River in Fremont County, Idaho, and has prepared an Environmental Assessment (EA) for the project. The project occupies about 9.8 acres of land within the Targhee National Forest, administered by the U.S. Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1413–032 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1656 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12187–000]

Price Dam Partnership, LTD; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 21, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12187–000.

c. *Date filed:* June 3, 2002.

d. *Applicant:* Price Dam Partnership, LTD.

e. *Name of Project:* Price Dam Hydroelectric Project.

f. *Location:* On the Mississippi River, in the City of Alton, Wood River Township, Madison County, Illinois. The proposed project would be constructed on the U.S. Corps of Engineers (Corps) Melvin Price Locks & Dam and would occupy 7.8 acres of federal lands (including six of nine existing gate bays in the dam and a portion of the Illinois shoreline for the construction of the proposed transmission line).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Price; Price Dam Partnership LTD; P.O. Box 5550; Aiken, SC 29804–5550; (803) 642–5581.

i. *FERC Contact:* Lee Emery, (202) 502–8379, or *lee.emery@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please indicate the project number (P–12187) on any comments or motions filed.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed project would use the U.S. Army Corps of Engineers' Melvin Price Locks & Dam and Reservoir, and would consist of the following new facilities: (1) 192 individual, turbine/generator units grouped in six moveable steel modules with each module containing 32 bulb-type generators having a capacity of 550 kilowatts; (2) six air-operated spillway gates containing an inflatable rubber bladder; (3) a mobile, 1,000 metric ton crane; (4) a fish bypass on each module; (5) a trashrack assembly with a two-inch clear spacing between the bars and a crane-operated trash rake; (6) a new 0.8-mile-long, 138-kilovolt transmission line; and (7) appurtenant facilities. The average annual generation is estimated to be 319,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant.

Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1665 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.: RP03–398–000 and RP04–155–000 (Consolidated)]

Northern Natural Gas Company; Notice of Informal Settlement Conference

July 2, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (EST) on Wednesday, July 14, 2004 and continuing if necessary at 9:30 a.m. on Thursday, July 15, 2004 in a room to be announced later at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kevin Frank (202) 502–8065 *kevin.frank@ferc.gov*, Gopal Swaminathan (202) 502–6132 *gopal.swaminathan@ferc.gov*, or William Collins (202) 502–8248 *william.collins@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1663 Filed 7–27–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0220; FRL–7370–6]

2,4-DB (4-2,4-dichlorophenoxy) butyric acid and 2,4-DB-DMAS (Dimethylamine 4-2,4-dichlorophenoxy) butyrate; Availability of Risk Assessments (Interim Process)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. These risk assessments are the human health and environmental fate and effects risk assessments and related documents for 2,4-DB and 2,4-DB-DMAS. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket identification (ID) number OPP–2004–0220, must be received on or before September 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mika Hunter, Special Review and Reregistration Division (7508–C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0041; e-mail address: *hunter.mika@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for 2,4-DB and 2,4-DB-DMAS, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0220. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information

claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0220. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0220. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0220.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0220. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessment and other related documents for 2,4-DB and 2,4-DB-DMAS, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the 2,4-DB and 2,4-DB-DMAS RED will be made available for public comment.

EPA and the United States Department of Agriculture have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as 2,4-DB and 2,4-DB-DMAS, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2001 and early 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal Government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for 2,4-DB and 2,4-DB-DMAS. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The 2,4-DB and 2,4-DB-DMAS risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 22, 2004

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–17187 Filed 7–27–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0188; FRL–7366–3]

Abamectin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0188, must be received on or before August 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS code 111)
- Crop production (NAICS code 112)
- Animal production (NAICS code 311)
- Food manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0188. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Note: Due to renumbering of buildings in area, the street address will change to 1801 South Bell St., as of June 26, 2004. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0188. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0188. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001, Attention: Docket ID number OPP–2004–0188.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0188. Note: Due to renumbering of buildings in area, the street address will change to 1801 South Bell St., as of June 26, 2004. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also, provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on the pesticide petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioners' summary of the pesticide petitions, PP 2H5642 and PP 3E6557, is printed below as required by FFDCA section 408(d)(3). The summary of the pesticide petitions was prepared by Whitmire Micro-Gen Research Laboratories, Inc. and Interregional Research Project Number 4 and represents the view of the pesticide petitioners. The summary of the pesticide petitions announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Whitmire Micro-Gen Research Laboratories, Inc.

Interregional Research Project Number 4

PP 2H5642 and PP 3E6557

EPA has received a pesticide petition (PP 2H5642) from Whitmire Micro-Gen Research Laboratories, Inc., 3568 Tree Court Industrial Boulevard, St. Louis, MO 63122. EPA has also received a pesticide petition (PP 3E6557) from Interregional Research Project Number 4, 681 U.S. Hwy. #1 South, North Brunswick, NJ 08902–3390. These pesticide petitions propose, pursuant to FFDCA section 408(d), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of abamectin (avermectin B_1) and/or its delta 8,9-isomer as follows:

1. PP 2H5642, which was submitted by Whitmire Micro-Gen Research Laboratories, Inc., proposed establishment of a tolerance for food products in food handling establishments at 0.001 parts per million (ppm).

2. PP 3E6557, which was submitted by Interregional Research Project Number 4, proposed establishment of a tolerance for herb crop subgroup 19A (except chives) at 0.03 ppm.

EPA has determined that the pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on the pesticide petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of abamectin in plants is adequately understood and the residues of concern include the parent insecticide abamectin (also referred to as avermectin B_1 which is a mixture of a minimum of 80% avermectin B_{1a} and a maximum of 20% avermectin B_{1b}) and the delta 8,9-isomer of the B_{1a} and of the B_{1b} components of the parent insecticide.

2. *Analytical method*. The analytical methods involves homogenization, filtration, partition, and cleanup with analysis by high performance liquid chromotography (HPLC)-fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation as required by PR Notice 96–1.

3. *Magnitude of residues*. Residue studies were submitted for food handling establishments and for basil (the representative crop for herb crop subgroup 19A (except chives)). Results from the studies demonstrate that the highest residues found will not exceed the proposed tolerances when abamectin is applied following the proposed use directions.

B. Toxicological Profile

1. *Acute toxicity*. The data base includes the following studies:

i. A rat acute oral study with a lethal dose $(LD)_{50}$ of 4.4 to 11.8 milligram/kilogram (mg/kg) males and 10.9 to 14.9 mg/kg females.

ii. An acute oral toxicity in the CF–1 mouse with the delta 8,9-isomer has LD_{50} greater than 80 mg/kg.

iii. A rabbit acute dermal study with a LD_{50} >2,000 mg/kg.

iv. A rat acute inhalation study with a LC_{50} >5.73 mg/Liter.

v. A primary eye irritation study in rabbits which showed irritation.

vi. A primary dermal irritation study in rabbits which showed no irritation.

vii. A primary dermal sensitization study in guinea pigs which showed no skin sensitization potential.

viii. An acute oral toxicity study in monkeys with a no observed adverse effect level (NOAEL) of 1.0 mg/kg based upon emesis at 2.0 mg/kg.

2. *Genotoxicity*. The Ames assays conducted with and without metabolic activation were both negative. The V–79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated *in vitro* at doses greater than 0.2 millimeter (mm). This *in vitro* dose of 0.2 mm is biologically unobtainable *in vivo*, due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage. There are also, many studies and a great deal of clinical and follow-up experience with regard to ivermectin, a closely similar human and animal drug.

3. *Reproductive and developmental toxicity*. In a 2-generation study in rats the NOAEL was established at 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight (bwt), and mortality. The NOAELs for systemic and reproductive toxicity were 0.4 mg/kg/day. In the 2-generations reproduction study in rats with the delta 8,9-isomer, the NOAEL was 0.4 mg/kg/day and the lowest observed adverse effect level (LOAEL) was greater than 0.4 mg/kg/day highest dose tested (HDT). In an oral developmental toxicity study in the CF–1 mouse the maternal NOAEL was 0.05mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 0.20 mg/kg/day based upon cleft palates. In an oral developmental toxicity study with the delta 8,9-isomer in CF–1 mice the maternal NOAEL was 0.10 mg/kg/day based upon decreased body weights. The fetal NOAEL was 0.06 mg/kg/day based upon cleft palate. In an oral developmental toxicity study in rabbits the maternal NOAEL was 1.0 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 1.0 mg/kg/day based upon clubbed feet. In an oral developmental toxicity study in rats the maternal and fetal NOAEL was 1.6 mg/kg/day, the HDT. In an oral developmental toxicity study with the delta 8,9-isomer the maternal NOAEL in CF-1 mice that expressed P-glycoprotein was greater than 1.5 mg/kg/day, the highest and only dose tested. No cleft palates were observed in fetuses that expressed normal levels of P-glycoprotein, but fetuses with low or no levels of P-glycoprotein had increased incidence of cleft palates.

4. *Subchronic toxicity*. Subchronic toxicity studies included the following:

i. A rat 8–week feeding study with a NOAEL of 1.4 mg/kg/day based upon tremors.

ii. A rat 14–week oral toxicity study with a NOAEL of 0.4 mg/kg/day, the HDT.

iii. A dog 12–week feeding study with a NOAEL of 0.5 mg/kg/day based upon mydriasis.

iv. A dog 18–week oral study with a NOAEL of 0.25 mg/kg/day based upon mortality.

v. A. CD–1 mouse 84–day feeding study with a NOAEL of 4 mg/kg/day based upon decreased body weights.

5. *Chronic toxicity*. A rat 53–week carcinogenicity feeding study was negative for carcinogenicity, with a NOAEL of 1.5 mg/kg/day based upon tremors. A CD–1 mouse 94–week carcinogenicity feeding study was negative for carcinogenicity, with a NOAEL of 4 mg/kg/day based upon decreased body weights. A dog 53–week chronic feeding study was negative for carcinogenicity, with a NOAEL of 0.25 mg/kg/day based upon mydriasis.

6. *Animal metabolism*. Rats were given oral doses of 0.14 or 1.4 mg/kg bwt/day of abamectin or 1.4 mg/kg bwt/day of the delta 8,9 isomer. Over 7–days, the percentages excreted in urine were 0.3–1% of the administered dose of abamectin and 0.4% of the dose of the isomer. The animals eliminated 69–82% of the dose of abamectin and 94% of the dose of isomer in feces. In rats, goats, and cattle, unchanged parent compound accounted for up to 50% of the total radioactive residues in tissues. The 24-hydroxymethyl derivative of abamectin was found in rats, goats, and cattle treated with the compound and in rats treated with the delta 8,9 isomer, and the 3''-O-demethyl derivative was found in rats and cattle administered abamectin and in rats administered the isomer.

7. *Metabolite toxicology*. There are no metabolites of concern based on a differential metabolism between plants and animals. The potential hazard of the 24-hydroxymethyl or the 3''-O-demethyl animal metabolites was evaluated in toxicology studies with abamectin photolytic break-down product, the delta 8,9-isomer.

8. *Endocrine disruption*. There is no evidence that abamectin is an endocrine disrupter. Evaluation of the rat multi-generational study demonstrated no effect on the time to mating or on the mating and fertility indices, suggesting no effects on the estrous cycle, on mating behavior, or on male or female fertility at doses up to 0.4 mg/kg/day, the HDT. Furthermore, the range finding study demonstrated no adverse effect on female fertility at doses up to 1.5 mg/kg/day, the HDT. Similarly, chronic and subchronic toxicity studies in mice, rats, and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract, or to the thyroid or pituitary (based upon organ weights and gross and histopathologic examination). In the developmental studies, the pattern of toxicity observed does not seem suggestive of any endocrine effect. Finally, experience with ivermectin in breeding animals, including sperm evaluations in multiple species, shows no adverse effects suggestive of endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. In support of the petition for tolerance for abamectin in celeriac, the last EPA-approved tolerance, an acute assessment was conducted for avermectin B_{1a} and B_{1b} residues using the Dietary Exposure Evaluation Model DEEM™ and food consumption information from United State Department of Agriculture's (USDA's) 1994–1996 Continuing Survey of Food Intake by Individuals (CSFII). Acute dietary exposure to the adult male subpopulation was compared to an acute reference dose (RfD) of 0.0025 mg/kg/day based on a NOAEL of 0.25 mg/kg/day from a 1–year dog study and a 100X uncertainty factor (UF). For all other populations (containing females, infants and children) an acute population adjusted dose (PAD) of 0.00083 mg/kg/day was used and reflects an appropriate 300X UF. This tier 3 probabilistic analysis included the entire distribution of field trial residues and percent of crop treated information was incorporated by adding zeroes into the residue distribution file (RDF)

representing the percent of crop not treated. Non-detected residues of avermectin B_{1a} were entered into the software as ½ the limit of quantitation (½ limit of quantitation (LOQ) and non-detected residues of avermectin B_{1b} were entered in as ¼ LOQ since the production ratio of B_{1a}: B_{1b} is 80:20. The acute dietary exposure results for the male (20 + years) population shows that 2.6% of the acute RfD was utilized at the 99.9th percentile of exposure. For the general U.S. population at the 99.9th percentile, exposure was 13.2% of the acute PAD. The most sensitive subpopulation was non-nursing infants (<1–year old) with 39.3% of the acute PAD at the 99.9th percentile.

For the male subpopulation, chronic exposure was compared to the chronic RfD of 0.0012 mg/kg/day from a 2-generation reproduction study in rats and a 100X UF. A 300X UF was utilized for populations containing females (13 + years old) and infants and children and the exposures were compared to a PAD of 0.0004 mg/kg/day. Residue values, taken from field trials conducted at maximum application rates and minimum pre-harvest intervals (PHI), were averaged and incorporated into the assessment. Residue values were adjusted with percent of crop treated information. For the male population (both 13–19 years and 20 + years), exposure was 0.3% of the chronic RfD. The chronic exposure results indicate that the U.S. population utilizes 1.3% of the chronic PAD. The most sensitive subpopulation was non-nursing infants with 2.9% of the chronic PAD. These results are conservative in that residue values were generated from field trials with maximum application rates and minimum post PHI. In addition, a significant reduction in residues would be expected as abamectin-treated commodities travel through food commerce, food preparation and storage.

Food handling establishment studies indicate that residue of abamectin in food is not expected from this use. While residues of abamectin in herbs up to tolerance levels are likely, the exceedingly small proportion of herbs in the diet limits exposure via this food group. Thus the chronic dietary risk assessment will not be impacted by these additional uses.

ii. *Drinking water*—a. *Acute exposure*. The estimated maximum concentration of abamectin in surface water is 0.88 parts per billion (ppb) (peak estimated environmental concentration (EEC) value from EPA's Pesticide Root Zone Model (PRZM)/EXAMS). This is an estimated environmental concentration based on the use of abamectin on strawberries (the maximum use rate on registered and proposed uses). Use rates for crops on the current petition are all below the maximum use rate for strawberries. Whitmire Micro-Gen believes the estimates of abamectin exposure in water derived from the PRAM/EXAMS models are significantly overstated. EPA noted that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of abamectin on black plastic compared to soil. Although, there is a high degree of uncertainty to this analysis, this is the best available estimate of concentrations of abamectin in drinking water.

Based on the EPA's ''Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' document (December 2, 1997), the acute drinking water levels of comparison ($DWLOC_{acute}$) were calculated for abamectin. For the adult male subpopulation, the $DWLOC_{acute}$ was determined based on an acute RfD of 0.0025 mg/kg/day based on a NOAEL of 0.25 mg/kg/day from a 1–year dog study and a 100X UF. For all other populations (containing females, infants, and children), the $DWLOC_{acute}$ was determined based on a population adjusted dose PAD of 0.00083 mg/kg/day and reflects an appropriate 300X UF. The acute dietary exposure results for the male (20 + years) population shows an exposure estimate of 0.000066 mg/kg bwt/day at the 99.9th percentile of exposure, thus a $DWLOC_{acute}$ of 85 for this subpopulation. For the general U.S. population at the 99.9th percentile, an exposure estimate of 0.000110 mg/kg bwt/day was determined, thus a $DWLOC_{acute}$ of 25. The most exposed subpopulation was non-nursing infants (<1 year old) with an exposure estimate of 0.000327 mg/kg bwt/day at the 99.9th percentile, thus a $DWLOC_{acute}$ of 3 for this subpopulation. Based on this analysis, abamectin EECs do not exceed the calculated acute DWLOCs. Based on a maximum EEC of 0.88 ppb, acute exposure through the consumption of drinking water is below 19% of the acute population adjusted dose for all subpopulations.

b. *Chronic exposure*. The estimated maximum concentrations of abamectin in surface and ground water are 0.37 ppb (mean of annual values from PRZM/EXAMS) and 0.002 ppb screening concentration in ground water (SCI-GROW), respectively. These are EECs based on the use of abamectin on strawberries (the maximum use rate on registered and proposed uses). Use rates for crops on the current petition are all below the maximum use rate for strawberries. The chronic drinking water levels of comparison ($DWLOC_{chronic}$) were calculated for abamectin. For the adult male subpopulation, the $DWLOC_{chronic}$ was determined based on the chronic RfD of 0.0012 mg/kg/day from a 2-generation reproduction study in rats and a 100X uncertainty factor. A 300X UF was utilized for populations containing females (13 + years old) and infants and children and the $DWLOC_{chronic}$ was determined based on a population-adjusted dose PAD of 0.0004 mg/kg/day. The chronic dietary exposure results for the male (13–19 yrs and 20 + years) population shows an exposure estimate of 0.000004 mg/kg bwt/day, thus a $DWLOC_{chronic}$ of 42 for this subpopulation. For the general U.S. population, an exposure estimate of 0.000005 mg/kg bwt/day was determined, thus a $DWLOC_{chronic}$ of 14. The most exposed subpopulation was non-nursing infants (<1 year old) with an exposure estimate of 0.000012 mg/kg bwt/day, thus a $DWLOC_{chronic}$ of 2.3 for this subpopulation. Based on this analysis, abamectin EECs do not exceed the $calculated_{chronic}$ DWLOCs. Based on a maximum EEC of 0.37 ppb, chronic exposure through the consumption of drinking water is below 16% of the chronic population adjusted dose for all subpopulations.

2. *Non-dietary exposure*. Abamectin's registered residential uses include indoor crack/crevice and outdoor application to lawns. For lawn uses, EPA conducted a risk assessment for adult applicators and post-application exposure to abamectin using the EPA's draft Standard Operating Procedures (SOPs) for residential exposure assessments. The highest predicted exposure, oral hand to mouth for children, resulted in a calculated margin of exposure (MOE) of 14,000. For children's post-application exposure to abamectin from indoor crack/crevice products, valid exposure studies demonstrate there is no exposure and therefore no risk for indoor residential scenarios. Short- and intermediate-term risk for the registered uses do not exceed EPA's level of concern.

i. *Chronic exposure and risk*. Chronic exposures for the residential uses are not expected.

ii. Short-term and intermediate-term exposure and risk. Risk for the registered uses do not exceed EPA's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether

to establish, modify, or revoke a tolerance, the Agency consider '' available information'' concerning the cumulative effects of a particular pesticide residue and ''other substances that have a common mechanism of toxicity.'' EPA stated in the **Federal Register** (FR) document published April 7, 1999, (64 FR 16843) (FRL–6070–6) that it does not have, at this time, available data to determine whether abamectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above and based on the completeness and reliability of the toxicity data base, Whitmire Micro-Gen has calculated aggregate exposure levels for this chemical. The calculations show that chronic dietary exposure is below 100% of the RfD and the predicted acute exposure is below 100% of the acute RfD for all subpopulations. Use on herb crop subgroup 19A (except chives) is not expected to have an impact on these calculations. Chronic exposure through the consumption of drinking water has been estimated to be well below any level of concern. Acute exposure to residues of abamectin in drinking water has been estimated to be above the drinking water level of comparison DWLOC for children (1–6 years old) but the certainty of this calculation is low due to the uncertainty on the amount of runoff from strawberry plant beds covered in plastic mulch and the uncertainty on the amount of degradation of abamectin on black plastic as compared to soil. Whitmire Micro-Gen concludes that there is a reasonable certainty that no harm will result from aggregate exposure to abamectin residues.

2. *Infants and children*. The Food Quality Protection Act FQPA (Public Law 104–170) authorizes the employment of an additional safety factor of up to 10X to guard against the possibility of prenatal or postnatal toxicity, or to account for an incomplete data base on toxicity or exposure. EPA has chosen to retain the FQPA safety factor for abamectin based on several reasons including evidence of neurotoxicity, susceptibility of neonatal rat pups, similarity to ivermectin, lack of a developmental neurotoxicity study, and concern for exposure to infants and children. It is the opinion of Whitmire Micro-Gen that a 3X safety factor is more appropriate for abamectin at this time. EPA has evaluated abamectin repeatedly since its introduction in 1985 and has found repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of abamectin. In addition, valid exposure studies demonstrate there is no exposure via indoor applications of abamectin products. Whitmire Micro-Gen states that the data base for abamectin is complete and that the developmental neurotoxicity study is a new and not yet initially required study. Additionally, there is much more information regarding human risk potential than is the case with most pesticides, because of the widespread animal-drug and human-drug uses of ivermectin, the closely related analog of abamectin.

It is the opinion of Whitmire Micro-Gen that the use of a full 10X safety factor to address risks to infants and children is not necessary. The established chronic endpoint for abamectin in the neonatal rat is overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration (FDA) to support the allowable daily intake for ivermectin residues in food from treated animals. No evidence of toxicity was observed in neonatal rhesus monkeys after 14–days of repeated administration of 0.1 mg/kg/day HDT and in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day HDT. The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than 2 times the LD_{50} in the adult rat and more than 20 times the LD_{50} in the neonatal rat. The absence of a steep dose-response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to abamectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.

F. International Tolerances

Abamectin is a broad spectrum insecticide used throughout the world to control pests of livestock, crops, ornamental plants and turf, and household, commercial and industrial use areas. There is no codex maximum residue limit MRLs for abamectin in or on food products in food handling establishments or on herbs. Therefore, international harmonization is not an issue at this time.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0177; FRL–7365–2]

Carfentrazone-ethyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0177, must be received on or before August 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address:*miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111);
- Animal production (NAICS 112);
- Food manufacturing (NAICS 311); and
- Pesticide manufacturing (NAICS).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0177. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0177. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0177. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0177.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0177. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assignedto this action in the subject line on the first page of your response. You may also provide thename, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summary of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

FMC Corporation and IR-4

2F6468, 3E6746, 3E6554, 4E6814 and 3F6584

EPA has received pesticide petitions (2F6468, 3E6746, 3E6554, 4E6814 and 3F6584) from FMC Corporation and IR-4, 1735 Market Street, Philadelphia, PA 19103 and Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of carfentrazone-ethyl (ethyl-α-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and the metabolite carfentrazone-ethyl chloropropionic acid (α, 2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on the raw agricultural commodities: Acerola at 0.1 parts per million (ppm); Almond hulls at 0.2 ppm and grass, forage, fodder and hay, group 17 at 12 ppm; Hops at 0.05 ppm; Avocado at 0.1 ppm; Atemoya at 0.1 ppm; Banana at 0.1 ppm; Berry group 13 at 0.1 ppm; Birida at 0.1 ppm; Borage, seed at 0.1 ppm; Cacao at 0.1 ppm; Cactus at 0.1 ppm; Canistel at 0.1 ppm; Cherimoya at 0.1 ppm; Citrus, crop group 10 at 0.1 ppm; Citrus cultivars and/or hybrids of grapefruit and pummelo, including Uniq fruit at 0.1 ppm; Coconut at 0.1 ppm; Coffee at 0.1 ppm; Crambe, seed at 0.1 ppm; Custard apple at 0.1 ppm; Date at 0.1 ppm; Feijoa at 0.1 ppm; Fig at 0.1 ppm; Fish at 0.2 ppm; Flax, seed at 0.1 ppm; Grape at 0.1 ppm; Grapefruit at 0.1 ppm; Guava at 0.1 ppm; Guayule at 0.1 ppm; Herbs and spice group 19 at 0.1 ppm; Horseradish at 0.1 ppm; Ilama at 0.1 ppm; Indian Mulberry at 0.1 ppm; Jabotica at 0.1 ppm; Juneberry at 0.1 ppm; Kava at 0.1 ppm; Kiwi fruit at 0.1 ppm; Lingonberry at 0.1 ppm; Lychee at 0.1 ppm; Longan at 0.1 ppm; Mango at 0.1 ppm; Mustard seed, Indian at 0.1 ppm; Mustard seed, Field at 0.1 ppm; Mustard seed, Black at 0.1 ppm; Okra at 0.1 ppm; Olive at 0.1 ppm; Palm Heart, leaves at 0.1 ppm; Passionfruit at 0.1 ppm; Papaya at 0.1 ppm; Pawpaw at 0.1 ppm; Peanut at 0.1 ppm; Persimmon at 0.1 ppm; Pistachio at 0.1 ppm; Pome fruit, crop group 11 at 0.1 ppm; Pomegranate at 0.1 ppm; Pulasan at 0.1 ppm; Pummelo at 0.1 ppm; Rambutan at 0.1 ppm; Rapeseed, Indian at 0.1 ppm; Rapeseed, seed at 0.1 ppm; Safflower, seed at 0.1 ppm; Salal at 0.1 ppm; Sapodilla at 0.1 ppm; Sapote, black at 0.1 ppm; Sapote, mamey at 0.1 ppm; Shellfish at 0.2 ppm; Sorghum, sweet, stalks at 0.1 ppm; Sorghum, sweet, syrup at 0.1 ppm; Soursop at 0.1 ppm; Spanish lime at 0.1 ppm; Star apple at 0.1 ppm; Starfruit at 0.1 ppm; Stone fruit, crop group 12 at 0.1 ppm; Strawberry at 0.1 ppm; Strawberrypear at 0.1 ppm; Stevia at 0.1 ppm; Sugar apple at 0.1 ppm; Sugarcane at 0.1 ppm; Sunflower, seed at 0.1 ppm; Ti, leaves at 0.1 ppm; Tea at 0.1 ppm; Tree nut, crop group 14 at 0.1 ppm; Tuberous and corm vegetables, crop subgroup 1C at 0.1 ppm; Vanilla at 0.1 ppm; Vegetable, brassica, leafy, group 5 at 0.1 ppm;

Vegetable, bulb, group 3 at 0.1 ppm; Vegetable, cucurbit group 9 at 0.1 ppm; Vegetable, foliage of legume, group 7 at 0.1 ppm; Vegetables, Fruiting, Group, crop group 8 at 0.1 ppm; Vegetable, leaves of root and tuber, group 2 at 0.1 ppm; Vegetable, leafy, except brassica, group 4 at 0.1 ppm; Vegetable, legume, group 6 at 0.1 ppm; Vegetable, root and tuber, group 1 at 0.1 ppm; Wasabi, roots at 0.1 ppm; and Wax jambu at 0.1 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of carfentrazone-ethyl in plants is adequately understood. Corn, wheat, radish and soybean metabolism studies with carfentrazone-ethyl have shown uptake of material into plant tissue with no significant movement into grain, root or seeds. All four plants extensively metabolized carfentrazone-ethyl and exhibited a similar metabolic pathway. The residues of concern are the combined residues of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of carfentrazone-ethyl and its metabolites in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set or proposed in the tolerances. The analytical method for carfentrazone-ethyl involves separate analyses for parent and its metabolites. The parent is analyzed by gas chromatography/electron capture detection (GC/ECD). The metabolites are derivatized with boron trifluoride and acetic anhydride for analysis by gas chromatography mass spectrometry detection (GC/MSD) using selective ion monitoring.

3. *Magnitude of residues*. Trials were conducted on several on several crop groups listed above. Carfentrazone-ethyl (Aim EC, Aim EW or Aim Herbicide) was applied as a broadcast application to soil at a target rate of 0.032 pounds active ingredient per acre (lbs ai/A) 24–48 hours prior to planting. The second application was a post-emergent banded application at a target rate of 0.064 lb ai/A within 12–24 hours of harvest with a hooded sprayer to row middles with the hood riding along the soil surface. Treated and untreated mature samples were collected at crop maturity. Additional samples from one trial each of several crops were collected to establish a residue decline pattern. Additional samples from one trial each of several crops were collected for processing studies for subsequent analysis of processed parts. Residues of carfentrazone-ethyl and its metabolites in the crop group samples were detected in low levels ranging from ND to 0.06 ppm with a PHI of 1 day. Residues were not found in the exaggerated rate samples, and therefore, processing was not conducted for most of the crops. Residue values <0.05 ppm are estimated values less than the limit of quantitation (LOQ) and greater than the limit of detection (LOD) (0.01 - 0.02 ppm).

For berries, trials were conducted as follows: For blueberry, the first application of carfentrazone-ethyl (Aim EC, Aim EW or Aim Herbicide), was a dormant post-direct application to the base of tree trunks at a targeted rate of 0.032 lb ai/A and the second application was an indirect hooded sprayer application at a target banded rate of 0.064 lb ai/A 12-24 hours prior to harvest for a total of 0.096 lb ai/A. For blackberry (Aim EC) and raspberry (Aim EW) carfentrazone-ethyl was applied four times as a post-direct application each at a target rate of 0.1 lb ai/A for a total of 0.4 lb ai/A with a PHI of 15 days. Treated and untreated mature samples were collected at crop maturity. Additional samples from one blueberry trial were collected to establish a residue decline pattern. Residues were not detected (<0.01 ppm) in any of the samples.

For grape, tuberous and corm vegetables, citrus fruits, pome fruits, stone fruits, tree nuts and grass, trials were conducted as follows: Carfentrazone-ethyl (Aim EC, Aim EW or Aim Herbicide) was applied three times as a broadcast foliar application at a target rate of 0.031 lb ai/A for a total target rate of 0.093 lb ai/A. Additional samples were collected from one trial each to establish a residue decline pattern and for processing studies. For grass, forage samples were collected on 0 day, hay was cut on 0 day and dried for 0 - 14 days after the third application of the test substance. The maximum total residue for carfentrazone-ethyl and its major metabolites in/on forage and hay was 5.59 and 10.64 ppm, respectively. Low level residues were found in the control samples in seven of the twelve trials ranging from an estimated 0.02 ppm to 0.07 ppm. Residues of carfentrazone-ethyl and its metabolites in the crop/group samples were detected in low levels ranging from ND to < LOQ except for residues of almond hulls. Residue values < 0.05 ppm are estimated values less than the LOQ and greater than the LOD (0.01 - 0.04 ppm). RAC were harvested at the appropriate time and subsequent analyses determined that the residues of carfentrazone-ethyl and its metabolites would not exceed the proposed tolerances.

No residues of carfentrazone-ethyl were found in any fish tissue sample at any time. The maximum total residue of carfentrazone-ethyl chloropropionic acid in the fish tissues were 0.17 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Carfentrazone-ethyl demonstrates low oral, dermal and inhalation toxicity. The acute oral LD_{50} value in the rat was greater than 5,000 milligrams/kilogram (mg/kg), the acute dermal LD_{50} value in the rat was greater than 4,000 mg/kg and the acute inhalation LC_{50} value in the rat was greater than 5.09 mg/Liter (L)/4h. Carfentrazone-ethyl is non-irritating to rabbit skin and minimally irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs. An acute neurotoxicity study in the rat had a systemic NOAEL of 500 mg/kg based on clinical signs and decreased motor activity levels; the NOAEL for neurotoxicity was greater than 2,000 mg/kg (highest dose tested) based on the lack of neurotoxic clinical signs or effects on neuropathology.

2. *Genotoxicty*. Carfentrazone-ethyl did not cause mutations in the Ames assay with or without metabolic activation. There was a positive response in the Chromosome Aberration assay without activation but a negative response with activation. The Mouse Micronucleus assay (an *in vivo* test which also measures chromosome damage), the CHO/HGPRT forward mutation assay and the Unscheduled DNA Synthesis assay were negative. The overwhelming weight of the evidence supports the conclusion that Carfentrazone-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity*. Carfentrazone-ethyl is not considered to be a reproductive or a developmental toxin. In the 2-generation reproduction study, the NOAEL for reproductive toxicity was greater than 4,000 ppm (greater than 323 to greater than 409 mg/kg/day). In the developmental toxicity studies, the rat and rabbit maternal NOAELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOAEL for the rabbit was greater than 300 mg/kg/day, which was the HDT and for the rat the NOAEL was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs at 1,250 mg/

kg/day. These two findings (thickened and wavy ribs) are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

4. *Subchronic toxicity*. Ninety-day feeding studies were conducted in mice, rats and dogs with Carfentrazone-ethyl. The NOAEL for the mouse study was 4,000 ppm (571 mg/kg/day), for the rat study was 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females) and for dogs was 150 mg/kg/day. A 90–day subchronic neurotoxicity study in the rat had a systemic NOAEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females) based on decreases in body weights, body weight gains and food consumption at 10,000 ppm; the neurotoxicity NOAEL was greater than 20,000 ppm (1178.3 mg/kg/day for males; 1433.5 mg/kg/day for females) which was the highest dose tested.

5. *Chronic toxicity*. Carfentrazone-ethyl is not carcinogenic to rats or mice. A 2–year Combined Chronic Toxicity/Oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOAEL of 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females based on red fluorescent granules consistent with porphyrin deposits in the liver at the 500 and 200 ppm levels, respectively. An 18 Month Oncogenicity study in the mouse had a carcinogenic NOAEL that was greater than 7,000 ppm (>1,090 mg/kg/day for males; >1296 mg/kg/day for females) based on no evidence of carcinogenicity at the highest dose tested. A 1–Year Oral Toxicity study in the dog had a NOAEL of 50 mg/kg/day based on isolated increases in urine porphyrins in the 150 mg/kg/day group (this finding was not considered adverse). Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as Group ''E'' for carcinogenicity -- no evidence of carcinogenicity -- based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

6. *Animal metabolism*. The metabolism of carfentrazone-ethyl in animals is adequately understood. Carfentrazone-ethyl was extensively metabolized and readily eliminated following oral administration to rats, goats, and poultry via excreta. All three animals exhibited a similar metabolic pathway. As in plants, the parent chemical was metabolized by hydrolytic mechanisms to predominantly form carfentrazone-ethyl-chloropropionic acid, which was readily excreted.

7. *Endocrine disruption*. An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects was reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carfentrazone-ethyl causes endocrine effect.

C. Aggregate Exposure

1. *Dietary exposure*—i. *acute dietary*. Based on the available toxicity data, the EPA has established an acute Reference Dose (aRfD) for carfentrazone-ethyl of 5 mg/kg/day. The aRfD for carfentrazone-ethyl is based on acute neurotoxicity study in rats with a threshold NOAEL of 500 mg/kg/day and an uncertainty factor of 100.

ii. *Chronic dietary*. Based on the available toxicity data, the EPA has established a RfD for carfentrazone-ethyl of 0.03 mg/kg/day. The RfD for carfentrazone-ethyl is based on a 2–year chronic toxicity/carcinogenicity study in rats with a threshold NOAEL of 3 mg/kg/day and an uncertainty factor of 100. For purposes of assessing the potential chronic dietary exposure, a Tier 1 dietary risk assessment was conducted based on the Theoretical Maximum Residue Contribution (TMRC) from the established and proposed tolerances for carfentrazone-ethyl. The tolerances are as follows: 0.1 ppm in or on caneberry subgroup; 0.20 ppm in or on corn, field, forage; 0.20 ppm in or on corn, sweet, forage;0.1 ppm corn, sweet, kernel plus cob with husk removed; 10 ppm in or on cotton, gin by products; 0.20 ppm in or on cotton, undelinted seed; 0.60 ppm in or on cotton, hulls; 0.35 ppm in or on cotton, meals; 1.0 ppm in or on cotton, refined oil; 1.0 ppm in or on grain, cereal, forage (excluding corn and sorghum); 0.30 ppm in or on grain, cereal hay; 0.10 ppm in or on grain, cereal, group; 0.30 ppm in or on grain, cereal, stover; 0.1 ppm in or on grain, cereal, straw (excluding rice); 1.0 ppm in or on rice, straw; 0.20 ppm in or on sorghum, forage and0.1 ppm in or on soybean, seed. (The TMRC is a ''worse case'' estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.). In conducting this exposure assessment, the following very conservative assumptions were made - 100% of soybean, cotton, Caneberry and cereal grains will contain carfentrazone-ethyl residues and those residues would be at the level of the tolerance which result in an over estimate of human exposure.

2. *Food*. Dietary exposure from the proposed uses would account for 1.0% or less of the aPAD in subpopulations (including infants and children). Dietary exposure from the proposed uses would account for 15% or less of the cPAD in subpopulations (including infants and children).

3. *Drinking water*. Acute DWLOC is estimated at 175,000 mg/kg/day, surface water EEC at 21.4 parts per billion (ppb) and ground water EEC at 13.4 ppb for U.S. subpopulations - all seasons. Chronic DWLOC is estimated at 998 mg/kg/day, surface water EEC at 20.2 ppb and ground water EEC at 13.4 ppb for U.S. subpopulations - all seasons.

4. *Non-dietary exposure*. No specific worker exposure tests have been conducted with carfentrazone-ethyl. The potential for non-occupational exposure to the general population has not been fully assessed.

D. Cumulative Effects

EPA is also required to consider the potential for cumulative effects of carfentrazone-ethyl and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize less than 1% of the aPAD and less than 15% of the cPAD for the US subpopulations. EPA generally has no concern for exposures below 100 percent of the aPAD or cPAD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data

from developmental toxicity studies in the rat and rabbit and the two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. In these studies, the rat and rabbit maternal NOAELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOAEL for the rabbit was greater than 300 mg/kg/day, which was the highest dose, tested and for the rat was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs. These two findings are not considered adverse effects of treatment but related delays in rib development, which are generally believed to be reversible.

In a two-generation reproduction study in rats, no reproductive toxicity was observed under the conditions of the study at 4,000 ppm, which was the highest dose tested.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre-natal and post-natal effects for children is complete and an additional uncertainty factor is not warranted. Therefore at this time, the RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

3. *Population adjusted dose (aPAD and cPAD).* Using the conservative exposure assumptions described above, the percent of the aPAD that will be utilized by aggregate exposure to residues of carfentrazone-ethyl for non-nursing infants (<1 year old) would be < 1% (aPAD) and < 10% (cPAD); for children 1–6 years of age would be < 1% (aPAD) and < 15% (cPAD), (the most highly exposed group). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of carfentrazone-ethyl including all anticipated dietary exposure.

F. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for carfentrazone-ethyl on any crops at this time. However, MRLs for small grains in Europe have been proposed which consist of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

[FR Doc. 04–16719 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0197; FRL–7366–2]

Spiromesifen; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0197, must be received on or before August 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food processing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturers (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0197. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Note: Due to renumbering of buildings in area, the street address will change to 1801 South Bell Street as of June 26, 2004. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0197. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0197. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0197.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0197. Note: Due to renumbering of buildings in area, the street address will change to 1801 South Bell Street as of June 26, 2004. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Bayer Corporation

PP 3F6537

EPA has received a pesticide petition (3F6537) from Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the following residues:

1. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester, and its enol metabolite; 4-hydroxy- 3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4] non-3-en-2-one in or on the raw agricultural commodities strawberry at 2.0 parts per million (ppm); vegetable, tuberous and corm, crop subgroup 1C at 0.01 ppm; vegetable, leafy greens (except Brassica), crop subgroup 4A at 10 ppm; vegetable, Brassica, head and stem, crop subgroup 5A at 2.0 ppm; vegetable, Brassica, leafy, crop subgroup 5B at 12 ppm; vegetable, fruiting, crop group 8 at 0.30 ppm; tomato, paste at 0.60 ppm; vegetable, Cucurbit, crop group 9 at 0.10 ppm; corn, field, grain at 0.01 ppm; corn, field, forage at 3.0 ppm; corn, field, stover at 5.0 ppm; cotton at 0.50 ppm; and cotton, gin byproducts at 15 ppm.

2. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester, its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non- 3-en-2-one, and its metabolites containing the 4-hydroxymethyl moiety; 4- hydroxy-3-[4-(hydroxymethyl)- 2,6-dimethylphenyl]-1-oxaspiro[4.4] non-3-en-2-one, moieties in or on the rotational crop commodities alfalfa, forage at 1.5 ppm; alfalfa, hay at 3.0 ppm; wheat, grain at 0.01 ppm; wheat, forage at 0.20 ppm; wheat, hay at 0.15 ppm; wheat, straw at 0.25 ppm; wheat, bran at 0.05 ppm; wheat, shorts at 0.03 ppm; barley, grain at 0.02 ppm; barley, hay at 0.25 ppm; barley, straw at 0.25 ppm; beet, sugar, tops at 0.20 ppm; beet, sugar, roots at 0.02 ppm; and beet, sugar, molasses at 0.05 ppm.

3. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester, and its metabolites containing the enol; 4-hydroxy- 3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4] non-3-en-2-one, or 4-hydroxymethyl; 4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]- 1-oxaspiro[4.4] non-3-en-2-one, moieties in or on the raw agricultural commodities cattle, fat at 0.05 ppm; cattle, meat byproducts at 0.05 ppm; milk at 0.01 ppm; and milk, fat at 0.03 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of spiromesifen in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled spiromesifen in various crops, all showing similar results. The residue of concern is spiromesifen and its enol metabolite.

2. *Analytical method*. Adequate analytical methodology using LC/MS/MS detection is available for enforcement purposes.

3. *Magnitude of residues*. Complete residue data exists for spiromesifen on these crops and crop groupings. The data support the requested tolerances.

B. Toxicological Profile

1. *Acute toxicity*. Oral and dermal LD_{50} values were >2,000 mg/kg bw. Inhalation LC_{50} values were >4,873 mg/m^3 air. Spiromesifen was not irritating to rabbit skin or eyes but did cause skin sensitization in the Magnusson/Kligman maximization test in guinea pigs. Acute toxicity studies for spiromesifen support an overall toxicity Category III.

2. *Genotoxicity*. Several genotoxicity tests were conducted to test for point-mutagenic activity, chromosome aberration *in vitro* and *in vivo*, and for DNA repair. All tests conducted were negative, indicating no evidence of mutagenic or genotoxic potential.

3. *Reproductive and developmental toxicity*. An oral developmental toxicity study in rat did not reveal any evidence of teratogenic potential. The maternal and developmental no observed adverse effect levels (NOAELs) were 10 mg/kg bw/day. An oral developmental toxicity study in rabbits demonstrated a maternal NOAEL of 5 mg/kg bw/day, a developmental NOAEL of 35 mg/kg bw/day and did not reveal any teratogenic potential. A 2–generation study in rats, with a parental toxicity NOAEL of 2.2 mg/kg bw/day for males and 3.8 mg/kg bw/day for females, did not reveal evidence of a primary reproductive

toxicity potential. The reproductive NOAEL was 36.6 mg/kg bw/day for males and 14.2 mg/kg bw/day in females.

4. *Subchronic toxicity*. A subchronic toxicity feeding study with rats over 90 days demonstrated a NOAEL of 6.3 and 7.7 mg/kg bw/day for males and females, respectively, based on reduced body weights, effects on the lipid metabolism (decrease of triglycerides and cholesterol) and thyroid effects (colloidal alteration, hypertrophy) at the higher dose levels. A subchronic feeding study in mice over 14 weeks demonstrated a NOAEL of 3.2 and 5.1 mg/kg bw/day based on effects on lipid metabolism (decrease of cholesterol) and adrenal effects (cytoplasmic eosinophilia). A 14-week feeding study in dogs demonstrated a NOAEL of 9.2 and 9.3 mg/kg bw/day based on liver effects (enzyme induction, increased liver weights and cytoplasmic change) and thyroid effects (decreased T4).

5. *Chronic toxicity*. A 12-month chronic feeding study in rats demonstrated a NOAEL of 6.5 and 19.3 mg/kg bw/day for males and females, respectively. A 24-month oncogenicity study in rats demonstrated a NOAEL of 6.1 and 19.5 mg/kg bw/day for males and females, respectively. An oncogenicity study in the mouse revealed a NOAEL of 3.3 and 3.8 mg/kg bw/day for males and females, respectively based on macroscopic and microscopic adrenal effects. There was no indication in the rat or mouse for an oncogenic effect of spiromesifen. A 1–year feeding study with dogs demonstrated a NOAEL of 11.5 and 10.8 mg/kg bw day for males and females, respectively based on decreased body weights, liver effects (increased liver weight, hepatocellular cytoplasmic change, vacuoles) adrenal effects (increased incidence of small cell types).

6. *Animal metabolism*. Metabolism and pharmacokinetic studies in the rat demonstrate that spiromesifen residues are rapidly absorbed, metabolized and eliminated. There was no evidence of accumulation of residues in any tissues or organs. The primary metabolites are the enol, which is formed by cleavage of the alkyl ester group, and the 4-hydroxymethyl metabolite. However, several other metabolites are also formed.

7. *Metabolite toxicology*. The residues of concern are spiromesifen, its enol metabolite and BSN 4-hydroxymethyl, which are products of metabolism in mammalian systems, as well as in the environment. Since both products are major metabolites following the oral administration of spiromesifen to rats, toxicology data for these metabolites are completely supported by data obtained for spiromesifen.

8. *Endocrine disruption*. There is no evidence to suggest that spiromesifen has any primary endocrine disruptive potential. Reproductive and developmental findings provided no evidence of an enhanced sensitivity of the young. All prospective endocrine and endocrine-related changes which were noted were considered a function of the chemical's biological mode of action, the degree of exposure, a response secondary to other changes (e.g, enhanced liver metabolism), an aging or strain-specific phenomenon, or some combination of these factors.

C. Aggregate Exposure

1. *Dietary exposure*. For the acute dietary analysis, the acute reference dose (aRfD) of 2.0 mg/kg/day was derived from a NOAEL of 200 mg/kg based on an acute neurotoxicity study in rats and the application of an uncertainty factor (UF) of 100 to account for inter-species extrapolation and intra-species variability. For the chronic dietary analysis, the chronic reference dose (cRfD), of 0.022 mg/kg/day was derived from a NOAEL of 2.2 mg/kg/day based on a 2–generation reproduction toxicity study in rats and the application of an UF of 100. Based on the moderate, exposure-driven, non-primary, and/or animal specific nature of the endocrine and neurological changes attributed to exposure to spiromesifen as well as the lack of evidence to support a primary embryotoxic or teratogenic potential for spiromesifen, an FQPA safety factor of 1 was applied to the acute and chronic toxicology values, resulting in an acute population adjusted dose (aPAD) of 2.0 mg/kg/day and a chronic population adjusted dose (cPAD) of 0.022 mg/kg/day. As a conservative measure, the aPAD and cPAD values were used for all population sub-groups when conducting the assessments.

i. *Food*. Assessments were conducted to evaluate the potential risks due to acute and chronic dietary exposure of the entire U.S. population and selected population subgroups to residues of spiromesifen. These assessments cover the proposed use of spiromesifen on brassica (head and stem, broccoli and cabbage; leafy, mustard greens), corn (field), cotton, cucurbits (cantaloupe, cucumbers, and summer squash), fruiting vegetables (peppers and tomatoes), leafy greens (head and leaf lettuce and spinach), potatoes, strawberries, and the rotational crops of alfalfa, barley, sugarbeets, and wheat. For the acute assessment, the most highly exposed population subgroup was children 1-6 years with an exposure equal to 0.4% of the acute reference dose (aPAD) at the 95th percentile. Acute exposure of the overall US population was equivalent to 0.3% of the aPAD. For the chronic dietary assessment, the most highly exposed population subgroup was children 1-6 years, with an exposure equal to 1.2% of the chronic reference dose (cPAD). Chronic exposure for the overall U.S. population equated to 0.4% of the cPAD. These Tier 2 acute and chronic dietary exposure estimates are well below EPA's level of concern for the overall U.S. population as well as the various population subgroups.

ii. *Drinking water*. Spiromesifen is immobile in soil and therefore will not leach into groundwater. Additionally, due to insolubility in water and a highly lipophilic nature, any residues in surface water will rapidly bind to soil particles and remain with sediment where it is quickly degraded, and therefore not contribute to potential dietary exposure from drinking water. Estimated environmental concentrations (EECs) of spiromesifen and its enol metabolite in surface water (Tier I) were determined using EPA's FIRST screening model (FIFRA Index Reservoir Screening Tool). EEC predictions of spiromesifen its enol metabolite in groundwater (Tier I) were made using SCI-GROW (Screening Concentration in Ground Water). Tier II EEC predictions in surface drinking water were made using the Pesticide Root Zone Model, PRZM3, in combination with the Exposure Analysis Modeling System, EXAMS II, and EPA's Index Reservoir (IR) scenario. Use of spiromesifen (Tier II) on strawberries and vegetables was simulated in Florida, potatoes in Minnesota and cotton in Texas and California. Applications of spiromesifen to field corn were also evaluated in Texas.

The highest predicted Tier I surface water EECs for spiromesifen were from use on strawberries, with peak (acute) and annual average (chronic) concentrations of 7.41 and 0.18 ppb, respectively. Corresponding surface water EECs for the enol metabolite were 37.5 and 19.4 ppb. Strawberries produced the highest EECs under the Tier I scenario due to the conservative runoff assumptions built into the model. The highest predicted EECs in ground water were 0.000 ppb for spiromesifen and 1.09 ppb for the enol, also from the strawberry use scenario. Tier II EECs were predicted to be highest for strawberries and vegetables. The highest peak, 4-day, 21-day, 60-day, 90-day, yearly upper 90th percentile (of the

annual maximums) and annual average concentrations across all use scenarios were 1.30 and 1.07 ppb for FL strawberries and 0.66, 0.35, 0.24, 0.07 and 0.05 ppb for Florida vegetables, respectively. EECs of spiromesifen enol were highest for Florida strawberries, with corresponding concentrations of 32, 30, 26, 17, 11, 3.9, and 1.7 ppb, respectively.

The highest acute and chronic concentrations (spiromesifen and enol in surface water combined) across all use scenarios were used to assess human health risk from drinking water. Potential risk was estimated by comparing estimated drinking water concentrations to the acute and chronic Population Adjusted Dose (PAD) values, while accounting for differences in body weight and drinking water consumption between adults and children. These calculations result in risk estimates in the form of percentages of the acute and chronic PAD values. Tier I acute risk for adults and children were estimated at 0.06 and 0.23%, respectively, while Tier II acute estimates were 0.05 and 0.17%, respectively. Maximum Tier I chronic risk was estimated at 2.5% for adults and 8.9% for children. Corresponding Tier II chronic risk was estimated at 0.52% for adults and 1.8% for children (0.81% for children using the mean of the annual average concentrations over the simulation period).

2. *Non-dietary exposure*. Exposure assessments were prepared for both mixer/loader-applicators and reentry workers based on use of spiromesifen on various field crops, vegetables and strawberries. Agricultural worker margins of exposure (MOE) estimates were conservatively based on a no-observable-effect level (NOEL) of 1.06 mg/kg/day, maximum label rates, and a dermal absorption value of 2.25%. An occupational exposure uncertainty factor of 100 was used in the assessment. All margins of exposure (total) exceeded 100, indicating that these uses of spiromesifen pose no significant risk to workers who mix, load and apply this product, or to those who reenter treated areas to perform post-application activities. These data support the use of a single layer of clothing for mixer/loaders and applicators, gloves for mixer/loaders, and a 12-hour REI for reentry workers.

Exposure assessments were also conducted for both applicators and reentry based on use of spiromesifen for ornamentals, greenhouse and nursery applications. There are no indoor residential uses for spiromesifen, and therefore no assessments were performed for indoor residential use. All margins of exposure (total) exceeded 100, indicating that these uses of spiromesifen pose no significant risk to workers who mix, load and apply this product, or to those who reenter treated areas to perform post-application activities. These data support the use of a single layer of clothing for mixer/loaders and applicators, gloves for mixer/loaders, and reentry activities to be performed immediately after the application spray dries.

D. Cumulative Effects

Spiromesifen represents a new class of chemistry, ketoenoles. There are no known registered chemicals within this class. Bayer will submit information, if necessary, for EPA to consider concerning potential cumulative effects of spiromesifen consistent with the schedule established by EPA at 62 FR 42020 (Aug. 4, 1997) (FRL–5734–6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to spiromesifen from all label uses will utilize less than 10 percent of the RfD for chronic dietary exposures and that margins of exposure in excess of 100 exist for aggregate exposure to spiromesifen for non-occupational exposure. EPA generally has no concerns for exposures below 100 percent of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Margins of exposure of 100 or more also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to spiromesifen residues.

2. *Infants and children*. In assessing the potential for increased sensitivity of infants and children, data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity. None of these studies conducted with spiromesifen indicated developmental or reproductive effects. The toxicology data which support these uses of spiromesifen include the following: An oral developmental toxicity study in rat that did not reveal any evidence of teratogenic potential. Maternal and developmental NOAELs were 10 mg/kg bw/day. An oral developmental toxicity study in rabbits demonstrated a maternal NOAEL of 5 mg/kg bw/day, a developmental NOAEL of 35 mg/kg bw/day and did not reveal any teratogenic potential. A two-generation study in rats, with a parental toxicity NOAEL of 2.2 mg/kg bw/day, did not reveal evidence of a primary reproductive toxicity potential. The reproductive NOAEL was 14.2 mg/kg bw/day. FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children. The additional safety factor may be used when prenatal and postnatal threshold effects were observed in studies or to account for incompleteness of the toxicity database. Based on the toxicological data requirements, the data relative to prenatal and postnatal effects in children is complete. No indication of increased susceptibility of younger animals was observed in any of the above studies. For the population with the highest exposure, children 1-6 years old, the acute dietary exposure at the 95th percentile was 0.4% of the aPAD, equivalent to an MOE of 24845. Acute exposure of the overall US population was equivalent to 0.3% of the aPAD. For the chronic dietary analysis, the most highly exposed population subgroup was children 1-6 years old, with an exposure equal to 1.2% of the cPAD. Chronic exposure for the overall U.S. population equated to 0.4% of the cPAD.

F. International Tolerances

Codex maximum residue levels (MRLs) are not yet established for spiromesifen.

[FR Doc. 04–16720 Filed 7–27–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0221; FRL–7371–5]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 67979–EUP–L from Syngenta Seeds, Inc. - Field Crops - NAFTA requesting an experimental use permit (EUP) for the plant-incorporated

protectant *Bacillus thuringiensis* VIP3A insect control protein as expressed in events COT202 and COT203 cotton plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0221, must be received on or before August 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0221. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0221. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0221. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0221.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0221. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Syngenta Seeds is proposing to test 245 acres of the plant-incorporated protectant *Bacillus thuringiensis* VIP3A insect control protein as expressed in events COT202 and COT203 cotton plants from March 2005 to March 2006 in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. Testing is to include insect efficacy, agronomic performance, and breeding and observation in field trials.

III. What Action is the Agency Taking?

Following the review of the Syngenta Seeds, Inc. - Field Crops - NAFTA application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 19, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–17168 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0092; FRL7363–5]

Draft Federal Guide for Green Construction Specs; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Executive Order 13101, EPA's Office of Prevention, Pesticides, and Toxic Substances is responsible for providing information to Federal agencies to assist them in practicing environmentally preferable purchasing (EPP). Because construction and renovation of buildings constitute a large share of Federal expenditures and may involve significant environmental impact, EPA has a special interest in providing tools to promote environmentally preferable purchasing during these activities. The draft Federal Guide for Green Construction Specs is being developed by EPA with our partners, the Office of the Federal Environmental Executive and the members of the multiagency-sponsored Whole Building Design Guide, to help Federal building project managers meet various mandates as established by statute and Executive Orders, as well as EPA and the Department of Energy (DOE) program recommendations. Following an advance review with

approximately 100 building industry organizations, EPA and our partners are seeking public input with this notice. The draft is available on the Whole Building Design Guide at *http://fedgreenspecs.wbdg.org*.

DATES: Comments, identified by docket ID number OPPT–2004–0092, must be received on or before September 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Alison Kinn Bennett, Pollution Prevention Division, 7409M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8859; e-mail address: *kinn.alison@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons that design, build, or acquire buildings or building products for the Federal government. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0092. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access the Draft Federal Guide for Green Construction Specifications at the Whole Building Design Guide Internet site at: *http://fedgreenspecs.wbdg.org.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket.

Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs

further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select *search*, and then key in docket ID number OPPT–2004–0092. The system is an *anonymous access* system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID number OPPT–2004–0092. In contrast to EPA's electronic public docket, EPA's e-mail system is not an *anonymous access* system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *Send your comments to*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number OPPT–2004–0092. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is the Agency Taking?

Under Executive Order 13101, EPA's Office of Prevention, Pesticides, and Toxic Substances is responsible for providing information to Federal agencies to assist them in practicing environmentally preferable purchasing (EPP). Because construction and renovation of buildings constitute a large share of Federal expenditures and may involve significant environmental impact, EPA has a special interest in providing tools to promote environmentally preferable purchasing during these activities.

The draft Federal Guide for Green Construction Specs is being developed by EPA with our partners, the Office of the Federal Environmental Executive and the members of the multiagency-sponsored Whole Building Design Guide, to help Federal building project managers meet various mandates as established by statute and Executive Orders, as well as, EPA and DOE program recommendations.

Following an advance review with approximately 100 building industry organizations, EPA and our partners are seeking public input with this notice. The draft is available on the Whole Building Design Guide at *http://fedgreenspecs.wbdg.org*.

For more information about the scope, purpose, and use of the Federal Guide for Green Construction Specs, please see the Frequently Asked Questions at *http://www.wbdg.org/design/greenspec_faq.php*.

List of Subjects

Environmental protection, Green building, Federal construction and renovation.

Dated: July 12, 2004.

Susan B. Hazen

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–16946 Filed 7–27–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Proposal to Defer the Effective Date of Reclassification of the Statement of Social Insurance

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, 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 a *Proposal to Defer the Effective Date of Reclassification of the Statement of Social Insurance.* The proposed standard would defer for one year the effective dates of Statement of Federal Financial Accounting Standards (SFFAS) 25, Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment, as well as SFFAS 26, Presentation of Significant Assumptions for the Statement of Social Insurance: Amending SFFAS 25. The proposes is available on the FASAB home page *http://www.fasb.gov/exposuredraft.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the proposal. Written comments are requested by August 20, 2004, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: July 23, 2004.

Wendy M. Comes,

Executive Director.

[FR Doc. 04–17125 Filed 7–27–04; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011574–011.

Title: Pacific Islands Discussion Agreement.

Parties: CMA CGM, S.A.; Compagnie Maritime Marfret, S.A.; P&O Nedlloyd Limited; Hamburg-Süd; Polynesia Line Ltd.; FESCO Ocean Management Limited; and Australia-New Zealand Direct Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds CMA CGM and Compagnie Maritime Marfret as parties to the agreement.

Agreement No.: 011648–009.

Title: APL/Crowley/Lykes/MLL Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte. Ltd. (''APL''); Crowley Liner Services, Inc. (''CLS''); Lykes Lines Limited, LLC (''Lykes''); and TMM Lines Limited, LLC (''TMM'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The modification would delete CLS as a party to the agreement and delete the Gulf/Caribbean trade from the geographic scope of the agreement and related agreement provisions. Furthermore, it would adjust APL's allocation under the agreement and provide for limited future adjustments to APL's allocation, indicate that only Lykes and TMM will operate vessels under the agreement, and reduce the notice period required to withdraw from the agreement. Finally, the modification would rename and restate the agreement.

Agreement No.: 011886.

Title: HMM/MOL Space Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. (''HMM'') and Mitsui O.S.K. Lines, Ltd. (''MOL'').

Filing Party: Eliot J. Halperin, Esq.; Manelli Denison & Selter PLLC; 2000 M Street, NW., 7th floor; Washington, DC 20036–3307.

Synopsis: The proposed agreement would authorize MOL to charter space from HMM on HMM's vessels operating between ports in the United States and ports in China and South Korea. The parties request expedited review.

Agreement No.: 011887.

Title: Zim/CCNI Space Charter Agreement.

Parties: Zim Israel Navigation Company Ltd. and Compania Chilena de Navegacion Interoceanica.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The proposed agreement would authorize Zim to charter space to CCNI in the trade between the U.S. West Coast and Jamaica. The parties request expedited review.

Dated: July 23, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–17191 Filed 7–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 004428F.
Name: AA Shipping LLC.
Address: 11100 South Wilcrest, Suite 3, Houston, TX 77099.
Date Revoked: July 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 10734F.
Name: Alcar International, Inc.
Address: 5501 NW 72nd Avenue, Miami, FL 33166.
Date Revoked: July 7, 2004.
Reason: Failed to maintain a valid bond.

License Number: 002964NF.
Name: Aries International, Inc.
Address: 365 Franklin Avenue, Franklin Square, NY 11010.
Date Revoked: July 13, 2004.
Reason: Failed to maintain valid bonds.

License Number: 003706NF.
Name: Chesapeake Bay Shipping and Warehousing, Inc.
Address: 3431 Benson Avenue, Suite E, Baltimore, MD 21227.
Date Revoked: July 4, 2004.
Reason: Failed to maintain valid bonds.

License Number: 017500F.
Name: Global Freight International, LLC dba Global Freight International.
Address: 2140 44th Street, SE., Suite 306, Kenwood, MI 49508
Date Revoked: July 4, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018047N.
Name: Global Quality Logistics, Inc.
Address: 13200 S. Broadway, Los Angeles, CA 90061.
Date Revoked: July 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 014263N.
Name: Jet Box Cargo, Inc. dba JBC International Logistic System.
Address: 2011 NW 79th Avenue, Miami, FL 33122.
Date Revoked: July 15, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017883NF.
Name: Magic Logistics, Inc.
Address: 4436 NW 74th Avenue, Miami, FL 33166.
Date Revoked: July 14, 2004.
Reason: Failed to maintain valid bonds.

License Number: 003446F.
Name: R&R Forwarders, Inc.
Address: 4462 NW 74th Avenue, Miami, FL 33166
Date Revoked: July 10, 2004.
Reason: Failed to maintain a valid bond.

License Number: 000499F.
Name: The Copeland Co., Inc.
Address: 5482 Jetport Industrial Blvd., Tampa, FL 33634.
Date Revoked: July 7, 2004.
Reason: Failed to maintain a valid bond.

License Number: 011157N.
Name: The Norton Line Inc.
Address: 249 East Ocean Blvd., Suite 620, Long Beach, CA 90802.
Date Revoked: July 10, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016471NF.
Name: Universal Express International.
Address: 320 N. Eucalyptus Avenue, Unit C, Inglewood, CA 90302.

Date Revoked: July 15, 2004.

Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–17192 Filed 7–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Amoy International, LLC dba Amoy Line, 14145 Proctor Avenue, Suite 14, City of Industry, CA 91746.
Officer: Yi Fan Chen, President (Qualifying Individual).

Global Association of Forwarders & Shippers, 19618 S. Susana Road, Rancho Dominguez, CA 90221.
Officers: John J. Brown, President (Qualifying Individual), Karana Brown, Secretary.

Castle Shipping Lines, Inc., 4225 Nicols Road, Eagan, MN 55122–1919.
Officer: John T. Andrusko, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Continental Shipping, 648 Bay Street, Suite 303, Staten Island, NY 10304. Leonor Antonieta Garcia Balseca; Sole Proprietor.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

East-West CFS, Inc., 14821 Northam Street, La Mirada, CA 90638.
Officers: Sherry Wang, President (Qualifying Individual); Cheng Lu, CFO/Secretary.

Dated: July 23, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–17193 Filed 7–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
016201N	Delta Line International, Inc., 8008 NW., 68th Street Miami, FL 33166	June 26, 2004.
014600N	Domar Enterprises, Inc. dba SGL Lines, 2534 Walnut Bend, Suite C, Houston, TX 77042	June 28, 2004.
017378F	E.M.W. Freight Forwarding Corp., 8601 NW., 72nd Street Miami, FL 33166	June 13, 2004.
004638F	FITS Limited Liability Company, 1923 Lakeville Drive Kingwood, TX 77339	June 9, 2004.
016297NF	Multitrans, Inc., 2103 NW., 79th Avenue Miami, FL 33122	May 1, 2004.
017353NF	West Consolidators, Inc., 220 W. Ivy Avenue, Inglewood, CA 90302	June 9, 2004.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–17194 Filed 7–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Steven R. Blust,

Chairman.

The Members of the Performance Review Board are:

1. A. Paul Anderson, Commissioner.
2. Joseph E. Brennan, Commissioner.
3. Harold J. Creel, Jr., Commissioner.
4. Rebecca F. Dye, Commissioner.
5. Norman D. Kline, Chief Administrative Law Judge.
6. Irwin L. Schroeder, Administrative Law Judge.
7. Miriam A. Trudelle, Administrative Law Judge.
8. Bryant L. VanBrakle, Secretary.
9. Bruce A. Dombrowski, Executive Director.
10. Florence A. Carr, Director, Bureau of Trade Analysis.
11. Vern W. Hill, Director, Bureau of Enforcement.
12. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing.
13. Austin L. Schmitt, Deputy Executive Director.
14. Amy W. Larson, General Counsel.

[FR Doc.04–17195 Filed 7–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are

incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer — Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision of the following reports:

1. Report title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted

Agency form number: FR 4006

OMB control number: 7100–0129

Frequency: Annual

Reporters: Banking Holding Companies

Annual reporting hours: 180 hours

Estimated average hours per response: 5 hours

Number of respondents: 36

General description of report: This information collection is mandatory [12 U.S.C. §§ 1842(a) and 1843(c)(2)] and may be given confidential treatment upon request [5 U.S.C. § 552(b)(4)].

Abstract: Bank holding companies (BHCs) that have acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted (DPC) generally are required to submit the extension request annually for shares or assets that have been held beyond two years from the acquisition date. The extension request does not have a required format; BHCs submit the information in a letter. The letter contains information on the progress made to dispose of such shares or assets and requests permission for an extension to hold them. This extension request is required pursuant to the Board's authority under the Bank Holding Company Act of 1956 (the Act), as amended and Regulation Y. The Federal Reserve uses the information to fulfill its statutory obligation to supervise BHCs.

2. Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers

Agency form number: FR 2046

OMB control number: 7100–0289

Frequency: On occasion

Reporters: Depository institutions

Annual reporting hours: 575 hours

Estimated average hours per response: 0.75 hours for primary and secondary credit borrowers; 0.25 hours for seasonal credit borrowers

Number of respondents: 128

General description of report: This information collection is mandatory (Sections 10B, 11(a)(2), and 11(i) of the Federal Reserve Act (12 USC §§ 347b(a) and 248(a)(2) and (i)) and individual respondent data are regarded as confidential (5 U.S.C. § 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, ''Extensions of Credit by Federal Reserve Banks,'' requires that Reserve Banks review balance sheet data in determining whether to extend credit and in ascertaining whether undue use is made of such credit. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing.

Board of Governors of the Federal Reserve System, July 22, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–17123 Filed 7–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Charles E. Mahan, IV, Fayetteville, West Virginia; to retain voting shares of FCNB Bancorp, Inc., Fayetteville, West Virginia, and thereby indirectly retain voting shares of The Fayette County National Bank of Fayetteville, Fayetteville, West Virginia.

Board of Governors of the Federal Reserve System, July 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17121 Filed 7–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000

Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Vision Bancshares, Inc., Gulf Shores, Alabama; to acquire 100 percent of the voting shares of BankTrust of Florida, Wewahitchka, Florida.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Wintrust Financial Corporation, Lake Forest, Illinois; to merge with Town Bankshares, Ltd., Delafield, Wisconsin, and thereby indirectly acquire voting shares of Town Bank, Delafield, Wisconsin.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Citizens Bancshares Co., Chillicothe, Missouri to acquire up to 12 percent of the voting shares of First Community Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire First Community Bank, Lee's Summit, Missouri.

Board of Governors of the Federal Reserve System, July 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17122 Filed 7–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The information collection required described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposed to extend through September 30, 2007, the current PRA clearance for information collection requirements contained in its Used Motor Vehicle Trade Regulation Rule (''Used Car Rule'' or ''Rule''). That clearance expires on September 30, 2004.

DATES: Comments must be submitted on or before September 27, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Used Car Rule: Paperwork comment,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the enveloped, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex T), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 East Monroe, Suite 1860, Chicago, Illinois 60603, (312) 960–5634.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Used Car Rule, 16 CFR part 455 (OMB Control Number 3084–0108).

The FTC invites comments on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Used Car Rule facilities informed purchasing decisions by consumers by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars they offer for sale. The Rule required that used car dealers display a Buyers Guide that, among other things, discloses information about warranty coverage on each used care offered for sale.

Burden statement:

Estimated total annual hours burden: 1,921,000 hours.

The Rule has no recordkeeping requirements. The estimated burden relating solely to disclosure requirements is 1,921,000 hours. As explained in more detail below, this estimate is based on the number of used care dealers (approximately 76,000 [2]), the number of used cars sold by dealers annually (approximately 30,000,000 [3]), and the time needed to fulfill the information collection tasks required by the Rule.[4] Staff revises its prior annual

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The Used Car Market Report 2004 (''Manheim Market Report''), p. 45, publishing by Manheim, 6205 Peachtree Dunwoody Road, Atlanta, Georgia 30328, citing NADA and CNW Marketing/Research. The Manheim Market Report estimates the number of dealerships in 2003 as 75,725. Staff has rounded that number to 76,000, slightly lower than the estimate of 80,000 dealers used in the prior Paperwork Reduction Act notice. The Manheim Market Report is available online at: *www.manheimnews.com/UCMR/reports/UCMR2004dy7r9901resources/index.html.*

[3] Manheim Market Report, p. 45. The Manheim Market Report estimates the number of used cars sold by dealers in 2003 as 29,903,000. Staff has rounded that number to 30,000,000, the same estimate used in the prior Paperwork Reduction Act notice.

[4] A relatively small number of dealers opt to contract with outside companies to perform the various tasks associated with complying with the

Continued

burden estimate of 1,925,000 hours to reflect a decrease in the approximate number of dealers.

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide in the window of each used car they offer for sale. The component tasks associated with this requirement include: (1) Ordering and stocking Buyers Guide forms; (2) entering applicable data on Buyers Guides; (3) posting the Buyers Guides on vehicles; and (4) making any necessary revisions in Buyers Guides.

Dealers should need no more than an average of one hour per year to obtain Buyers Guide forms, which are readily available from many commercial printers or can be produced by an office word-processing or desk-top publishing system.[5] Based on a universe of 76,000 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 76,000 hours.

For used cars sold ''as is,'' copying vehicle-specific data from dealer inventories to the Buyers Guide forms and checking off the ''no warranty'' box may take up to two minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process. Staff conservatively assumes that this task, on average, will require 1.5 minutes. For used cars sold under warranty, checking off the warranty box and adding warranty information may take an additional one minute, *i.e.*, 2.5 minutes. Based on input from industry sources, staff estimates that approximately 60% of used cars sold by dealers are sold ''as is,'' with the remainder sold under warranty. Thus, staff estimates the time required to enter data for used cars sold without warranty is 450,000 hours [(30,000,000 × 60% × 1.5 minutes) ÷ 60 minutes/hour] and 500,000 hours for used cars sold under warrant [(30,000,000 × 40% × 2.5 minutes) ÷ 60 minutes/hour], for an overall total of 950,000 hours.

Although the time required to post the Buyers Guide on each used car may vary substantially, FTC staff estimates that, on average, dealers will spend 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and place it on or on the vehicle. For the 30,000,000 vehicles sold the burden associated with this task is 875,000 hours. To the extent dealers are able to integrate this process into other activities performed in their ordinary course of business, this estimate likely overstates the actual burden.

If negotiations between buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Guide to reflect the actual terms of sale. According to the rulemaking record, bargaining over warranty coverage rarely occurs. Allowing for revision in 2% of sales, at two minutes per revision, staff estimates that dealers will spend 20,000 hours annually revising Buyers Guides.

Estimated annual cost burden: $29,651,000, consisting of $20,651,000 in labor costs and $9,000,000 in non-labor costs.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $10.75 per hour and an estimate of 1,921,000 burden hours for disclosure requirements, the total labor cost burden would be approximately $20,651,000

Capital or other non-labor costs: The cost of the Buyers Guide form itself is estimated to be 30 cents per form, so that forms for 30 million vehicles would cost dealers $9,000,000. In making this estimate, staff conservatively assumes that all dealers will purchase reprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are minimal.

William E. Kovacic,

General Counsel.

[FR Doc. 04–17158 Filed 7–27–04; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/07/2004			
20040883	Hospital Partners of America, Inc	Tenet Healthcare Corporation	Redding Medical Center.
20040899	MMI Investments, L.P	NDCHealth Corporation	NDCHealth Corporation.
20040919	Rockwood Holdings, Inc	mg technologies ag	CeramTec North America Innovative Ceramic Engineering Corp. Chemetall Corporation, Sachtleben Corporation.
20040922	Illinois Tool Works Inc	Andre Schwitter III	Truswal Systems Corporation.

Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to ''dealers,'' incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[5] The Buyers Guide is also available online from the FTC's Web site, *www.ftc.gov*, at *www.ftc.gov/bcp/conline/edcams/automobiles/index.html.*

Trans No.	Acquiring	Acquired	Entities
20040929	President and Fellows of Harvard College.	Suez	c/o Trigen Corporation, Trenton Energy Corporation, Trigen Building Services Corporation, Trigen-Kansas City Energy Corporation, Trigen-Maryland Steam Corporation, Trigen-Missouri Energy Corporation, Trigen-Oklahoma Energy Corporation, Trigen-Schuylkill Cogeneration, Inc., United Thermal Corporation.
20040944	Questor Partners Fund II, L.P	Deutsche Lufthansa AG	Chef Solutions, Inc.
20040966	Sumitomo Corporation	J.W. Childs Equity Partners II, L.P	JWC Hartz Holdings, Inc.
20040977	KKR Millennium Fund (Overseas), Limited Partnership.	KKR 1996 Fund L.P	Rockwood Specialties Group, Inc.
20040978	KKR European Fund, Limited Partnership.	KKR 1996 Fund L.P	Rockwood Holdings, Inc.
Transactions Granted Early Termination—06/08/2004			
20040021	Harrah's Entertainment, Inc	Jack B. Binion	Horseshoe Gaming Holding Corp.
20040872	Alcoa, Inc	Russian Aluminum Management	ZAO-Prime-alum.
20040887	Citigroup Inc	Principal Financial Group, Inc	Principal Residential Mortgage, Inc.
20040925	DLJ Merchant Banking Partners III, L.P	KKR 1996 Fund L.P	Rockwood Holdings, Inc.
20040932	Madison Dearborn Capital Partners IV, L.P.	PF Management, Inc	Pierre Foods, Inc.
20040938	The Genlyte Group Incorporated	The Genlyte Group Incorporated	Genlyte Thomas Group LLC, GTG Intangible Holdings LLP.
20040939	HFCP IV (Bermuda), L.P	Lincoln National Corporation	Dial Holding Company, LLC.
20040941	Welsh, Carson, Anderson & Stowe IX, L.P.	Hillcrest HealthCare System	Healthcrest, Inc., Hillcrest HealthCare System.
20040942	Jon Grant Lincoln	Alliance Gaming Corporation	United Coin Machine Co.
20040943	Goense Bounds & Partners A, L.P	Andrew M. Stein	Stein Wood, Inc.
20040946	GTCR Fund VII, L.P	Honeywell International Inc	Honeywell International Inc.
20040947	Suns Legacy Partners, L.L.C	Phoenix Suns Limited Partnership	Phoenix Suns Limited Partnership.
20040948	Morgan Stanley	AMR Corporation	AMR Corporation.
20040949	Alfred A. Slifka	Repsol YPF, S.A	Chelsea Sandwich LLC., Global Companies LLC., Global Montello Group LLC.
20040950	Richard Slifka	Repsol YPF, S.A	Chelsea Sandwich LLC, Global Companies LLC, Global Montello Group LLC.
20040951	Symantec Corporation	Brightmail Incorporated	Brightmail Incorporated.
20040954	Ralph Lauren	Sylvia Company LLC	RL Childrenswear Company LLC.
20040956	GTCR Fund VIII, L.P	Winward Capital Partners II, L.P	RPSI, Inc.
20040957	Group 1 Automotive, Inc	Jardine Matheson Holdings Limited	Jardine California Motors Limited.
20040964	Intelsat, Ltd	Lockheed Martin Corporation	Comsat General Corporation, Comsat New Services, Inc., Lockheed Martin Global Telecommunications, LLC.
Transactions Granted Early Termination—06/09/2004			
20040980	ED&F Man Holdings Limited	Unifina Holding AG	Volcafe Holding Ltd., Volcafe International Ltd.
Transactions Granted Early Termination—06/10/2004			
20040965	Marsh & McLennan Companies, Inc	Kroll Inc	Kroll Inc.
Transactions Granted Early Termination—06/14/2004			
20040889	Siemens Aktiengesellschaft	CVC European Equity Partners L.P	Trench Electric Holding B.V.
20040896	Matlin Patterson Global Opportunities Partners II, L.P.	Duke Energy Corporation	Duke Energy Capitol of Texas, Inc., Duke Energy Enterprise, LLC, Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Marketing America, LLC, Duke Energy Marshall County, LLC, Duke Energy Murray, LLC, Duke Energy New Albany, LLC, Duke Energy Sandersville, LLC, Duke Energy Southaven, LLC, Duke Energy Trading and Marketing, LLC.
20040967	Coinstar, Inc	Wellspring Capital Partners II, L.P	ACMI Holdings, Inc.
20040979	Ronald O. Perelman	Charles Barton Rice, Sr	Barton Protective Services Incorporated.
20040981	Bayerische Hypo-und Vereinsbank AG	Ramius Capital Group, LLC	RCG Tapestry, LLC.
20040985	Charlesbank Equity Fund V. Limited Partnership.	Terry Collins	Papa Murphy's International, Inc.

Trans No.	Acquiring	Acquired	Entities
20040989	CEP Batesville Acquisition, LLC	NRG Energy, Inc	LSP Batesville Funding Corporation, LSP Batesville Holding, LLC, LSP Energy Inc., LSP Energy Limited Partnership, NRG Batesville LLC.
20040993	Entergy Corporation	Royal Dutch Petroleum Corporation	WindEnergy GP LLC. WindEnergy LP LLC.
20041000	Continental AG	Phoenix AG	Phoenix AG.
Transactions Granted Early Termination—06/16/2004			
20040962	K2 Inc	Marmot Mountain, Ltd	Marmot Mountain, Ltd.
20040974	Apax Europe V–A, L.P	SSL International plc	LRC Hospital Products Sdn Bhd, LRC Products Limited, SSL Americas Inc., Tubifoam.
20040988	Castle Harlan Partners IV, L.P	ATT Holding Co	ATT Holding Co.
20040995	E.I. du Pont de Nemours and Company	Maxygen, Inc	Verdia, Inc.
Transactions Granted Early Termination—06/17/2004			
20040905	Deluxe Corporation	New England Business Service, Inc	New England Business Service, Inc.
20040924	Teleflex Incorporated	FS Equity Partners IV, L.P	Hudson Respiratory Care Inc.
20040994	Harris Corporation	Donald S. Orkand	The Orkand Corporation.
20041004	Honeywell International Inc	Genesis Cable Systems, L.L.C	Genesis Cable Systems, L.L.C.
Transactions Granted Early Termination—06/18/2004			
20040969	Kuwait Petroleum Corporation	MEGlobal Canada Inc	MEGlobal Canada Inc.
20040970	The Dow Chemical Company	MEGlobal Canada Inc	MEGlobal Canada Inc.
20040984	Lucent Technologies Inc	Telica, Inc	Telica, Inc.
20040999	TPG Partners IV, L.P	Grohe Aktiengesellschaft	Grohe Aktiengesellschaft.
20041001	Octel Corp	Starreon Corporation	Octel Starreon LLC.
20041002	KRG Capital Fund II, L.P	Matria Healthcare, Inc	Diabetes Management Solutions, Inc., Diabetes Self Care, Inc.
20041005	Beverly Enterprises, Inc	M. Kyle Rice	Hospice USA, LLC.
20041006	Beverly Enterprises, Inc	Richard K. Rice	Hospice USA, LLC.
20041008	CapStreet II, L.P	E*TRADE Financial Corporation	E*TRADE Access, Inc.
20041010	Radio One, Inc	M.S. Stude	KRTS, LP.
20041012	Cebridge Connections Holdings, LLC	USA Media Holdings, LLC	USA Media Group, LLC.
Transactions Granted Early Termination—06/21/2004			
20040958	Castle Harlan Partners IV, L.P	Carlyle-Horizon Partners, L.P	Horizon Lines Holding Corp.
Transactions Granted Early Termination—06/22/2004			
20040945	Schneider Electric S.A	Balfour Beatty plc	Andover Controls Corporation.
20040986	U.S. Bancorp	National City Corporation	National City Bank, National City Bank of Indiana, National City Bank of Kentucky, National City Bank of Michigan/Illinois, National City Bank of Pennsylvania.
20041014	Bank of America Corporation	Thomas R. Wheeler	Electronic Product Integration Corporation.
20041025	Verizon Communications Inc	Verizon Communications Inc	CyberTel Cellular Telephone Company.
Transactions Granted Early Termination—06/23/2004			
20040935	Deutsche Post AG	Accretive Associates I, LLC	QuikPak, Inc.
20040959	General Electric Company	Chevron Texaco Corporation	Chevron Texaco Corporation.
20040997	Macrovision Corporation	InstallShield Software Corporation	InstallShield Software Corporation.
Transactions Granted Early Termination—06/25/2004			
20040972	Reed Elsevier PLC	Saxon Publishers, Inc	Saxon Publishers, Inc.
20040973	Reed Elsevier NV	Saxon Publishers, Inc	Saxon Publishers, Inc.
20041016	Brockway Moran & Partners Fund II, L.P	Air Evac Leasing Corporation	Air Evac Leasing Corporation.
20041018	Bain Capital Fund VII, L.P	Rhodia, S.A	Rhodia Inc.
20041027	Nautic Partners V, L.P	Wat H. Tyler	D–Rep Plastics, Inc., IPS Corporation Studor, Incorporated Watertite Products, Inc. Weld-On Adhesives, Inc.
20041032	Bob Evans Farms, Inc	SK Equity Fund, L.P	SWH Corporation.
20041034	James Dondero	Leap Wireless International, Inc	Leap Wireless International, Inc.
20041035	MHR Institutional Partners IIA LP	Leap Wireless International, Inc	Leap Wireless International, Inc.

Trans No.	Acquiring	Acquired	Entities
20041037	Daniel Glassman	Pharma Services Holding, Inc	Bioglan Pharmaceuticals Company, Quintiles Bermuda Ltd. Quintiles Ireland Limited.
20041046	Craig H. Neilsen	Windsor Woodmont Black Hawk Resort Corp.	Windsor Woodmont Black Hawk Resort Corp.
20041050	MNBA Corporation	SouthTrust Corporation	SouthTrust Bank.
Transactions Granted Early Termination—06/28/2004			
20041020	C&D Technologies, Inc	Nicholas G. Tagaris	Datel Holding Corporation.
20041023	Oshkosh Truck Corporation	Littlejohn Partners IV, L.P	JerrDan Corporation.
Transactions Granted Early Termination—06/29/2004			
20041019	Oscar Davis	Goldline Controls, Inc	Goldline Controls Inc.
20041038	Ryerson Tull, Inc	Arcelor S.A	J&F Steel, LLC.
20041045	SEB SA	Waterford Wedgwood plc	All-Clad USA, Inc.
20041056	Platinum Equity Capital Partners, L.P	Safeguard Scientifics, Inc	CompuCom Systems, Inc.
20041059	Thomas H. Lee Equity Fund IV, L.P	TA/Advent VIII, L.P	United Pet Group, Inc.
Transactions Granted Early Termination—06/30/2004			
20040692	General Dynamics Corp	W. David Thompson	Spectrum Astro, Inc.
20040829	Tele Atlas N.V	Stephen R. Polk	Geographic Data Technology, Inc.
20041055	Tellabs, Inc	Advanced Fibre Communications, Inc	Advanced Fibre Communications, Inc.
Transactions Granted Early Termination—07/01/2004			
20040987	Briggs & Stratton Corporation	KMS Acquisition Company, L.P	Simplicity Manufacturing, Inc.
20041072	Amgen Inc	Roche Holding Ltd	F. Hoffmann-La Roche Ltd., Hoffmann-La Roche Inc.
Transactions Granted Early Termination—07/02/2004			
20040512	Pentair, Inc	Wisconsin Energy Corporation	WICOR, Inc.
20041024	Cardinal Health, Inc	Geodax Technology, Inc	Geodax Technology, Inc.
20041073	Citigroup Inc	Arizant, Inc	Arizant, Inc.
20041082	ABRY Partners IV, L.P	Monitronics International, Inc	Monitronics International, Inc.
20041083	Blackstone NSS Communications Partners (Cayman) L.P.	New Skies Satellites N.V	New Skies Satellites N.V.
20041088	Regus Group plc	HQ Global Holdings, Inc	HQ Global Holdings, Inc.
20041089	TPG N.V	NC III Limited	Wilson Logistics Holding AB.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–17159 Filed 7–27–04; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9310]

Aspen Technology, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 13, 2004.

ADDRESSES: Comments should refer to ''Aspen Technology, Inc., Docket No. 9310,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Richman, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2563.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the

public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 15, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/07/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before August 13, 2004. Comments should refer to ''Aspen Technology, Inc., Docket No. 9310,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Order (''Proposed Order'') with Aspen Technology, Inc. (''AspenTech'') to resolve the anticompetitive effects alleged in the Complaint issued by the Commission on August 6, 2003.

On or about May 31, 2002, AspenTech acquired Hyprotech, Ltd. from AEA Technology plc for approximately $106.1 million in a transaction that was not reportable under the Hart-Scott-Rodino Act. At the time of the acquisition, AspenTech and Hyprotech were the primary global suppliers of process engineering simulation software and had only one other significant competitor, Simulation Sciences (''SimSci''). The Agreement requires that AspenTech divest its integrated engineering software business to Bentley Systems, Inc. (''Bentley''), and its batch and continuous process engineering software business to a Commission-approved buyer.

The Proposed Order has been placed on the public record for 30 days for interested persons to comment. Comments received during this 30 day period will become part of the public record. After 30 days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw the Proposed Order or make the Proposed Order final.

I. The Parties

AspenTech, headquartered in Cambridge, Massachusetts, is a developer and worldwide supplier of manufacturing, engineering, and supply chain simulation computer software. AspenTech's products include non-linear process engineering simulation software used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that support those industries. AspenTech had total revenues of approximately $323 million for fiscal year 2003, and it employs approximately 1,750 people worldwide.

Hyprotech was a wholly-owned operating division of AEA Technology plc, a corporation organized, existing, and doing business under the laws of the United Kingdom. Hyprotech was also a developer and worldwide supplier of engineering and simulation computer software used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that support those industries. Headquartered in Calgary, Alberta, Canada, Hyprotech had offices throughout the world, including the United States, and had revenues of approximately $68.5 million in fiscal year 2002.

Prior to the acquisition, AspenTech and Hyprotech were the largest providers of process engineering simulation software. Process engineering simulation software enables plant designers, engineers, production planners, and others, to design, simulate, and analyze production processes used in various industrial operations. The software allows users to mathematically model, or simulate, a process to predict what happens when different variables (such as heat, pressure, or raw material composition) are changed, thereby allowing more efficient and lower cost operations. AspenTech and Hyprotech were also the two primary providers of integrated engineering software, which facilitates the sharing and implementation of process design data.

II. The Commission's Complaint

On August 6, 2003, the Commission issued a Complaint charging that AspenTech unlawfully acquired the assets of Hyprotech in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Complaint alleges the following seven global markets within which to analyze the effects of the acquisition: (1) Software used to simulate continuous process engineering applications; (2) four narrower markets contained within the overall continuous process engineering software market, each such market defined by end-use application (specifically oil and gas, refining, chemicals, and air separation process simulation); (3) software used to simulate batch process engineering applications, such as fine chemicals or pharmaceuticals; and (4) software used for integrated engineering applications (multi-user software that enables engineers to share process design data).

The Complaint alleges that, prior to the acquisition, AspenTech and

Hyprotech were the closest competitors within each relevant market. The Complaint further alleges that, prior to the acquisition, AspenTech and Hyprotech vigorously competed to develop, license, and support continuous and batch process engineering simulation software and integrated engineering software. This competition provided customers with lower prices, better service, and increased product innovation. The Complaint maintains that entry into the relevant product markets is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint charges that the combination of the two companies substantially lessened competition in the relevant markets. Specifically, the acquisition eliminated the competition between AspenTech and Hyprotech to reduce prices, enhance innovation, and offer better services with respect to their software offerings in the relevant markets. Thus the acquisition enhanced AspenTech's ability to raise customers' prices above competitive levels in the relevant markets. The acquisition also increased AspenTech's capability to undermine open standard setting organizations, diminishing the pro-consumer effectiveness of such organizations to promote third-party software design and sale.

III. Terms of the Proposed Order

The Proposed Order effectively remedies the acquisition's alleged anticompetitive effects by requiring AspenTech to divest the overlapping Hyprotech assets. The continuous process and batch process assets, along with AspenTech's operator training software and service business, are to be divested to a Commission-approved buyer and in a manner approved by the Commission, and the integrated engineering software business is to be divested to Bentley, also subject to the Commission's final approval.

A. Divestiture of the Hyprotech Process Engineering Software and AspenTech Operator Training Software Business

The Proposed Order directs AspenTech to sell Hyprotech's continuous process and batch process assets, as well as AspenTech's operator training business, to a buyer acceptable to the Commission within the required time period. Section II. If AspenTech is unable to divest this set of assets to a Commission-approved buyer within 60 or 90 days of the Commission making the Proposed Order final, this time period dependant on when AspenTech provides an application for divestiture, the Commission may appoint a trustee to divest the assets to a Commission-approved buyer.

The Proposed Order assures the viability of the divestiture of the continuous and batch process engineering software assets by (1) requiring AspenTech to divest its operator training software and services business and (2) allowing customers with current software maintenance and support agreements to choose between maintaining those contracts with AspenTech or switching to the Commission-approved buyer. Section II. Customers will also be able to obtain additional copies of Hyprotech software from the Commission-approved buyer without affecting current license agreements with AspenTech. Paragraph II.F.

The Proposed Order allows AspenTech to license the Hyprotech continuous and batch process engineering software from the Commission-approved buyer to preserve software development efforts since the acquisition. The Proposed Order requires AspenTech to provide the Commission-approved buyer with (1) all releases and upgrades to the Hyprotech process engineering simulation software for two years and (2) within fourteen days after the two-year post-divestiture period, all Hyprotech process engineering software under development at that time. Paragraph II.D. The Proposed Order additionally requires AspenTech to provide support services on the process engineering software assets to the Commission-approved buyer for two years from the date of divestiture. Paragraph II.E. These provisions ensure that the Commission-approved buyer will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Proposed Order requires AspenTech to indemnify the Commission-approved buyer in the event that the divested process engineering software infringes specific intellectual property rights. AspenTech will be bound to either procure for the Commission-approved buyer the right to continue to use the software or modify or replace the software so that it does not infringe the third party's intellectual property rights. Paragraphs II.H. and II.I.

The Commission's purpose in divesting the process engineering simulation software assets is to allow the buyer to engage in the development and licensing of the Hyprotech software and to remedy the lessening of competition alleged in the Commission's Complaint in the markets for (1) continuous process engineering simulation flowsheet software for process industries and smaller markets contained therein, and (2) batch process engineering simulation flowsheet software for process industries.

B. Divestiture to Bentley

Pursuant to the Proposed Order and subject to the Commission's final approval, AspenTech will divest Hyprotech's AXSYS integrated engineering software business to Bentley. Section III. Bentley is a technology firm that provides architecture, engineering, construction, and operations software for a variety of applications, including buildings, industrial plants, and civil operations. Bentley reported 2003 revenues of approximately $260 million.

Under the terms of the Proposed Order, Bentley will acquire Hyprotech's integrated engineering software products and, among other things, all rights to any existing software contracts no earlier than one day, and no later than ten days after the Proposed Order is placed on the public record. The Proposed Order contains additional provisions that require AspenTech to provide Bentley with updates, upgrades, and new releases of AspenTech's engineering and other products on at least as favorable terms as offered to any other person, for a period of five years. Paragraph III.E. AspenTech must also provide Bentley with no-cost support services relating to the AXSYS assets for a period of two years. Paragraph III.F. These provisions ensure that Bentley will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Commission believes that Bentley is a satisfactory buyer for these assets. The AXSYS software effectively complements the other software and services that Bentley currently offers. Bentley has the engineering, software, and marketing resources to support the AXSYS software, and the expertise to provide updated and innovative versions of AXSYS. As a result, the Commission believes that divestiture of this product line to Bentley will remedy the acquisition's alleged anticompetitive effects in the integrated engineering software market.

The purpose of the divestiture is to ensure the continued use and development of the AXSYS software in the same business in which Hyprotech used the software prior to Hyprotech's acquisition by AspenTech and to remedy the lessening of competition alleged in the Commission's Complaint

in the market for integrated engineering software for process industries.

C. Other Provisions

To maintain the viability of both packages and to provide a level playing field for third-party software developers that must interface with the Hyprotech and AspenTech process engineering simulation software products, the Proposed Order requires Aspentech to maintain a level playing field. For a period of five years after the divestiture, the Proposed Order requires AspenTech to develop its engineering simulation software in a manner that maintains its compatibility with HYSYS and to maintain published interfaces to AspenTech engineering simulation software. Paragraphs IV.A. and IV.B. AspenTech also must publish and provide support for all HYSYS and AspenPlus interfaces. Paragraphs IV.B. and IV.C. Finally, the proposed order prohibits AspenTech from entering into or enforcing any agreement with any competitors that has the purpose of impeding or obstructing the conduct or organizational structure of any standard-setting organization, which agreement has not been explicitly disclosed to the members of that standard-setting organization and that is inconsistent with the purpose of the Proposed Order as stated in Paragraphs II.K. and III.H. Paragraph IV.D.

To ensure that both the Commission-approved buyer of the process engineering software and operator training software and Bentley can hire employees familiar with the divested software, the Proposed Order directs AspenTech to provide the acquirers with access to relevant AspenTech employees. Paragraph V.A. This provision requires AspenTech to provide the acquirers with lists of relevant employees, remove any impediments deterring current AspenTech employees from switching to Commission-approved buyers, and for a period of two years following the divestitures, prevents AspenTech from soliciting any former AspenTech employees who choose to work for either of the Commission-approved buyers. Paragraphs V.B. through V.D.

Section VI of the Proposed Order includes the standard divestiture trustee provision pursuant to which the Commission may appoint a trustee to effectuate a required divestiture if AspenTech is unable to comply with its divestiture obligations in either Section II. or Section III., or both. Section VI. If, however, the Commission rejects Bentley as a buyer, AspenTech is granted an additional six months to divest the asset package to an acquirer that receives the prior approval of the Commission. Paragraph III.B. If AspenTech is unable to divest within that six month period, then the Commission may appoint a trustee to divest the AXSYS Assets.

IV. Opportunity for Public Comment

By accepting the Proposed Order, subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order or modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–17155 Filed 7–27–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 032 3052]

Nutramax Laboratories, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 12, 2004.

ADDRESSES: Comments should refer to ''Nutramax Laboratories, Inc., File No. 032 3052,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Shira Modell, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3116.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 13, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/07/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before August 12, 2004. Comments should refer to ''Nutramax Laboratories, Inc., File No. 032 3052,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must

that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Nutramax Laboratories, Inc. (''Nutramax'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Senior Moment, a dietary supplement containing cerebral phospholipids and docosahexaenoic acid (DHA). According to the FTC complaint, Nutramax represented that Senior Moment prevents memory loss and restores lost memory function in adults of all ages. The complaint alleges that the company failed to have substantiation for these claims. It further alleges that Nutramax falsely represented that scientific studies prove that Senior Moment restores lost memory function in adults of all ages.

The proposed consent order contains provisions designed to prevent Nutramax from engaging in similar acts and practices in the future.

Part I of the order requires Nutramax to have competent and reliable scientific evidence substantiating any claims that Senior Moment or any substantially similar product prevents memory loss or restores lost memory function.

Part II requires Nutramax to have competent and reliable scientific evidence substantiating any claims about the benefits, performance or efficacy of any food, drug, dietary supplement, device or service sold for human use or consumption for cognitive functions or processes, or the treatment, cure, mitigation, alleviation of the symptoms, prevention, or reduction in the risk of any related disease or disorder. Although the order does not prohibit the trade name ''Senior Moment,'' it does require the respondent to have competent and reliable scientific evidence to substantiate any covered claims conveyed directly or by implication through the use of the product name.

Part III prohibits any misrepresentation of the existence, contents, validity, results, conclusions, or interpretations of any test or study, in connection with the marketing or sale of any product or program for human cognitive function or processes.

Part IV permits any representation for any product that is permitted in labeling for such product pursuant to regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Parts V through VIII of the order require Nutramax to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–17156 Filed 7–27–04; 8:45 am]

BILLING CODE 6750–01–P

identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Janet Silva, Director of Human Resources, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2022.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board: Rosemarie A. Straight, Chair; Judith Bailey, Member; Maryanne S. Kane, Member; Todd J. Zywicki, Member; Howard J. Beales, Member; Lydia B. Parnes, Member; Clarence L. Peeler, Member; Luke M. Froeb, Member; Pauline M. Ippolito, Member; Susan Creighton, Member; Bernard A. Nigro, Member; William E. Kovacic, Member; and John D. Graubert, Member.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–17157 Filed 7–27–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0115]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed

information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of a Currently Approved Collection;

Title of Information Collection: HHS Acquisition Regulation—Solicitation and Contracts;

Form/OMB No.: OS–0990–0115;

Use: Information is needed to evaluate feasibility of contractor(s) scientific or technical approach, management plan, and cost to accomplish the program or services required by the government.

Frequency: Recordkeeping, Reporting;

Affected Public: State, local, or tribal governments and not-for-profit institutions;

Annual Number of Respondents: 5,357*;*

Total Annual Responses: 5,357;

Average Burden Per Response: 1 hour;

Total Annual Hours: 883,905

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0115), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: July 20, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–17115 Filed 7–27–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0159]

Schering Corp. et al.; Withdrawal of Approval of 92 New Drug Applications and 49 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 5, 2004 (69 FR 25124). The document announced the withdrawal of approval of 92 new drug applications (NDAs) and 49 abbreviated new drug applications (ANDAs). The document inadvertently withdrew approval of ANDA 88–584 for DHCplus (dihydrocodeine bitartrate, acetaminophen, and caffeine) Capsules, 356.4 milligrams, held by Purdue Frederick Co., One Stamford Forum, Stamford, CT 06901–3431. FDA confirms that approval of ANDA 88–584 is still in effect.

DATES: The notice published on May 5, 2004 (69 FR 25124) as corrected by this document has a date of June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 04–10194 appearing on page 25124 in the issue of Wednesday, May 5, 2004, the following correction is made: On page 25130, in the table, the entry for NDA 88–584 is removed.

Dated: June 2, 2004.

Steven Galson,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 04–17110 Filed 7–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The National Institutes of Health

Submission for OMB Review; Comment Request; Brain Power! The NIDA Junior Scientist Program and the Companion Program, Brain Power! Challenge

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 1, 2004, page 17194, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Brain Power! The NIDA Junior Scientist Program, for grades K–5, and the companion program for Middle School, the Brain Power! Challenge. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a three-year clearance to evaluate the effectiveness of the Brain Power! Program's ability to: (1) Increase student's knowledge about the biology of the brain and the neurobiology of drug addiction, (2) increase positive attitudes toward science, careers in science, science as an enjoyable endeavor, and the use of animals in research; and stimulate interest in scientific careers; and (3) engender more realistic perceptions of scientists as being from many races, ages, and genders. The secondary goals of the evaluation are to determine the Program's impact on attitudes and intentions toward drug use. The findings will provide valuable information concerning the goals of NIDA's Science Education Program of increasing scientific literacy and stimulating interest in scientific careers. In order to test the effectiveness of the evaluation, information will be collected from students before and after exposure to the curriculum with pre- and post-test self-report measures. Surveys will also be administered to teachers after the completion of the program to examine ease and fidelity of implementation, as well as impact in knowledge and understanding of the neurobiology of addiction. Surveys will be administered to parents to obtain parental reaction and opinion on the materials and the degree to which parents find the curriculum informative and appropriate.

Frequency of Response: On occasion. *Affected Public:* Elementary and middle school students, teachers, and parents. *Type of Respondents:* Students, Teachers, and Parents. The reporting

burden is as follows: *Estimated Number of Respondents:* 1,437; *Estimated Number of Responses per Respondent:* Students: 2; Parents and teachers: 1; *Average Burden Hours Per Response:* Students and Teachers: .5; Parents of students K–grade 5: .25; Parents of students grades 6–9: .5; *Estimated Total Annual Burden Hours Requested:* 434.83. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours requested
Students (K–grade 5)	640	2	.5	640
Students (grades 6–9)	560	2	.5	560
Parents (K–grade 5)	56	1	.25	14
Parents (grades 6–9)	56	1	.5	28
Teachers (full eval.)	25	1	.5	12.5
Teachers (online eval.)	100	1	.5	50
Total	1,437	1	.5	1,304.5
Annualized Burden Total	479			434.83

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimate public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Cathrine Sasek, Coordinator, Science Education Program, Office of Science Policy and Communications, National Institute on Drug Abuse, 6001 Executive Blvd, Room 5237, Bethesda, MD 20892, or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or by e-mail to: *csasek@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: July 21, 2004.

Laura Rosenthal,

Associate Director for Management, National Institute for Drug Abuse.

[FR Doc. 04–17127 Filed 7–27–04; 8:45 am]

BILLING CODE 4140–01–P

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, R03s.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites Bethesda, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Lynn Mertens King, Ph.D., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm. 4AN–32F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: July 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17128 Filed 7–27–04; 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 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 Dental and Craniofacial Research Special Emphasis Panel 05–05, Review PAR–04–091, Data Analysis and Statistical Methodology.

Date: September 20, 2004.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–09, Review PAR–04–091, Data Analysis and Statistical Methodology.

Date: September 30, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17129 Filed 7–27–04; 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 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 Dental and Craniofacial Research Council.

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, much 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 Dental and Craniofacial Research Council RFA Review.

Date: August 23, 2004.

Open: 1 p.m. to 1:30 p.m.

Agenda: Director's Comments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institute of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH–NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, (301) 594–2089, *NORMAN.BRAVEMAN@NIH.GOV*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17130 Filed 7–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel High Throughput Molecular Screening Assay Development.

Date: August 5–6, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Willard Hotel, 1401 Pennsylvania Avenue, Washington, DC 20004.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders, 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17131 Filed 7–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Aging Special Emphasis Panel, Cancer in Aging.

Date: August 5, 2004.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7706 *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, The InChianti Follow-Up Study.

Date: August 6, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alessandra M. Bini, PhD., Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7708.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Early Markers of Alzheimer's Disease in BLSA Participants: Structural & Functional Brain Changes.

Date: August 9, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Nekola, PhD., Chief, Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692, 301–496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17133 Filed 7–27–04; 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 an Unsolicited P01 Application on Regulatory APCs.

Date: August 19, 2004.

Time: 1 p.m. to 4 p.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: Kenneth E. Santora, 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, 301–496–2550, *ks216i@nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17134 Filed 7–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientifc Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review NAED Conflicts.

Date: July 26, 2004

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Reviews and Grants.

Date: July 26, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr,nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neurotechnology/Human Brain Project.

Date: July 27, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

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: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: July 29, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review NIDA Program Project

Date: August 5, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@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.

(Catalogue of Federal Domestic Assistance Programs 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: July 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–17132 Filed 7–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[CBP Dec. 04–23]

Duty-Free Treatment of Articles Imported in Connection With the 2004 FINA World Championships

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of designation of international athletic event for purposes of preferential tariff provision.

SUMMARY: This notice advises the public of the designation of the 2004 Federation Internationale de Natation (FINA) World Championships, an international swimming competition, as a qualifying international athletic event under subheading 9817.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Kristen K. Ver Steeg, Office of Regulations and Rulings (202–572–8810).

SUPPLEMENTARY INFORMATION:

Background

Section 1456 of the Tariff Suspension and Trade Act of 2000 (the Act) (Pub. L. 106–476, 114 Stat. 2101) promulgated the duty-free treatment provided under subheading 9817.60.00, HTSUS, for certain articles brought into the United States for certain international athletic events. Subheading 9817.60.00, HTSUS, which implements section 1456(a) of the Act, states:

> Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow.

Section 1456(b) of the Act, provides that such articles are free of duty, taxes, and fees, but are subject to routine inspections. The authority in section 1456 has been delegated to the Commissioner of Customs and Border Protection. See Homeland Security Act of 2002 (Public Law 107–296), Treasury Department Order No. 100–16, DHS Delegation Number 7010.1.

The 2004 World Swimming Championships will be held in Indianapolis, Indiana, from October 7, 2004, though October 11, 2004. This event is sponsored by the FINA, which is the international governing body for all aquatic sports, including swimming. United States Aquatic Sports (USAS), USA Swimming and the Indiana Sports Corporation will also sponsor the event, which will feature approximately 600 athletes from more than 100 countries. The President, USAS, on behalf of the Indiana Sports Corporation, has requested that the event be designated as a qualifying international athletic event for purposes of subheading 9817.60.00, HTSUS.

Determination

It is determined that the 2004 FINA World Championships qualifies as a ''similar international athletic event'' in accordance with section 1456 of the Tariff Suspension and Trade Act of 2000. Therefore, articles meeting the conditions and requirements set forth in subheading 9817.60.00, HTSUS, imported in connection with the 2004 FINA World Swimming Championships, will be entitled to duty-free treatment.

Robert C. Bonner,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 04–17116 Filed 7–27–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–08]

Notice of Proposed Information Collection for Public Comment: 2005 American Housing Survey—National Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202) 708–1060, Ext. 5887 (this is not a toll-free number), or Jane M. Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301) 763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

This notice also lists the following information:

Title of Proposal: 2005 American Housing Survey—National Sample.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 2005 American Housing Survey National Sample (AHS–N) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

The 2005 survey is similar to previous AHS–N Surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for the beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities. The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–21, AHS–22 and AHS–23.

Members of Affected Public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 55,000.

Estimate Responses per Respondent: 1 every two years.

Time per Respondent: 34 minutes.

Total Hours to respond: 31,167.

Respondent's Obligation: Voluntary.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Title 13 U.S.C. 9(a), and title 12, U.S.C., 1701z–1 *et seq.*

Dated: July 21, 2004.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. 04–17197 Filed 7–27–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–54]

Notice of Submission of Proposed Information Collection to OMB; Mortgagee's Application for Partial Settlement (Multifamily Mortgage)

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for the reinstatement of approval to collect the information for Multifamily Mortgagees' applications for partial insurance benefit payment within 24 to 48 hours after assignment or conveyance of defaulted MF mortgage. The information collected provides required data to process a partial claim payment within 24 to 48 hours after assignment or conveyance of a multifamily mortgage.

DATES: *Comments Due Date:* August 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0427) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage).

OMB Approval Number: 2502–0427.

Form Numbers: HUD–2537.

Description of the Need for the Information and Its Proposed Use:

Multifamily Mortgagees may apply for partial insurance benefit payment within 24 to 48 hours after assignment

or conveyance of defaulted MF mortgage. The information collected provides required data to process a partial claim payment within 24 to 48 hours after assignment or conveyance of a multifamily mortgage.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	215	1		0.251		54

Total Estimated Burden Hours: 54.

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 20, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17198 Filed 7–27–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4903–N–55]

Notice of Submission of Proposed Information Collection to OMB; Minimum Property Standards for Housing

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for renewal of the current approval to collect information for Minimum Property Standards for Housing. The information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These standards will protect the Department's interest by requiring certain features of design and construction.

DATES: *Comments Due Date:* August 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0321) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Minimum Property Standards for Housing.

OMB Approval Number: 2502–0321.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This Information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These standards will protect the Department's interest by requiring certain features of design and constriction.

Frequency of Submission: On occasion.

	Number of respondents	x	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden:	1,000		1		8		8,000

Total Estimated Burden Hours: 8,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 21, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17199 Filed 7–27–04; 8:45 am]

BILLING CODE 4210–72–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–499]

Certain Audio Digital-to-Analog Converters and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Claims 1 and 2 of U.S. Patent No. 6,492,928

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 16) terminating the above-captioned investigation as to claims 1 and 2 of U.S. Patent No. 6,492,928 (''the ''928 patent'').

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 2003, based on a complaint filed on behalf of Cirrus Logic, Inc. of Austin, Texas (''complainant''). 68 FR 64,641 (Nov. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of the '928 patent. The notice of investigation named two respondents: Wolfson Microelectronics, PLC of Edinburgh, United Kingdom; and Wolfson Microelectronics, Inc. of San Diego, Calif. 68 FR 64,641 (Nov. 14, 2003).

On December 29, 2003, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of claims 2, 3, 5, 6, and 15 of the '928 patent, and of claims 9, 12, and 19 of U.S. Patent No. 6,011,501. That ID was not reviewed by the Commission. 69 FR 4177 (Jan. 28, 2004).

On June 30, 2004, complainant filed an unopposed motion to terminate the investigation in part as to allegations of infringement of claims 1 and 2 of the '928 patent based on the withdrawal of the allegations.

On July 1, 2004, the ALJ issued the subject ID (Order No. 16) granting complainant's motion to terminate the investigation as to claims 1 and 2 of the '928 patent. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: July 22, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17172 Filed 7–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–653 (Second Review)]

Sebacic Acid From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review and scheduling of a full five-year review concerning the antidumping duty order on sebacic acid from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on sebacic acid from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission also hereby gives notice of scheduling of the full five-year review concerning the antidumping duty order on sebacic acid from China. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On July 6, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (69 FR 17233, April 1, 2004) was adequate and that the respondent interested party group response was inadequate.[1] The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[1] Commissioner Lane found that the respondent interested party group response was adequate.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on November 17, 2004, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on December 7, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 1, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 3, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 29, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 16, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before December 16, 2004. On January 14, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 19, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 23, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17171 Filed 7–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376, 377, and 379 (Review) and 731–TA–788–793 (Review)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On July 6, 2004, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. With regard to subject stainless steel plate from Belgium and Korea, the Commission found that both the domestic interested party group responses and the respondent interested party group responses to its notice of institution (69 FR 17235, April 1, 2004) were adequate and voted to conduct full reviews. With regard to subject stainless steel plate from Canada, Italy, South Africa, and Taiwan, the Commission found that the domestic interested party group responses were adequate and the respondent interested party group responses were inadequate. Although the Commission did not receive a response from any respondent interested parties in the reviews concerning subject imports from Canada, Italy, South Africa, or Taiwan, it determined to conduct full reviews to promote administrative efficiency in light of its decision to conduct full reviews with respect to the reviews concerning subject imports from Belgium and Korea. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 22, 2004.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17169 Filed 7–27–04; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–770–775 (Review)]

Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on August 1, 2003 (68 FR 45277) and determined on November 4, 2003 that it would conduct full reviews (68 FR 65085, November 18, 2003). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 3, 2004 (69 FR 5185). The hearing was held in Washington, DC, on May 18, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on July 22, 2004. The views of the Commission are contained in USITC Publication 3707 (July 2004), entitled *Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan: Investigations Nos. 731–TA–770–775 (Review).*

Issued: July 23, 2004.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17170 Filed 7–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–15]

U.S.-Bahrain Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on June 28, 2004 of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. TA–2104–15, U.S.-Bahrain Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)).

Background: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S. Free Trade agreement with Bahrain on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers. The report will assess the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers. In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. The President notified the Congress on June 15, 2004, of his intent to enter into an FTA with Bahrain.

The Commission has begun its assessment, and it will seek public input for the investigation through a public hearing on August 10, 2004 (see below).

DATES: Effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Project Leaders, Thomas Jennings, (202–205–3260) or Walker Pollard (202–205–3228), Office of Economics. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). For media

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting with respect to stainless steel wire rod from Italy, Korea, Spain, and Sweden.

information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on August 10, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., August 3, 2004 in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on August 3, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after August 5, 2004, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the ''Submissions'' section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., August 3, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 17, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submission that contains confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules requires that the cover of the document and the individual pages be marked clearly as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets.

The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8)(see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Issued: July 26, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17326 Filed 7–27–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the STOP Violence Against Indian Women Discretionary Grant Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 57, on page 13878 on March 24, 2004, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for STOP Violence Against Indian Women Discretionary Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 165 grantees from the STOP Violence Against Indian Women Discretionary Grant Program. The STOP Violence Against Indian Women Discretionary Grants are designed to develop and strengthen tribal law enforcement and prosecutorial strategies to combat violent crimes against Indian

women, as well as develop and strengthen victim services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 165 respondents (grantees from the STOP Violence Against Indian Women Discretionary Grant Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-Annual Progress Report is 330 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 22, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–17135 Filed 7–27–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Semi-Annual Progress Report for the Rural Domestic Violence and Child Victimization Enforcement Grants Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 57, on page 13876 on March 24, 2004, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Rural Domestic Violence and Child Victimization Enforcement Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the165 grantees from the Semi-Annual Progress Report for the Rural Domestic Violence and Child Victimization Enforcement Grants Program. The Rural Domestic Violence and Child Victimization Enforcement Grant Program provides a unique opportunity for rural jurisdictions to address the needs of law enforcement, prosecution agencies, the courts, and nonprofit non-governmental victim services agencies that respond to domestic violence, dating violence, and child abuse cases. Rural jurisdictions also are encouraged to create or enhance partnerships among criminal justice agencies, community organizations, health and social service providers, and child welfare agencies in order to implement prevention and education programs, as well as to develop innovative strategies to address the unique challenges of preventing and responding to domestic violence, dating violence, and child victimization in rural areas.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 165 respondents (grantees from the Rural Domestic Violence and Child Victimization Enforcement Grants Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the Semi-Annual Progress Report is 330 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 21, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–17136 Filed 7–27–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Semi-Annual Progress Report for Education and

Technical Assistance Grants to End Violence Against Women with Disabilities Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 57, page 13876 on March 24, 2004, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

–Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 18 grantees from the Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program. Eligible grantees may include states, units of local government, Indian tribal governments and non-governmental private entities. These grants provide funds for education and technical assistance in the form of training, consultations, and information to organizations and programs that provide services to individuals with disabilities and to domestic violence programs providing shelter or related assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 18 respondents (grantees from the Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden to complete the Semi-Annual Progress Report is 36 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 21, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–17137 Filed 7–27–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: semi-annual progress report for the grants to support tribal domestic violence and sexual assault coalitions program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 57, on page 13875 on March 24, 2004, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Grants to Support Tribal Domestic Violence and Sexual Assault Coalitions Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 14 grantees from the Grants To Support Tribal Domestic Violence and Sexual Assault Coalitions Program. Eligible grantees may include Indian tribal governments that will support the development and operation of new or existing nonprofit tribal domestic violence and sexual assault coalitions in Indian country. These grants provide funds to develop and operate nonprofit tribal domestic violence and sexual assault coalitions in Indian country to address the unique issues that confront Indian victims. The Tribal Coalitions Program provides resources for organizing and supporting efforts to end violence against Indian women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 14 respondents (grantees from the Tribal Coalitions Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden to complete the Semi-Annual Progress Report is 28 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 21, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–17138 Filed 7–27–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0113 (2004)]

Cranes and Derricks Standard for Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Cranes and Derricks Standard for Construction (29 CFR 1926.550(a)(6)). This paragraph requires employers to establish and maintain a record of the dates and results of the annual inspection conducted on each hoisting machine and piece of equipment.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by September 27, 2004.

Facsimile and electronic transmission: Your comments must be received by September 27, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0113 (2004), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://comments.osha.gov*.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://OSHA.gov*. Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Paragraph (a)(6) of the Standard requires employers to perform annual inspections of cranes and derricks and to establish and maintain a written record of the dates and results of these inspections. The inspections identify problems such as deterioration caused by exposure to adverse weather condition, worn components and other flaws and defects that develop during use, and accelerated wear resulting from misalignments of connecting systems and components. A competent person or a government or private agency recognized by the Department of Labor must perform the inspections.

Establishing and maintaining a written record of the annual inspections

alerts the equipment mechanics to servicing or repair problems. Prior to returning the equipment to service, employers can review the records to ensure that the mechanics performed the necessary repairs and maintenance. Accordingly, by using only equipment that is in safe working order, employers will prevent severe injury and death to the equipment operators and other employees who use or work near the equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required inspection and the equipment is safe.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the information collection requirements in the Cranes and Derricks Standard for Construction (29 CFR 1926.550(a)(6)). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Cranes and Derricks Standard for Construction (29 CFR 1926.550(a)(6).

OMB Number: 1218–0113.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 2,073.

Frequency of Recordkeeping: Annually.

Average Time per Response: Varies from 3 to 6 hours.

Total Annual Hours Requested: 9,329.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related problems there may be significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 2693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 23rd, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–17174 Filed 7–27–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0198(2004)]

Logging Operations Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the Information Collection requirements contained in the Logging Operations Standard (29 CFR 1910.266). The purpose of these requirements is to establish safety practices, means, methods and operations for employees engaged in logging activities.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by September 27, 2004.

Facsimile and electronic transmission: Your comments must be received by September 27, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0198(2004), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 639–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.*

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go the OSHA's Web page at *http://OSHA.gov.* In addition, comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

Background

The Department of Labor, as part of its continuing effort to reduce paperwork

and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Logging Operations Standard (the Standard) (29 CFR 1910.266) specifies several paperwork requirements. The following sections describe what information is collected under each requirement, who uses the information, and how they use it

Paragraph (f)(1)(iii) of the Standard requires the employer to assure that operating and maintenance instructions are available on machines or in the area where the machine is being operated. Similarly, paragraph (g)(3) requires the employer to assure that operating and maintenance instructions are available in each vehicle.

Paragraph (i)(1) of the Standard requires employers to provide training for each employee, including supervisors. To meet this requirement, employers must conduct the training at the frequencies specified by paragraph (i)(2). Paragraph (i)(3) specifies that employee/supervisor training, at a minimum, must consist of the following elements: Safe work practices, including the use, operation, and maintenance of tools, machines, and vehicles they use and procedures, practices, and requirements of the employer's worksite; recognition and control of health, and safety hazards associated with the employee's/supervisor's specific work tasks and logging operations in general; and the requirements of the Standard.

Paragraph (i)(10)(i) specifies that employers must certify that employees/supervisors have received the required training. This certification must be in writing and provide the following information: The name/identifier of the employee/supervisor; the date(s) of the training; and either the signature of the employer or the individual who conducted the training. Paragraph (i)(10)(ii) requires employers to maintain the most recent certification for training completed by an employee/supervisor.

Training employees/supervisors in safe work practices and to recognize and control the safety and health hazards associated with their work tasks and overall logging operations enables them to prevent serious accidents by using specific procedures and equipment in a safe manner to avoid or to control dangerous exposures to these hazards.

Establishing and maintaining written certification of the training each employee/supervisor receives assures the employer that they receive the training specified by the Standard, and at the required frequencies. With regard to first aid training, the certification assures that the employee's/supervisor's certificate is currently valid. In addition, these records provide the most efficient means for an OSHA compliance officer to determine whether an employer performed the required training at the necessary and appropriate frequencies.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Action

OSHA is proposing to extend the information collection requirements in the Logging Operations Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Logging Operations Standard (29 CFR 1910.266).

OMB Number: 1218–0198.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 12,098.

Frequency of Recordkeeping: Initially; on occasion.

Average Time per Response: Varies from 1 minute (.02 hour) to maintain training certification records to 3 hours to conduct initial training.

Total Annual Hours Requested: 21, 599.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related problems there may be significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (200) 2693–2350 (TTY (877) 889–5627 (for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available at OSHA's Web page.

V. Authority and Signature

John L. Henshaw, Assistant of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 22, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–17175 Filed 7–27–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 13, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *records.mgt@nara.gov.* Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–04–1, 35 items, 33 temporary items). Records of the Office of Climate, Water and Weather Services. Included are such records as system change request files, requirements documents, facility operation logs, national hydrologic information summaries, region survey reports, and electronic copies of records created using electronic mail and word processing. Also included are electronic data, system documentation, inputs, and outputs associated with electronic systems that relate to storms and severe weather. Proposed for permanent retention are recordkeeping copies of marine service charts and service assessment reports.

2. Department of Commerce, Bureau of Industry and Security (N1–476–04–1, 16 items, 14 temporary items). Records accumulated by the Office of Antiboycott Compliance, including such records as investigative case files, settlement files, compliance manuals, foreign boycott public comments, country files, export award files, and working papers. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of antiboycott subject files and the division director's subject correspondence files.

3. Department of Commerce, Bureau of Industry and Security (N1–476–04–2, 4 items, 3 temporary items). Country files, chronological files, and electronic copies of records created using electronic mail and word processing accumulated by the Office of the Assistant Secretary for Export Enforcement. Proposed for permanent retention are recordkeeping copies of the Assistant Secretary's subject files.

4. Department of Homeland Security, Transportation Security Administration (N1–560–03–7, 37 items, 35 temporary items). Records relating to aviation operations, including such files as customer service records, statistical reports, policy and planning files, and records relating to screening passengers, baggage, and cargo. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of records documenting the organization and functions of agency components involved in aviation operations and records relating to major incidents. This schedule authorizes the agency to apply the proposed disposition instructions to records in all media.

5. Department of Homeland Security, U.S. Coast Guard (N1–26–04–3, 2 items, 2 temporary items). Paper and electronic copies of navigation data recorded by

vessels underway which are used as navigational aids by Coast Guard vessels.

6. Department of Justice, Drug Enforcement Administration (N1–170–04–2, 5 items, 5 temporary items). Files relating to periodic inspections of agency offices and programs, including electronic copies of records created using electronic mail and word processing.

7. Department of Justice, Drug Enforcement Administration (N1–170–04–3, 10 items, 10 temporary items). Inputs, electronic data, outputs, and system documentation associated with an electronic system used for information collected from controlled substance manufacturers. Also included are electronic copies of records created using electronic mail and word processing.

8. Department of Justice, Drug Enforcement Administration (N1–170–04–6, 6 items, 6 temporary items). Inputs, electronic data, outputs, and system documentation associated with an electronic system that allows participating law enforcement entities to determine whether a particular suspect is the subject of a drug investigation by any other participating law enforcement entity. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of State, Bureau of Political-Military Affairs (N1–59–04–4, 8 items, 8 temporary items). Records associated with an electronic system used to manage and process munitions export applications. Included are paper and electronic arms export case files, which are used as inputs, outputs, master files, and system documentation.

10. Department of State, Bureau of Intelligence and Research (N1–59–04–5, 5 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with program files, logs, and reports on significant intelligence items received overnight or on weekends. Recordkeeping copies of these files are proposed for permanent retention.

11. Department of the Treasury, Internal Revenue Service (N1–58–04–3, 2 items, 2 temporary items). Correspondence from the public received by the Commissioner.

12. Department of the Treasury, Internal Revenue Service (N1–58–04–4, 5 items, 5 temporary items). Records relating to collection statute expiration date extension extracts, including individual and business tax return closed accounts for which no unpaid balance is due, and an electronic system used to control and track the collection process.

13. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–25, 16 items, 16 temporary items). Records relating to management control and accountability, including such records as internal and external audit reviews, management studies, and electronic corrective action tracking records. Also included are electronic copies of records created using electronic mail and word processing.

14. Executive Office of the President, Office of Management and Budget (N1–51–04–1, 2 items, 2 temporary items). Electronic records created using the agency's collaborative authoring tool, a computer support collaborative work environment that allows two or more individuals to create documents together. Records needed for the operation of the collaborative authoring tool are also included. The disposition of recordkeeping copies of records produced using the tool will be carried out in accordance with existing agency records schedules.

15. Tennessee Valley Authority, Chief Operating Officer (N1–142–04–1, 3 items, 3 temporary items). Records relating to the development of the Pipeline Electric Drive Compression Project. Also included are electronic copies of documents created using electronic mail and word processing.

16. Tennessee Valley Authority, Communications and Government Relations (N1–142–04–7, 4 items, 3 temporary items). Database containing copies of a newsletter which consists of brief articles of interest to agency staff and customers. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of the newsletter are proposed for permanent retention.

Dated: July 19, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–17151 Filed 7–27–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and its Subdivisions; Sunshine Act Meeting

Date and Time: August 4–5, 2004.

August 4, 2004: 8 a.m.–5:30 p.m.

Concurrent Sessions

8 a.m.–9:30 a.m. Open
8:30 a.m.–9:30 a.m. Open
9:30 a.m.–11 a.m. Open
9:30 a.m.–10:30 a.m. Open
11 a.m.–12:30 p.m. Open
12:30 p.m.–1 p.m. Closed
1 p.m.–2 p.m. Open
2 p.m.–3:30 p.m. Closed
3:30 p.m.–3:45 p.m. Open
3:45 p.m.–5 p.m. Closed
5 p.m.–5:15 p.m. Open
5:15 p.m.–5:30 p.m. Closed

August 5, 2004: 8:30 a.m.–3 p.m.

Concurrent Sessions

8:30 a.m.–9:30 a.m. Closed
9:30 a.m.–11:30 a.m. Open
11:30 a.m.–12 noon Closed
12 noon–12:30 p.m. Closed
12:45 p.m.–3 p.m. Open

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. *http://www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: NSF Information Center, (703) 292–5111.

STATUS: Part of this meeting will be closed to the public; Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, August 4, 2004

Open

Subcommittee on S&E Indicators (8 a.m.–9:30 a.m.), Room 1295

- Introductions
- Approval of minutes
- Schedule for S&E Indicators 2006
- Discussion of chapter outlines for S&E Indicators 2006

Ad Hoc Task Group on High Risk Research (8:30 a.m.–9:30 a.m.), Room 1295

- Discussion of draft white paper
- Discussion of workshop

Subcommittee on Polar Issues (9:30 a.m.–10:30 a.m.), Room 1295

- Chair's remarks, approval of minutes
- OPP Director's remarks
- International Polar Year research
- IT security update

Education and Human Resources (9:30 a.m.–11 a.m.), Room 1235

- Approval of minutes
- Comments from the chair
- Report from the Subcommittee on S&E Indicators
- Discussion of public comments received on NSB draft report, Broadening Participation in S&E Research & Education (*NSB–04–41*)
- EHR Directorate topics

Committee on Programs and Plans, Room 1235

Session I (11 a.m.–12:30 p.m.)

- Approval of Minutes, March 2004

- Environment status report
- Setting priorities for large facilities—continuing discussions

Session II (1 p.m.–2 p.m.)

- Updates:
  - High Risk ad hoc working group
  - LLDC working group
  - Subcommittee on Polar Issues

Committee on Strategy & Budget (3:30 p.m. 3:45 p.m.) Room 1235

- Approval of minutes
  - May 3 meeting
  - June 18 teleconference
  - July 16 teleconference
- Status of FY 2005 budget to Congress

Executive Committee (5 p.m.–5:15 p.m.), Room 1295

- Approval of Minutes
- Updates or new business from committee members
- Candidate sites for 2005 NSB retreat

Closed

Executive Closed Plenary session of the Board (12:30–1 p.m.), Room 1235

- Approval of Executive Closed minutes
- Executive Committee election

Committee on Programs & Plans (2 p.m.–3:30 p.m.), Room 1235

- Action Items

Committee on Strategy & Budget (3:45 p.m.–5 p.m.), Room 1235

- Discussion of FY 2006 NSF budget request to OMB
- Discussion of FY 2006 NSB budget request to OMB

Executive Committee (5:15 p.m.–5:30 p.m.), Room 1295

- Director's items, including
  - Specific personnel matters
  - Future budgets

Thursday, August 5, 2004

Open

Committee on Audit & Oversight (9:30 a.m.–11:30 a.m.), Room 1235

- Approval of minutes
- House Appropriations Committee questions regarding use and compensation of NSF IPA's/VSEE/temporary workers
- NSB position on House Government Efficiency and Financial Management Subcommittee question regarding PAS appointment of IG
- CFO update
- Business analysis update
- Math & science partnership report

Plenary Session of the Board (12:45 p.m.–3 p.m.), Room 1235

- Approval of minutes
- Resolution to close portions of the October 2004 meeting
- Chairman's report
- Director's report
- Committee reports

Closed

Ad Hoc Committee on Nominating NSB Class of 2006–2012 (8:30 a.m.–9:30 a.m.), Room 1295

- Discussion of nominees for appointment as NSB member

Committee on Audit & Oversight (11:30 a.m.–12 noon), Room 1235

- FY 2006 OIG Budget
- Pending Investigations

Closed Plenary Session of the Board (12 noon–12:30 p.m.), Room 1235

- Approval of closed minutes
- Closed committee reports
- FY 2006 budget

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 04–17253 Filed 7–26–04; 8:58 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 212, Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions); NRC Form 212A, Qualifications Investigation, Secretarial/Clerical.

3. *The form number if applicable:* NRC Form 212; NRC Form 212A.

4. *How often the collection is required:* On occasion.

5. *Who is required or asked to report:* Current/former supervisors, co-workers of applicants for employment.

6. *An estimate of the number of annual responses:* NRC Form 212: 1200; NRC Form 212A: 400.

7. *The estimated number of annual respondents:* NRC Form 212: 1200; NRC Form 212A: 400.

8. *An estimate of the total number of hours needed annually to complete the requirement or request: NRC Form 212, 300 hours (15 minutes per response);* NRC Form 212A, 100 hours (15 minutes per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Information requested on NRC Form 212, ''Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions)'' and NRC Form 212A, Qualification Investigation (Secretarial/Clerical)'' is used to determine the qualifications and suitability of external applicants for employment with NRC. The completed forms may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Human Resources, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the OMB reviewer listed below by August 27, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0033; and 3150–0034), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 22nd day of July, 2004.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–17143 Filed 7–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8584]

Kennecott Uranium Company—Sweetwater Uranium Mill Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for hearing.

DATES: A request for a hearing must be filed by September 27, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–F42, Washington, DC 20555–0001, telephone (301) 415–6606 and e-mail *esb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the renewal of Source Material License SUA–1350 for 10 years for Kennecott Uranium Company for operations at the Sweetwater uranium mill site located in Rawlins, Wyoming. The request and application for a 10-year license renewal was dated May 25, 2004, and accepted for review on June 24, 2004. All the processes and facilities of the mill have remained unchanged since the 1999 renewal. The facility will remain on stand-by status (no ore processing) until an amendment for operational status is requested and approved. Pursuant to 10 CFR 51.22(c)(11), this action is a Categorical Exclusion; therefore, an Environmental Assessment is not necessary.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license renewal. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention Rulemakings and Adjudications Staff between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Kennecott Uranium Company, Sweetwater Uranium Project, Post Office Box 1500, Rawlins, Wyoming 82301–1476, Attention: Oscar Paulson; and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by email to *ogcmailcenter@nrc.gov.*

The formal requirements for documents are contained in 10 CFR 2.304(b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by September 27, 2004.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the

petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the applications for renewals and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this Notice is: Request for a Ten Year License Renewal (application enclosed), ML041530045. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.* 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 (First Floor), Rockville, MD 20852. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at Rockville, Maryland, this 19th day of July 2004.

For the Nuclear Regulatory Commission.

Elaine Brummett,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–17140 Filed 7–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to partially withdraw its June 27, 2003, application for proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The request for amendment to the operating license in the application dated June 27, 2003, would allow plant modifications in order to facilitate maintenance on the replacement steam generators (SGs) to be installed in Refueling Outage (RO) 14 (Fall 2005). The proposed modifications (1) replace the existing sludge lance platforms with new platforms to provide a larger platform area around each SG, and (2) cut a permanent access opening through the secondary shield wall to improve access to the sludge lance platforms, which are to be done in RO 13 (Spring 2004). To allow these modifications, the licensee requested approval of the use of (1) the ASCE 4–86 ''100–40–40'' method of combining components of seismic response loads, and (2) leak-before-break (LBB) methodology for the accumulator, pressurizer surge, and residual heat removal (RHR) lines to exclude the dynamic effects associated with large reactor coolant system branch line ruptures. The amendment approving the installation of the permanent access opening through the secondary shield wall and the use of LBB for the accumulator and RHR lines was issued April 12, 2004, and the opening was installed by the licensee in RO 13.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 22, 2003 (68 FR 43397) for the application for amendment dated June 27, 2003. However, by letters dated April 5 and July 2, 2004, the licensee withdrew portions of its amendment request. The letter dated April 5, 2004, revised the original request for application of LBB on the pressurizer surge line and the letter dated July 2, 2004, withdrew its request to use the ASCE 4–86 methodology. The Commission has previously issued a Notice of Partial Withdrawal of Application for Amendment published in the **Federal Register** on April 20, 2004 (69 FR 21166) for the letter dated April 5, 2004. This Notice of Partial Withdrawal of Application for Amendment is for the letter dated July 2, 2004.

For further details with respect to this action, see the application for amendment dated June 27, 2003, and the licensee's letter dated July 2, 2004, which partially withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of July 2004.

For the Nuclear Regulatory Commission.

Jack Donohew,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17141 Filed 7–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36128]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for King's College's Facility in Wilkes-Barre, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Donna M. Janda, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5371, fax (610) 337–5269; or by e-mail: *dmj@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to King's College for Materials License No. 37–28499–01, to authorize release of its facility in Wilkes-Barre, Pennsylvania for unrestricted use. NRC 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. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Wilkes-Barre, Pennsylvania facility for unrestricted use. King's College was authorized by NRC from April 1991 to use radioactive materials for research and development purposes at the site. On January 15, 2004, King's College requested that NRC release the facility for unrestricted use. King's College has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

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 NRC staff has evaluated King's College'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 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. ML040340246, ML041120317, ML042020325). 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 at King of Prussia, Pennsylvania, this 21st day of July, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman, Chief,

Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety Region I.

[FR Doc. 04–17144 Filed 7–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–157]

Notice of Environmental Assessment and Finding of No Significant Impact for License Amendment for University of Texas at Austin, Austin, TX

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Don Stout, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001. Telephone: (301) 415–5269; email *des1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM–180 (SNM–180), to allow the University of Texas at Austin (UT), to receive, possess and store 3.88 kilograms of special nuclear material (SNM) that is currently stored at Manhattan College in Riverdale, New York. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based upon the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

Background

The Nuclear Engineering Teaching Laboratory (NETL) at the University of Texas (UT) uses special nuclear material to supplement training and instruction programs in the field of nuclear engineering. UT's license SNM–180, currently authorizes them to possess 470 grams of uranium-235 (U–235). Under SNM–180, UT is also authorized to possess 128 grams of plutonium contained in sealed plutonium-beryllium neutron sources. Independent of license SNM–180, UT has a research reactor, which operates under NRC Reactor License R–129 and a charged particle accelerator which operates under a Certificate of Registration from the Texas Department of Health, Bureau of Radiation Control (License TDH L00485).

The NRC staff has received an amendment request (Ref. 1), dated May 3, 2004, to allow receipt, possession, and storage of 3.88 kilograms of SNM. The purpose of this document is to assess the environmental consequences of the proposed amendment.

Review Scope

The purpose of this EA is to assess the environmental impacts of an amendment request that would allow UT to receive, possess and store an additional 3.88 kilograms of SNM under their existing Part 70 license. The scope of this EA is limited to the receipt, possession and storage of SNM at UT. The transportation of the SNM to UT is not part of this EA and is being handled separately by the U.S. Department of Energy or an approved alternate. This EA does not approve or deny the amendment request. A separate Safety Evaluation Report (SER) will be issued at a later date in support of approval or denial of the amendment request. The SER will document the safety review in the areas of radiation protection, nuclear criticality safety, material control and accountability, and security.

The existing conditions and operations for UT were evaluated by NRC in March 1998, during renewal of the UT license (Ref. 2). At that time, the licensee was granted a categorical exclusion under 10 CFR 51.22(c)(14)(v) because their license authorized the use

of radioactive materials for research and development and for educational purposes. This amendment requests receipt, possession, and storage of SNM. The use of this SNM for research and development is still being developed and is not part of this EA. This assessment will determine whether to issue or prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS will be prepared.

Proposed Action

The proposed action is to grant an amendment to SNM–180 to receive, possess and store SNM in accordance with 10 CFR Part 70 and 10 CFR Part 20. There are no effluent releases associated with the SNM in this amendment request. The SNM is encased in aluminum. Initially, the material will be stored in U.S. Department of Transportation approved 6M shipping containers in a secure location at UT. After completion of storage racks, the SNM will be moved to another area within the same secure location. The licensee has committed to maintaining doses as low as reasonably achievable (ALARA) and is required to review radiation dose data at least annually and report the findings of the assessment to the Radiation Safety Committee or the Reactor Committee.

Purpose and Need for Proposed Action

UT currently possesses and uses 470 grams of U–235 for sub-critical research and development experiments at the NETL. UT is requesting permission to receive, possess, and store additional SNM that will be used in future research and development sub-critical experiments. Future research and development utilizing this SNM will require another license amendment. Allowing UT to possess and store this material will assist Manhattan College by removing the SNM from their site and permit them to complete decommissioning. UT will benefit from the receipt of this material by providing them with additional SNM to conduct future research and development for educational purposes.

Alternatives

The alternatives available to the NRC are:

1. Approve the amendment request as submitted; or

2. No action (*i.e.*, deny the amendment request).

Affected Environment and Environmental Impacts of Proposed Action

The affected environment for Alternative 1 is the UT site. A full description of the UT site and its characteristics was given in the license application related to the March 1998 renewal of the UT license (Ref. 2). The NETL of the UT at Austin is located at the J.J. Pickle Research Campus. The proposed action will not result in the release of any chemical or radiological constituents to the environment because the SNM is a sealed source (metallic SNM encased in aluminum). Similarly, because the SNM is a sealed source and will remain in a secure location at UT, the proposed action will not cause any adverse impacts to local land use, biotic resources, or cultural resources.

Environmental Impacts of No Action Alternative

As an alternative to granting the proposed license amendment, the staff considered denying the amendment (the no action alternative). Under the no action alternative, Manhattan College in Riverdale, NY would be the affected environment. The 3.88 kilograms of SNM would continue to be stored at a site that no longer has an active nuclear engineering program. While continued storage of the material at Manhattan College would not have any immediate environmental significance, the facility cannot complete decommissioning until the SNM has been removed. The no action alternative would not have any environmental impacts associated with the UT affected environment.

Conclusion

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action and no action alternative are insignificant. The preferred action would be to relocate this unused material to a facility that could utilize it. Thus, the staff considers that Alternative 1 is the appropriate alternative for selection.

Agencies and Persons Contacted

On July 9, 2004, the NRC staff provided the Texas Department of Health (TDH), Bureau of Radiation Control (TDH) a copy of the EA. In an e-mail dated July 13, 2004, TDH indicated that they did not have any comments regarding the EA.

The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required because the proposed action will occur entirely within the existing facility and will not affect listed species or critical habitat.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties because it will occur entirely within the existing facility. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

III. Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of amending SNM–180 to allow UT to receive, possess and store 3.88 kilograms of SNM. On the basis of this assessment, the Commission has concluded that the environmental impacts associated with the proposed action would not be significant and the Commission is making a FONSI. Accordingly, the NRC has determined not to prepare an EIS for the proposed action.

IV. Further Information

A copy of this document will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. However, the documents related to this proposed licensing action will not be available electronically for public inspection in the NRC Public Document Room or from the PARS component of ADAMS due to the sensitive nature of the information regarding SNM specifics and detailed storage locations. The documents related to this notice are:

1. University of Texas—Austin, Letter dated May 3, 2004. to U.S. Nuclear Regulatory Commission, ''Amendment Request for Special Nuclear Material License at The University of Texas at Austin.'' Accession Number ML041320555 (not publicly available).

2. The NRC, March 4, 1998, ''Safety Evaluation Report: Renewal Application Dated October 24, 1997.''

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.* Documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, the 21st day of July 2004.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–17142 Filed 7–27–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50057; File No. SR–Amex–2004–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the NASD's Sale of Its Interest in the American Stock Exchange LLC to the Amex Membership Corporation

July 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] as amended (the ''Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2004, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 15, 2004, the Exchange filed Amendment No. 1 to the proposal.[3] On July 21, 2004, the Exchange filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission proposed changes to its Constitution and certain other organizational documents in connection with a proposed transaction (''Transaction'') under which The Amex Membership Corporation (''MC'') will become the sole owner of the Exchange through the acquisition of 100% of the Class B Participation Interest in the Exchange from New NASD Holdings, Inc. (''NAHO''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD''). The proposed changes to Amex's Constitution, together with the Amended and Restated Exchange Limited Liability Company Agreement, the Second Restated Certificate of Incorporation of MC and the Amended and Restated By-Laws of MC are collectively referred to herein as the ''proposed rule change.'' The text of the proposed rule change is available for viewing on the Commission's Web site, *www.sec.gov/rules/sro.shtml,* and at the Exchange and the Commission.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement changes to the current Constitution of the Exchange that will become effective at the time of the closing of the Transaction, as well as changes to the current Exchange Limited Liability Company Agreement, MC Certificate of Incorporation and MC By-laws. On February 7, 2004, the Board of Directors of MC, which corporation is currently the owner of 100% of the Class A Participation Interest in the Exchange, approved the terms of an agreement (the ''Transaction Agreement'') pursuant to which it, through a newly formed, wholly owned subsidiary of MC (''MC Acquisition Sub''), will acquire 100% of the Class B Participation Interest in the Exchange from NAHO, a wholly owned subsidiary of the NASD, giving MC sole ownership of the Exchange.[6] On February 26, 2004, the NASD Board of Governors unanimously approved the Transaction. On February 27, 2004, the Special Committee of the Board of Governors of the Exchange[7] unanimously determined that the Transaction was in the best interests of the Exchange and, subject to execution of a regulatory services agreement, recommended that the Board of Governors of the Exchange (each member of such Board, a ''Governor'') consider and approve the Transaction. In connection with the Exchange member approval of the Transaction, MC sent to all the Exchange regular and options principal members (referred to collectively as ''Members'') and seat owners an Information Memorandum dated February 17, 2004, which was supplemented on March 2 and March 12, 2004, respectively, describing the Transaction in detail. Attached as exhibits to the Information Memorandum were the Transaction Agreement (including exhibits thereto), the amended Exchange Constitution, the Exchange Amended and Restated Limited Liability Company Agreement (the ''Amended Exchange LLC Agreement'') the Second Restated MC Certificate of Incorporation, and the Amended and Restated By-Laws of MC (the ''Amended MC By-Laws'').[8] At a Special Meeting of Members held on March 18, 2004, the Members approved the Transaction. On March 31, 2004, the Board of the Exchange approved the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 13, 2004 (''Amendment No. 1''). Amendment No. 1 replaced Amex's original filing in its entirety.

[4] *See* letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel to Nancy Sanow, Assistant Director, Division, Commission, dated July 20, 2004 (''Amendment No. 2''). Amendment No. 2 corrected formatting errors in the Amex Constitution, the Amended and Restated Exchange Limited Liability Company Agreement, the Second Restated Certificate of Incorporation of The Amex Membership Corporation, and the Amended and Restated By-Laws of The Amex Membership Corporation that were filed with Amendment No. 1; no substantive changes to these documents were made in Amendment No. 2.

[5] The Commission notes that the texts of these documents that appear on the Commission's Web site are the texts that were filed as part of Amendment No. 2.

[6] Ownership interests in American Stock Exchange LLC currently consist of a Class A Participation Interest held by MC and a Class B Participation Interest held by NAHO.

[7] In connection with the Transaction, the Exchange Board of Governors, recognizing that certain of its members had actual or possible conflicts of interest in connection with the Transaction by virtue of their service on the NASD Board of Governors and the MC Board of Directors, recommended that the Special Committee consisting solely of Governors who were not members of the NASD Board of Governors or the MC Board of Directors be established. On December 11, 2003, the Exchange Board of Governors established the Special Committee to consider whether the Transaction is in the best interests of the Exchange and to make recommendations to the Exchange Board of Governors concerning actions to be taken by such Board in connection with the Transaction.

[8] Additional changes have been made to these governance documents since the distribution of the Information Memorandum and Supplements thereto to the Members and seat owners prior to the Special Meeting of Members on March 18, 2004. The Information Memorandum advised Members that the amendments to these governance documents required SEC approval and were subject to ''such other changes that may be requested by the SEC that are reasonably acceptable to each of the Exchange, NASD and [MC].''

Transaction [9], and on April 30, 2004, the regulatory services agreement was executed by the Exchange and the NASD. On June 24, 2004, the Board of MC approved the final forms of the Exchange and MC governance documents, including the Exchange Constitution, that are filed herein.[10] It is expected that in July 2004 the Board of the Exchange will approve the final forms of the Exchange and MC governance documents, including the Exchange Constitution. The Exchange states that, for the purpose of this filing, no further action by the Exchange Board or membership is required to be taken. The Exchange represents that no other changes to the rules of the Exchange are required to be made as a result of the Transaction.

The following is an overview of the key terms of the Transaction.

A. *Acquisition by MC of the Class B Participation Interest.* As stated previously, MC will, through MC Acquisition Sub, acquire 100% of the Class B Participation Interest in the Exchange from NAHO, a NASD subsidiary. As a result, upon consummation of the Transaction, MC will beneficially own 100% of the equity of the Exchange. MC Acquisition Sub will be formed for the sole purpose of acquiring and holding the Class B Participation Interest; it is being used to avoid a technical liquidation of the Exchange as a result of the closing of the Transaction. Following the consummation of the Transaction, the Class B Participation Interest will represent a non-voting interest in the Exchange; the Class A Participation Interest, which will continue to be held directly by MC, will represent the sole voting interest in the Exchange. In addition, all rights to trade through the facilities of the Exchange will continue to be owned by MC.

B. *Restructuring of Existing Debt.* At the closing of the Transaction, NASD and the Exchange will restructure an existing $50 million loan owed by the Exchange to NASD. Under the terms of the arrangement, among other things, the Exchange will have the ability to satisfy all obligations under this loan in full for $25 million plus accrued interest if it is repaid within the first year of the closing of the Transaction.

C. *Extension of a Revolving Credit Facility.* At the closing of the Transaction, NASD and the Exchange will enter into a Revolving Credit Facility, pursuant to which the Exchange will have the ability to borrow from NASD up to a maximum, at any one time, of $25 million.

D. *Unwinding of the 1998 Transaction.* Subject to the terms of the Transaction Agreement, the agreements relating to the 1998 transaction whereby NASD acquired the Class B Participation Interest in the Exchange (the ''1998 Transaction''), including the 1998 Transaction Agreement and the 1998 Technology Transfer Agreement, will be terminated and the 1998 Limited Liability Company Agreement of the Exchange will be amended. As the Transaction effectively results in an unwinding of the 1998 Transaction, NASD, the Exchange, and MC will enter into certain mutual releases of obligations, including those arising under the 1998 Agreements and otherwise related to the 1998 Transaction.

E. *Effect of the Transaction on Members.* The existing rights and obligations of the Members regarding trading through the Exchange will not be affected by the Transaction. Trading rights will continue to be owned by MC and represent the right to trade through the facilities of the Exchange. In connection with the termination of the 1998 Transaction Agreement, the Members will no longer have the special rights to approve material market changes to the Exchange's equity and options businesses that were put in place at the time NASD took control of the Exchange. However, no amendment to the Exchange Constitution that would result in a material change in the market structure or operations of the Exchange shall be made without first obtaining the consent from the Board of Directors of MC. In addition, Members will have the ability to elect the Exchange Board of Governors and the MC Board of Directors.

F. *Seat Fund Distribution.* NAHO will pay in full the remaining commitment under the 1998 Seat Fund Program to the owners of regular and options principal memberships, which is an aggregate of approximately $17.144 million (including accrued interest) as of January 31, 2004. Such amount will be distributed *pro rata* to the owners of regular and options principal memberships, with each regular and options principal membership receiving an equal amount of approximately $20,483, plus additional accrued interest on such amount at an annual rate of 5% from January 31, 2004 through the closing of the Transaction.

G. *Institution of New Governance Structures for Both the Exchange and MC.* The Exchange Constitution and the 1998 Limited Liability Company Agreement of the Exchange and the Certificate of Incorporation and By-Laws of MC will be amended to, among other things, institute new governance structures for both the Exchange and MC. The proposed governance structure for the Exchange provides for a Board of Governors selected by its Members, who will also have the opportunity to vote on a ''pass-through'' basis on certain significant matters involving the Exchange, including the sale, issuance, transfer or other disposition of any equity security of the Exchange or of any notes or debt securities of the Exchange containing equity features, or the issuance of any new trading rights by the Exchange. The new governance provisions also will provide that the Exchange Board of Governors will be largely independent and will have board committees composed primarily of independent Governors with substantial authority over compensation, audit, regulatory and corporate governance matters, as well as the nomination of Governors to serve on the Exchange Board of Governors. The proposed changes are intended to reflect ''best practices'' in the rapidly evolving corporate governance area, while at the same time ensuring fair representation of various constituencies on the Exchange Board of Governors. The corporate governance structure of MC also will change in that its Board of Directors will be elected by the Members of MC and will consist of five persons who do not necessarily serve on the Exchange Board of Governors.

A summary of the new Exchange governance structure, as provided in the Exchange Constitution, the Amended and Restated Exchange Limited Liability Agreement, the Second Restated MC Certificate of Incorporation and the Amended MC By-Laws, is set forth below. The text of the proposed rule change is available for viewing on the Commission's Web site, *www.sec.gov/rules/sro.shtml,* and at Amex and the Commission.

(i) *The Exchange Board of Governors.* The Exchange Board of Governors currently consists of eighteen members.[11] Within six months after the closing of the Transaction, the Exchange will transition from an eighteen member Board of Governors to a new Board consisting of fifteen Governors: (a) Nine of the Governors will be ''Independent

[9] At the March 31 meeting, the Exchange Board also approved the then-current forms of Exchange and MC governance documents.

[10] Telephone conversation between Mark Underberg, Esq., Counsel to MC, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Heather Seidel, Attorney Fellow, and Rebekah Liu, Special Counsel, Division, Commission, on July 19, 2004.

[11] It is expected that at least one Governor will resign from the Exchange Board of Governors upon the closing of the Transaction.

Governors'' and (b) six of the Governors will be ''Industry Governors'' as each is defined below. This six-month transition period will facilitate a phase-in of the new governance structure of the Exchange. Following the closing of the Transaction, the Board of Governors of the Exchange will form the initial Amex Nominating and Corporate Governance Committee, which will select nominees for Governor for the first election during the six-month transition period. By the end of the six-month transition period, the Members will have elected a new Board of Governors of the Exchange from and among these nominees or any other candidates nominated by the Members through petition.

At the first election of the Exchange Board of Governors during the six-month transition period, eight of the fifteen Governors will be elected to an initial two-year term and the remaining seven Governors will be elected to an initial one-year term.[12] Thereafter, there will be an annual meeting for the election of Governors to succeed those Governors whose terms have expired. All Governors elected at the annual meeting for the election of Governors will serve two-year terms and will hold office until their successors are elected. No Governor (other than the Management Governor, as defined below) who has served four consecutive terms as a Governor will be eligible for election as a Governor except after an interval of two years; *provided, however,* that service on the Exchange Board of Governors prior to January 1, 1999 will not be taken into account for these purposes.[13]

Each Governor will, in exercising his or her powers and performing his or her duties, comply with the Federal securities laws and the rules and regulations thereunder and cooperate with the Commission pursuant to its regulatory authority and take into consideration the self-regulatory function of the Exchange and his or her obligations under the Act and the rules thereunder, including, without limitation, Section 6(b)[14] of the Act.[15]

The nine Independent Governors will not be officers or employees of, and will have no material business relationship with, the Exchange and the holders of the Class A and Class B Participation Interests, will not be directors of the holders of the Class A or Class B Participation Interest, and will not be (i) Members, lessors or lessees of memberships, (ii) employed by, or affiliated or associated with, any entity that (x) is a Member, (y) otherwise has trading rights or privileges on the Exchange or (z) is a broker or dealer, or (iii) directors, officers or employees of an issuer of securities that are listed on the Exchange. The Independent Governors will meet such additional criteria for independence or otherwise, as are not inconsistent with the criteria above as may be established by the Amex Nominating and Corporate Governance Committee from time to time.[16]

Of the six Industry Governors of the Exchange, (i) two will be persons who spend a substantial portion of their time on the floor of the Exchange (the ''Floor Governors''); (ii) one will be the owner of a regular or options principal membership (the ''Membership Governor''); (iii) one will be affiliated with regular or associate member organizations that engage in a business having substantial direct contact with public securities customers (the ''Upstairs Governor''); (iv) one will be a director, officer, employee or representative of an issuer of securities that are listed on the Exchange (the ''Listed Company Governor''); and (v) one will be the Exchange's Chief Executive Officer (the ''Management Governor'').[17]

The nominees submitted to the Members for election as Governors upon the nomination of the Amex Nominating and Corporate Governance Committee will reflect the applicable terms of office and the classifications of Governors as set forth above.[18]

The Chairman of the Exchange Board of Governors may be the Management Governor or any Independent Governor. If the Management Governor is designated as the Chairman of the Exchange Board of Governors, the Board will also designate an Independent Governor as the ''Lead Governor'' to preside over executive sessions of the Exchange Board of Governors. The Management Governor will not participate in executive sessions (*i.e.*, meetings of the Exchange Board of Governors without management or staff of the Exchange). The Exchange will publicly disclose the Lead Governor's name and a means by which interested parties may communicate with the Lead Governor. If a Lead Governor has been designated by the Exchange Board of Governors, the Lead Governor will exercise the powers and discharge the duties of the Chairman in calling and presiding at meetings of the Exchange Board of Governors in the case of the absence or inability to act of the Chairman.[19]

(ii) *The Exchange Nomination and Election Procedures.* During the six-month transition period, the Members will elect a new Board of Governors of the Exchange that will be composed of fifteen members. Eight of the fifteen Governors will be elected to an initial two-year term and the remaining seven Governors will be elected to an initial one-year term.[20] The first year of each term will be extended or shortened depending upon whether the first election is held before or after July 1, 2004. Thereafter, there will be an annual meeting for the election of Governors to succeed those Governors whose terms have expired. After the election of the new Exchange Board of Governors, all Governors elected at the annual meeting for the election of Governors will serve two-year terms and will hold office until their successors are elected. All candidates to be submitted to the Members for election as Governors, members of the Amex Adjudicatory Council (''Council Members'') and Trustees of the Gratuity Fund (''Trustees'') will be selected by either (i) the Amex Nominating and Corporate Governance Committee or (ii) by petition of the Members to the Amex Nominating and Corporate Governance Committee.[21]

The Amex Nominating and Corporate Governance Committee will report to MC at least eight weeks prior to the date of the annual meeting of the Members, the names of candidates nominated by it as Governors, Council Members and Trustees. The report of the Amex Nominating and Corporate Governance Committee will be promptly disseminated or made available to the Members by posting or other appropriate means and will be promptly forwarded to the Secretary of MC for mailing to the Members in accordance with the Amended MC By-Laws (as in effect on the effective date of the amended Exchange Constitution or as amended in accordance with section 9.01 of such By-Laws as in effect on the

[12] The slate of initial eight Governors serving two-year terms and the initial Governors serving one-year terms shall consist of Independent Governors and Industry Governors in approximately equal proportions.

[13] *See* Article II, Section 1 of the Exchange Constitution.

[14] 15 U.S.C. 78f(b).

[15] *See* Article II, Section 3 of the Exchange Constitution.

[16] *See* Article II, Section 1 of the Exchange Constitution.

[17] *See* Article II, Section 1 of the Exchange Constitution.

[18] *See* Article I, Section 1.14 of the Amended MC By-Laws.

[19] *See* Article II, Section 3 of the Exchange Constitution.

[20] *See supra* note 9.

[21] *See* Article III, Section 1 of the Exchange Constitution.

effective date of the amended Exchange Constitution).[22]

The Members may propose nominees for Governors, Council Members and Trustees to the Amex Nominating and Corporate Governance Committee for consideration by written submission filed with the Secretary of the Exchange for delivery to the Amex Nominating and Corporate Governance Committee not less than 12 weeks prior to the date of the annual meeting of the Members. In the event that any question is raised as to whether any candidate meets the criteria for the appropriate classification, such matter shall be determined by the Amex Nominating and Corporate Governance Committee, subject to the right of appeal to the full Board of Governors.[23]

Members may also nominate candidates for Governors, Council Members and Trustees by written petition filed with the Amex Nominating and Corporate Governance Committee within three weeks after the dissemination of the report of the Amex Nominating and Corporate Governance Committee. In the event that any question is raised as to the validity of the signatures set forth on a petition or whether any candidate meets the criteria for the appropriate classification, such matter shall be determined by the Amex Nominating and Corporate Governance Committee, subject to the right of appeal to the full Board of Governors. The persons nominated by valid petition shall be deemed nominees for the offices and positions set forth in such petition and shall be included on the ballot sent to MC by the Amex Nominating and Corporate Governance Committee. A statement of the candidates nominated by petition will be promptly disseminated or made available to the Members by posting or other appropriate means and will be promptly forwarded to the Secretary of MC for mailing to the Members in accordance with the Amended MC By-Laws (as in effect on the effective date of the amended Exchange Constitution or as amended in accordance with section 9.01 of such By-Laws as in effect on the effective date of the amended Exchange Constitution). Such nominees will then be voted on by the MC Members.[24]

All Exchange Governors, Council Members and Trustees will be elected by a plurality of votes cast by the Members.[25] Thereafter, MC will vote its Class A Participation Interest in the Exchange to elect those Governors, Council Members and Trustees selected by the vote of the Members.

The time periods set forth above may be equitably adjusted by the Amex Nominating and Corporate Governance Committee with respect to the first election of Governors occurring following April 1, 2004, to facilitate a prompt initial election; provided, however, in no event shall the petition period described in the proceeding paragraph be less than 10 business days.[26]

(iii) *Matters Requiring Consent of MC or Members*[27]. The amended Exchange Constitution will prohibit the Exchange, without MC's consent, from (i) selling, issuing, transferring or otherwise disposing of any limited liability company interest or other equity security of the Exchange or any notes or debt securities of the Exchange containing equity features, (ii) issuing any new trading rights, or (iii) issuing additional memberships. Any consent of MC requested by the Exchange to take such actions will only be granted by MC upon the affirmative vote of a majority of the Members.[28] In addition, without the affirmative vote of a majority of the Members, MC may not sell, issue, transfer or otherwise dispose of any equity security of the Exchange or any notes or debt securities of the Exchange containing equity features.[29]

The amended Exchange Constitution will also provide that certain of its provisions may not be amended without the consent of MC. The provisions requiring consent from the board of MC to amend include:

- Article II, Section 1 (Classification of the Exchange Board of Governors);
- Article II, Section 6 (Standing Committees);
- Article III (Nomination and Election Procedures);
- Article XIII, Sections 1 and 3 (Procedure, Adoption of Amendments Requiring the Consent of MC); and
- Any amendment to the Constitution that would result in a material change in the market structure or operations of the Exchange.

Other than the provisions above, the provisions of the amended Exchange Constitution may be amended or repealed, and new provisions may be adopted, only if approved by a majority of Governors then in office in accordance with the procedure as specified in Article XIII of the amended Exchange Constitution.

(iv) *Officers of the Exchange*[30]. A Chief Regulatory Officer will be added to the Chief Executive Officer, Treasurer and Secretary, as the officers of the Exchange. The Chief Regulatory Officer will be responsible for the management and administration of the regulatory functions of the Exchange and will be appointed by the Regulatory Oversight Committee.[31] The Chief Regulatory Officer will report directly to the Regulatory Oversight Committee and to the Chief Executive Officer (or the Chief Executive Officer's designee). The Exchange Board of Governors will have the power to remove the Chief Regulatory Officer only with the advice and consent of the Regulatory Oversight Committee. The Treasurer and Secretary will continue to be appointed by the Chief Executive Officer, subject to the approval of the Exchange Board of Governors. In addition, internal auditors shall report directly to the Audit Committee and (to the extent that they are officers or employees of the Exchange)[32] to the Chief Executive Officer or the Chief Executive Officer's designee and shall not be removed without the advice and consent of the Audit Committee.

(v) *Standing Committees of the Exchange*[33]. The amended Exchange Constitution will provide for the creation of a number of new standing committees of the Exchange composed primarily of independent Governors. Specifically, the amended Exchange Constitution will provide for (i) a Nominating and Corporate Governance Committee, (ii) an Executive Committee, (iii) an Audit Committee, (iv) a Regulatory Oversight Committee, and (v) a Compensation Committee. Any

[22] *See* Article III, Section 2 of the Exchange Constitution.

[23] *See* Article III, Section 3 of the Exchange Constitution.

[24] *See* Article III, Section 4 of the Exchange Constitution.

[25] The Exchange Constitution, as amended, provides that the Chairman of the Gratuity Fund shall make a report to the Chairman of the Exchange Board of Governors regarding the condition of the Gratuity Fund, rather than to the Chief Executive Officer of the Exchange, as provided by the current Exchange Constitution.

[26] *See* Article III, Section 5 of the Exchange Constitution.

[27] *See* Article II, Section 8 and Article XIII, Section 1 of the Exchange Constitution and Sections 7, 8 and 9 of the Second Restated MC Certificate of Incorporation.

[28] *See* Sections 7(a) and 9 of the Second Restated MC Certificate of Incorporation.

[29] *See* Section 7(b) of the Second Restated MC Certificate of Incorporation.

[30] *See* Article II, Section 4 of the Exchange Constitution.

[31] *See* Section entitled ''Regulatory Oversight Committee'' in Section II.G(v) of this Notice, below.

[32] After the closing of the Transaction, it is expected that NASD will continue to provide the internal audit function services pursuant to a transition services agreement with the Exchange. Consequently, the internal auditors will not initially be the officers or employees of the Exchange.

[33] *See* Article II, Section 6 of the Exchange Constitution.

power that has been delegated to any such Standing Committee may not be delegated to any other committee formed by the Exchange Board of Governors.[34]

Amex Nominating and Corporate Governance Committee. The Amex Nominating and Corporate Governance Committee will be appointed by the Exchange Board of Governors and will consist of three Governors, two of whom shall be Independent Governors and one of whom shall be the Membership Governor, as established by resolution adopted by a majority of the Board of Governors then in office. The Amex Nominating and Corporate Governance Committee will, among other things: (i) Establish criteria and procedures for the nomination of Governors, Council Members and Trustees; (ii) review the qualifications of and, when necessary and appropriate, interview candidates who may be proposed for nomination as Governors, Council Members and Trustees; (iii) submit to MC, in its capacity as the Class A Interest holder, a list of nominees for the election of Governors, Council Members and Trustees; (iv) monitor and consider the Exchange's corporate governance practices; (v) consider and make recommendations concerning the composition, organization and functions of the Exchange Board of Governors; (vi) review periodically the performance of the Exchange Board of Governors; (vii) review periodically the Exchange Constitution; (viii) make periodic reports to the entire Exchange Board of Governors on such matters within its powers and responsibilities as the Board of Governors may specify; and (ix) perform such other duties in connection with the selection, election or termination of the Governors, Council Members and Trustees or other corporate governance matters as the Exchange Board of Governors may request.

Any vacancy in the Amex Nominating and Corporate Governance Committee will be filled by its remaining members, who will elect a Governor qualified to fill the vacancy. The NASD Nominating Committee will cease to exist upon the closing of the Transaction.

Executive Committee. The Executive Committee will be appointed by the Exchange Board of Governors, upon the recommendation of the Amex Nominating and Corporate Governance Committee, and will consist of three to five Governors, at least a majority of whom will be Independent Governors and at least one of whom shall be an Industry Governor. The Executive Committee will have reasonable access during normal working hours to all information (including all books and records) respecting the Exchange and its assets. The Executive Committee, to the extent permitted by law, will have and may exercise, when the Exchange Board of Governors is not in session, all powers of the Exchange Board of Governors regarding the supervision of the management of the business and affairs of the Exchange.

Audit Committee. The Audit Committee will be appointed by the Exchange Board of Governors, upon the recommendation of the Amex Nominating and Corporate Governance Committee, and will consist of three to five Independent Governors. The Audit Committee will: (i) Have the authority to consider the qualification of the Exchange's independent public accountants, to make recommendations to the Exchange Board of Governors as to their selection and retention, and to review and resolve disputes between such independent public accountants and management relating to the preparation of the annual financial statements; (ii) confer with the Exchange's independent public accountants to determine the scope of the audit that such accountants will perform; (iii) receive reports from the independent public accountants and transmit such reports to the Exchange Board of Governors, and after the close of the fiscal year, transmit to the Exchange Board of Governors the financial statements certified by such accountants; (iv) inquire into, examine and make comments on the accounting procedures of the Exchange and the reports of the independent public accountants; (v) consider and make recommendations to the Exchange Board of Governors upon matters presented to it by the officers of the Exchange pertaining to the audit practices and procedures adhered to by the Exchange; (vi) appoint the internal auditors of the Exchange (who shall report directly to the Audit Committee and who shall not be terminated without the advice and consent of the Audit Committee; to the extent that such internal auditors are officers or employees of the Exchange, they shall also report to the Chief Executive Officer or the Chief Executive Officer's designee); and (vii) make periodic reports to the entire Exchange Board of Governors on such matters within its powers and responsibilities as the Exchange Board of Governors may specify.

Regulatory Oversight Committee. The Exchange will establish a Regulatory Oversight Committee which will: (i) Have authority to determine the Exchange's regulatory scheme, programs, budget and staffing proposals annually; (ii) appoint and direct the Chief Regulatory Officer; (iii) advise the Compensation Committee with respect to and approve the compensation (or any change thereto) of the Chief Regulatory Officer; (iv) be responsible for assessing regulatory performance on a regular basis; (v) have the authority to recommend the adoption of rules to the Exchange Board of Governors concerning such matters as may be specified in the Regulatory Oversight Committee's charter; and (vi) make periodic reports to the entire Exchange Board of Governors on such matters within its powers and responsibilities as the Exchange Board of Governors may specify. The Chief Regulatory Officer will report directly to the Regulatory Oversight Committee and to the Chief Executive Officer (or the Chief Executive Officer's designee).

The Regulatory Oversight Committee will be appointed by the Exchange Board of Governors, upon the recommendation of the Amex Nominating and Corporate Governance Committee, and will consist of three to five Independent Governors and one Industry Governor. The Independent Governors serving as members of the Regulatory Oversight Committee will be the only voting members of the committee. The Industry Governor serving as a member of the Regulatory Oversight Committee will be a non-voting member. The Chief Regulatory Officer will report directly to the Regulatory Oversight Committee and to the Chief Executive Officer (or the Chief Executive Officer's designee). The Exchange Board of Governors will have the power to remove the Chief Regulatory Officer only with the advice and consent of the Regulatory Oversight Committee.

Compensation Committee. The Compensation Committee will be appointed by the Exchange Board of Governors, upon the recommendation of the Amex Nominating and Corporate Governance Committee, and will consist of three to five Independent Governors. The Compensation Committee will have and may exercise all of the authority of the Exchange Board of Governors in administering the Exchange's

[34] To establish the Standing Committees as described in this Section II.A.1.G.(v) and facilitate the transition, Industry Governors may serve as members of the Standing Committees until the earlier of (i) the six-month anniversary of the closing of the acquisition by MC (or MC Acquisition Sub) of the Class Participation B Interest (the ''Class B Interest Acquisition Closing Date'') or (ii) the date of the election of the Board of Governors first succeeding the Class B Interest Acquisition Closing Date.

management compensation plans, and will be responsible for, among other things: (i) Reviewing and approving performance goals relevant to the compensation of the Chief Executive Officer and evaluating the Chief Executive Officer's performance in achieving such goals, and recommending the compensation of the Chief Executive Officer to the Exchange Board of Governors; (ii) recommending to the Exchange Board of Governors the compensation of executive officers of the Exchange; (iii) causing to be publicly disclosed on an annual basis the compensation (and methodology behind such compensation) of the Governors and the five most highly compensated officers of the Exchange; and (iv) making periodic reports to the entire Exchange Board of Governors on such matters within its powers and responsibilities as the Exchange Board of Governors may specify.

(vi) *Seat Owners Advisory Committee.*[35] Under the amended Exchange Constitution, the Exchange Board of Governors will create and consult with the Seat Owners Advisory Committee (''SOAC''), consisting of representatives of various constituencies of the Exchange as SOAC shall deem appropriate.

(vii) *Amex Adjudicatory Council.*[36] The Amex Adjudicatory Council shall consist of six individuals, three of whom shall be Industry Governors (''Industry Council Members''), and three of whom shall be Independent Governors (''Independent Council Members'').[37] All Council Members shall be nominated and elected in accordance with the procedures as described above in Section II.A.1.G.(ii) of this Notice. In the event that a Council Member is precluded from participating in the Council's consideration of a particular matter due to a conflict of interest, the Board of Governors shall appoint a Governor within the same classification for the position to serve as a substitute for such Council Member with respect to the particular matter. In the event that a Governor fitting the relevant classification is not available to serve as a substitute, the Board of Governors may appoint a person who would be qualified to serve as a Governor within such classification (Industry Governor or Independent Governor). If a position on the Amex Adjudicatory Council becomes vacant, whether because of death, disability, disqualification, removal or resignation, the Board of Governors shall appoint a Governor within the same classification (Industry or Independent Council Member) to fill the vacancy until the next annual election of such Council members.[38]

(viii) *Confidential Information.*[39] All confidential information of the Exchange pertaining to the self-regulatory function of the Exchange, including all books and records of the Exchange reflecting such confidential information (including but not limited to regulatory investigations, examinations, disciplinary matters, and to the extent designated by the Exchange as confidential, trading data and trading practices) will be retained in confidence by each Governor, the Exchange and its personnel, and will not be used by each Governor, the Exchange and its personnel for any non-regulatory purposes and shall not be made available to any persons (including, without limitation, any Members of the Exchange) except that such confidential information may be disclosed: (i) To those personnel of the Exchange and to members of the Board of Governors of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange; (ii) to the extent required by applicable statute, rule or regulation or any court of competent jurisdiction; and (iii) to the extent that such confidential information has become generally available publicly through no fault of the Exchange or its Governors, officers, employees or advisors. The purpose of this provision is to help ensure that confidential information relating to the Exchange's self-regulatory function is accorded appropriate confidential treatment and is not misused.

Notwithstanding the foregoing, such confidential information of the Exchange shall be subject at all times to inspection and copying by the Commission at no additional cost to such Commission. Nothing in the Exchange Constitution shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information of the Exchange pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of a Governor, the Exchange and its personnel to disclose such confidential information to the Commission.

H. *Exchange Limited Liability Company Agreement.* The Amended Exchange LLC Agreement, which was filed as part of this rule filing and is available on the Commission's Web site, will become effective upon the closing of the Transaction. Among other things, the Amended Exchange LLC Agreement will establish the rights and obligations of MC and MC Acquisition Sub as equity owners of the Exchange and vest the Exchange Board of Governors with its management powers.

(i) *Distribution.*[40] The Amended Exchange LLC Agreement will provide that no distribution to MC and MC Acquisition Sub, as participants of the Exchange, shall include revenues received by the Exchange from regulatory fines, fees or penalties. The purpose of this provision is to ensure that the regulatory authority of the Exchange is not used improperly to benefit the holders of the Exchange's LLC interests.

(ii) *Indemnification.*[41] The Amended Exchange LLC Agreement will also provide that the Exchange will indemnify the Governors, officers, committee members, employees and agents of the Exchange to the fullest extent permitted by law, as well as the interestholders of the Exchange and their respective directors, officers, committee members, employees and agents, if any such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action of proceeding, had reasonable cause to believe that his or her conduct was unlawful.

The personal liability of the Governors of the Exchange will be eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as the

[35] *See* Article II, Section 3 of the Exchange Constitution.

[36] *See* Article II, Section 7 of the Exchange Constitution.

[37] Under the current Exchange Constitution, the Amex Adjudicatory Council consists of three floor governors (who spend a substantial part of their time on the floor of the Exchange) and three public governors (who are the representatives of the public (i) none of whom is, or is affiliated with, a broker or dealer in securities and (ii) all of them are nominated by the NASD Nominating Committee).

[38] Under the current Exchange Constitution, the Board of Directors of MC was authorized to fill such vacancies.

[39] *See* Article II, Section 3 of the Exchange Constitution.

[40] *See* Article IV, Section 4.6 of the Amended Exchange LLC Agreement.

[41] *See* Article VI of the Amended Exchange LLC Agreement.

same exists or may hereafter be amended.[42] No amendment or repeal of Section 6.6 of the Amended Exchange LLC Agreement shall apply to or have any effect on the liability or alleged liability of any Governor of the Exchange for or with respect to any act or omission on the part of such Governor occurring prior to such amendment or repeal.[43]

In furtherance of this indemnification obligation, the Amended Exchange LLC Agreement will provide that the Exchange may purchase and maintain insurance on behalf of certain persons whether or not the Exchange would have the power to indemnify those persons pursuant to the Amended Exchange LLC Agreement. Moreover, the Amended Exchange LLC Agreement will require the Exchange to cause MC and the MC Acquisition Sub to be covered under the Exchange's insurance policies to the same extent as the Governors, officers, committee members, employees and agents of the Exchange. Such insurance policies must insure against at least matters relating to or arising from the Transaction.

(iii) *Amendment.*[44] Any amendment to or repeal of any provision of the Amended Exchange LLC Agreement shall not be effective until the same is filed with or filed with and approved by the Commission, under Section 19 of the Act[45] and the rules promulgated thereunder, as the case may be.

(iv) *Direct Transfer of Ownership Interests in the Exchange.*[46] Under the Amended Exchange LLC Agreement, any sale, issuance, transfer or other disposition in any single transaction or series of transactions of (A) any limited liability company interests or other equity security of the Exchange or any securities convertible into or exchangeable for, or options rights or warrants to acquire, any such equity securities or (B) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any equity securities or containing profit participation features) shall: (i) Be made only in compliance with the member vote procedures set forth in Section 7(a) of the Second Restated Certificate of Incorporation of MC; and (ii) be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act,[47] and the rules promulgated thereunder. Any attempt to issue or transfer any such equity interests or any rights thereunder in violation of the preceding sentence shall be null and void *ab initio.* The purpose of this provision is to provide the Commission with the ability to review and subject to public notice and comment the transfer of any ownership interests of the Exchange.

I. *Second Restated MC Certificate of Incorporation.* MC will adopt a Second Restated MC Certificate of Incorporation upon the closing of the Transaction, which was filed as part of this rule filing and is available on the Commission's Web site.

(i) *Purpose.*[48] Under the Second Restated MC Certificate of Incorporation, the purposes of MC continue to be: (i) Directly or indirectly holding, acquiring, exchanging, or disposing of equity or other interests in the Exchange and exercising the rights incident to its ownership; and (ii) to conduct and carry on only activities incidental to and in furtherance of the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the New York Not-for-Profit Corporation Law.

(ii) *Required Consents.*[49] The Exchange will be required to obtain MC's consent prior to (i) the authorization, issuance or grant of any new trading rights on the Exchange, and (ii) the sale, issuance, transfer or other disposition in a single transaction or series of transactions of any equity security of the Exchange, or any notes or debt securities of the Exchange containing equity features. With respect to such matters, promptly upon receiving a written request from the Exchange, the Secretary of MC will call a meeting of the holders of the memberships entitled to vote thereat to vote on the matter. If the required number of memberships are voted in favor of authorizing such matter, the proper officers of MC shall promptly grant the MC's consent to the Exchange. Any such consent shall be granted by MC only upon the affirmative vote of a majority of the regular memberships and the options principal memberships voted (as a single class) at a meeting duly called and convened and at which a quorum is present. If a proposed matter is not approved at the duly convened meeting convened with respect thereto, the request for such matter shall not be submitted again to the membership for a period of ninety days.[50]

MC will be required to obtain the consent of the majority of the memberships entitled to vote in order for it to transfer, sell or otherwise dispose of its or an affiliate's interest in the Exchange. If such matter is not approved at the duly convened meeting convened with respect thereto, the request for such matter shall not be submitted again to the membership for a period of ninety days.[51]

(iii) *Indirect Transfer of Ownership Interests in the Exchange.*[52] Under the Second Restated MC Certificate of Incorporation, any sale, issuance, transfer or other disposition in any single transaction or series of transactions of (A) any equity securities of MC or MC Sub, or any securities convertible into or exchangeable for, or options rights or warrants to acquire, any such equity securities, or (B) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any equity securities or containing profit participation features) shall be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act[53] and the rules promulgated thereunder; provided that the foregoing shall not apply to any sale, transfer or other disposition of seats or membership interests of the MC. Any attempt to issue or transfer such equity interest or any rights thereunder in violation of the preceding sentence shall be null and void ab initio. The purpose of this provision is to provide the Commission the authority to review and subject to public notice and comment any transfer of indirect ownership interests in the Exchange other than the transfer of membership interests.

(iv) *Issuance of Additional Memberships.* Upon receiving a written request from the Exchange for an amendment to the Second Restated MC Certificate of Incorporation to authorize the issuance of additional memberships of any class, the Secretary of MC shall call a meeting of the holders of memberships entitled to vote thereat to vote on such request in accordance with the Amended MC By-Laws. Such an amendment may be authorized, and

[42] *See* Article VI, Section 6.6 (Fiduciary Duty) of the Amended Exchange LLC Agreement.

[43] *Id.*

[44] *See* Article XI, Section 11.3 of the Amended Exchange LLC Agreement.

[45] 15 U.S.C. 78s.

[46] See Article IX, Section 9.3 of the Amended Exchange LLC Agreement.

[47] 15 U.S.C. 78s.

[48] *See* Section 3 of the Second Restated MC Certificate of Incorporation.

[49] *See* Section 7(a) and 7(b) of the Second Restated MC Certificate of Incorporation.

[50] *See* Section 7(a) of the Second Restated MC Certificate of Incorporation.

[51] *See* Section 7(b) of the Second Restated MC Certificate of Incorporation.

[52] *See* Section 7(c) of the Second Restated MC Certificate of Incorporation.

[53] 15 U.S.C. 78s.

such additional memberships may be issued, only upon the affirmative vote of a majority of the regular memberships and the options principal memberships voted (as a single class) at a duly convened meeting.[54]

(v) *Elections.* The Members will have the right to elect any Governors, Council Members and Trustees that MC, as the Class A Interestholder, is entitled to vote upon in accordance with the amended Exchange Constitution and in accordance with the procedures set forth in the Amended MC By-Laws.[55]

(vi) *Indemnification.*[56] The Second Restated MC Certificate of Incorporation will also provide limitation of liability and indemnification for MC directors and officers. Under the Second Restated MC Certificate of Incorporation, MC will to the fullest extent permitted by law, indemnify any person who is or was made, or threatened to be made, a party to any threatened, pending or completed, action, suit or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of MC to procure a judgment in its favor, by reason of the fact that such person, or a person of whom such person is the legal representative, is or was a director or officer of MC, or is or was serving in any capacity at the request of MC for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against judgments, fines, penalties, excise taxes, amounts paid in settlement (with the written consent of MC which shall not be unreasonably withheld) and costs, charges and expenses (including attorneys' fees and disbursements). Notwithstanding the foregoing, no indemnification shall be provided to or on behalf of any director or officer if a judgment or other final adjudication adverse to such director or officer establishes that (i) his or her acts were committed in bad faith or were the result of active an deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, (ii) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or (iii) his or her acts violated Section 719 of the New York Not-for-Profit Corporation Law. MC will have the power to purchase insurance for its officers and directors.

(vii) *Books and Records.*[57] MC shall keep at the office of MC or such other locations within the United States as may from time to time be designated by the Board of Directors correct and complete books and records of account and minutes of the proceedings of its Members, Board of Directors and committees, if any, and a list of the names, addresses, and classes of membership of the Members. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time. To the extent that the foregoing books, minutes and records are related to the activities of the Exchange, such books, minutes and records shall be deemed to be the books, minutes and records of the Exchange for the purposes of Section 17(b) of the Act,[58] and shall be subject at all times to inspection and copying by the Commission and the Exchange. The Exchange believes that such provision would provide the Commission and the Exchange with the authority to inspect and copy the books, records and minutes of MC relating to the activities of the Exchange and therefore help the Commission and the Exchange carry out their regulatory responsibilities.

(viii) *Officers and Directors.*[59] With respect to conduct by the officers and directors of MC that relates to the activities of the Exchange, such officers and directors shall be deemed to be the officers and directors of the Exchange solely for the purposes of the removal and censure authority of the Commission pursuant to Section 19(h)(4) of the Act.[60]

For so long as MC shall control, directly or indirectly, the Exchange, each officer, director and employee of MC shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to the Exchange's obligations under the Act, and the rules thereunder, including, without limitation, Section 6(b) of the Act,[61] and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the Board of Governors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would adversely affect the ability of the Exchange to carry out its responsibilities under the Act.

(ix) *Consent to Jurisdiction*[62]. For so long as MC shall control, directly or indirectly, the Exchange, MC shall, and its officers, directors and employees by virtue of their acceptance of such position shall be deemed to, irrevocably submit to the exclusive jurisdiction of the United States federal courts, the Commission, and the Exchange, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to the activities of the Exchange, and MC shall, and by virtue of their acceptance of any such position, the officers, directors and employees of MC shall be deemed to, waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission as to such matters, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

(x) *Cooperation with the Commission*[63]. For so long as MC shall control, directly or indirectly, the Exchange, MC shall, and the officers, directors and employees of MC by virtue of their acceptance of such position shall be deemed to, agree to cooperate with the Commission and the Exchange, in respect of said Commission's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. MC shall take reasonable steps to ensure that its agents similarly cooperate with the Commission.

(xi) *Confidential Information*[64]. All confidential information of the Exchange pertaining to the self regulatory function of the Exchange, including books, minutes and records of the Exchange reflecting such confidential information (including but not limited to regulatory investigations, examinations, disciplinary matters, and to the extent designated by the Exchange as confidential, trading data and practices) which shall come into the possession of MC, the officers, directors, employees or agents of MC, shall be retained in confidence by MC and the officers, directors, employees and agents of MC and shall not be used for any

[54] *See* Section 9 of the Second Restated MC Certificate of Incorporation.

[55] *See* Section 8 of the Second Restated MC Certificate of Incorporation.

[56] *See* Section 11 of the Second Restated MC Certificate of Incorporation.

[57] *See* Section 12 of the Second Restated MC Certificate of Incorporation.

[58] 15 U.S.C. 78q(b).

[59] *See* Section 13 of the Second Restated MC Certificate of Incorporation.

[60] 15 U.S.C. 78s(h)(4).

[61] 15 U.S.C. 78f(b).

[62] *See* Section 14 of the Second Restated MC Certificate of Incorporation.

[63] *See* Section 15 of the Second Restated MC Certificate of Incorporation.

[64] *See* Section 16 of the Second Restated MC Certificate of Incorporation.

non-regulatory purposes. MC shall take reasonable steps to ensure that its agents will comply with this section. The purpose of this provision is to help ensure that confidential information relating to the Exchange's self-regulatory function is accorded appropriate confidential treatment and is not misused.

Nothing in the Second Restated Certificate of Incorporation shall be interpreted as to limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of MC and the officers, directors, employees or agents of MC to disclose such confidential information to the Commission or the Exchange.

(xii) *Further Compliance*[65]. MC shall take reasonable steps to ensure that its officers, directors and employees comply with Sections 12, 13, 14, 15 and 16 of the Second Restated MC Certificate of Incorporation, which shall include obtaining a written agreement from such individuals, as a condition to their initial or continued employment or service as a director, that they will comply with or consent to, as the case may be, such provisions.

The purpose of the provisions set forth above in paragraphs (vii)–(xii) of this section is to assist both the Exchange and the Commission in exercising their respective regulatory oversight responsibilities over the affairs of the Exchange by, among other things, providing access to books and records relating to the Exchange and ensuring that the officers, directors and employees of MC are aware of and take into account such responsibilities and cooperate with the Commission in connection therewith.

(xiii) *Amendment*[66]. Under the Second Restated MC Certificate of Incorporation, for so long as MC controls, directly or indirectly, the Exchange, before any change or addition to the Second Restated Certificate of Incorporation or By-laws of MC shall be effective, the same shall be submitted to the Board of Governors of the Exchange and if said Board shall determine that the same constitutes a ''rule of an exchange'' as such term is defined in the Act and the rules promulgated thereunder, and must be filed with or filed with and approved by the Commission before the same may be effective, under Section 19 of the Act,[67] and the rules promulgated thereunder, then the same shall not be effective until filed with or filed with and approved by the Commission, as the case may be. The Exchange believes that this provision would provide the Exchange, and the Commission (if applicable) the authority to review any amendment to the Second Restated Certificate of Incorporation of MC or its By-laws prior to its effectiveness in order to help the Exchange and Commission carry out their respective regulatory responsibilities.

J. *Amended MC By-Laws.* The Amended MC By-Laws will become effective upon the closing of the Transaction. The Amended MC By-laws were filed as part of the rule filing and is available on the Commission's website.

(i) *MC Board of Directors.* Under the Amended MC By-laws, at the next regular meeting for the election of directors after the closing of the Transaction, the Members will elect five directors in accordance with the Amended MC By-Laws.

The MC Board of Directors will be elected for one-year terms and will hold office until their successors are elected. No director of MC who has served eight consecutive elected terms as a director will be eligible for election as a director of MC except after an interval of two years; *provided, however,* that service on the Board of Directors prior to January 1, 1999 will not be taken into account for these purposes.[68] Unless otherwise required, each matter shall be decided by a vote of a majority of the directors present at the time of the vote, provided a quorum is present.[69]

Vacancies on the MC Board of Directors may be filled for the remaining term of such vacant position by a majority vote of all remaining MC Directors.[70] The Amended MC By-Laws will also provide limitation of liability and indemnification for MC directors and officers.[71]

(ii) *MC Nominating Committee*[72]. Under the Amended MC By-laws, the MC Nominating Committee will be appointed by the MC Board of Directors and will consist of two or three Directors. The MC Nominating Committee will: (i) Establish criteria and procedures for the nomination of MC Directors; (ii) search for qualified nominees for submission to the Members for election; (iii) review the qualifications of and, when necessary and appropriate, interview candidates who may be proposed for nomination as MC directors; (iv) submit to the Members a list of nominees for the election of MC directors; (v) perform any and all other duties in connection with the selection, election or termination of the MC directors as the MC Board of Directors may request; and (vi) make periodic reports to the entire Board of Directors on such matters within the Committee's powers and responsibilities as the Board of Directors may specify. Any vacancy in the MC Nominating Committee will be filled by the Committee's remaining members, who will elect a Director qualified to fill the vacancy.

(iii) *Nomination and Election Procedures*[73]. Under the Amended MC By-laws, all candidates to be submitted to the Members for election as directors will be selected by either (i) the MC Nominating Committee or (ii) by petition of the Members to the MC Nominating Committee.

The Members may propose nominees for directors of MC for consideration by the MC Nominating Committee by written submission filed with the Secretary of MC for delivery to the MC Nominating Committee not less than 12 weeks prior to the annual meeting of the Members. The eligibility of any candidate proposed in any such submission will be determined by the MC Nominating Committee in its sole discretion and without the right of appeal.

The MC Nominating Committee will report to MC at least eight weeks prior to the date of the annual meeting of the Members the names of candidates nominated by it as directors. Such report will be promptly disseminated or made available to Members by posting or other appropriate means and will be promptly forwarded to the Secretary of MC for mailing to the Members in accordance with the Amended MC By-Laws.

The Members may nominate candidates for directors of MC by written petition filed with the Secretary of MC for delivery to the MC Nominating Committee within three weeks after the dissemination of the report of the MC Nominating Committee. The eligibility of any candidate nominated in any such petition will be determined by the MC

[65] *See* Section 17 of the Second Restated MC Certificate of Incorporation.

[66] *See* Section 18 of the Second Restated MC Certificate of Incorporation.

[67] 15 U.S.C. 78s.

[68] *See* Article II, Section 2.03 of the Amended MC By-Laws.

[69] *See* Article II, Section 2.13 of the Amended MC By-Laws.

[70] *See* Article II, Section 2.06 of the Amended MC By-Laws.

[71] *See* Article VIII of the Amended MC By-Laws.

[72] *See* Article III, Section 3.03 of the Amended MC By-Laws.

[73] *See* Article I, Sections 1.13 and 1.14 of the Amended MC By-Laws.

Nominating Committee. A statement of the candidates nominated by petition will be promptly disseminated or made available to Members by posting or other appropriate means and will be promptly forwarded to the Secretary of MC for mailing to the Members within three days after the dissemination in accordance with the Amended MC By-Laws.

The time periods set forth above may be equitably adjusted by the MC Nominating Committee with respect to the first election of directors occurring following Apri1 1, 2004, to facilitate a prompt initial election; provided, however, in no event shall the petition period described in the proceeding paragraph be less than 10 business days.

Any person nominated by the MC Nominating Committee or by petition, whether or not such person is a Member, may be eligible to be elected to the MC Board of Directors. The Amended MC By-laws also includes the nomination procedures for Governors, Council Members and Trustees of the Exchange as described in Section II.A.1.G.(ii) of this Notice.[74]

(iv) *Elections*[75]. Under the Amended MC By-laws, unless otherwise required by the New York Not-for-Profit Corporation Law, by the MC Certificate of Incorporation or by the second sentence of this paragraph, all matters submitted to a vote of the Members shall be decided by the vote of a majority of the Members entitled to vote and present in person or by proxy at the meeting. At each meeting of the Members for the election of directors of MC, Governors of the Exchange, Trustees, and Council Members, such persons shall be elected by a plurality of votes cast, in person or by proxy, at such meeting by the regular and options principal members voting together as a single class and MC, as the holder of the Class A Interest of the Exchange, shall vote such Class A Interest so as to cause the election of such persons who have been so elected by the regular and options principal members.

(v) *Books and Records*[76]. Under the Amended MC By-laws, MC shall keep at the office of MC or such other locations within the United States as may from time to time be designated by the Board of Directors correct and complete books and records of account and minutes of the proceedings of its Members, Board of Directors and committees, if any, and a list of the names, addresses and classes of membership of the Members. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time. To the extent that the foregoing books, minutes and records are related to the activities of the Exchange, such books, minutes and records shall be deemed to be the books, minutes and records of the Exchange for the purposes of Section 17(b) of the Act,[77] and shall be subject at all times to inspection and copying by the Commission and the Exchange.

(vi) *Officers and Directors*[78]. Under the Amended MC By-laws, with respect to conduct by the officers and directors of MC that relates to the activities of Amex, such officers and directors shall be deemed to be the officers and directors of the Exchange solely for the purposes of the removal and censure authority of the Commission pursuant to Section 19(h)(4) of the Act.[79] For so long as MC shall control, directly or indirectly, the Exchange, each officer, director and employee of MC shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to the Exchange's obligations under the Act and the rules thereunder, including, without limitation, Section 6(b) of such Act,[80] and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the Board of Governors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would adversely affect the ability of the Exchange to carry out its responsibilities under the Act.

(vii) *Consent to Jurisdiction*[81]. For so long as MC shall control, directly or indirectly, the Exchange, MC shall, and its officers, directors and employees by virtue of their acceptance of such position shall be deemed to, irrevocably submit to the exclusive jurisdiction of the United States federal courts, the Commission, and the Exchange, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to the activities of the Exchange, and MC shall, and by virtue of their acceptance of any such position, the officers, directors and employees of MC shall be deemed to, waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission as to such matters, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

(viii) *Cooperation with the Commission*[82]. For so long as MC shall control, directly or indirectly, the Exchange, MC shall, and the officers, directors and employees of MC by virtue of their acceptance of such position shall be deemed to, agree to cooperate with the Commission and the Exchange in respect of said Commission's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. MC shall take reasonable steps to ensure that its agents similarly cooperate with the Commission.

(ix) *Confidential Information*[83]. All confidential information of the Exchange pertaining to the self-regulatory function of the Exchange, including books, minutes and records of the Exchange reflecting such confidential information (including but not limited to regulatory investigations, examinations, disciplinary matters, and to the extent designated by the Exchange as confidential, trading data and practices) which shall come into the possession of MC, the officers, directors, employees or agents of MC, shall be retained in confidence by MC and the officers, directors, employees and agents of MC and shall not be used for any non-regulatory purposes. MC will take reasonable steps to ensure that its agents will comply with this section. The purpose of this provision is to help ensure that confidential information relating to the Exchange's self-regulatory function is accorded appropriate confidential treatment and is not misused.

Nothing in the Amended MC By-Laws shall be interpreted as to limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the U.S. Federal securities laws and the rules thereunder, or to limit or impede the ability of MC, officers, directors, employees or agents of MC to disclose such confidential information to the Commission or the Exchange.

(x) *Further Compliance*[84]. MC will take reasonable steps to ensure that its officers, directors and employees

[74] *See* Section 1.14 of the Amended MC By-Laws.

[75] *See* Article I, Sections 1.10 and 1.11 of the Amended MC By-Laws.

[76] *See* Article VI, Section 6.02 of the Amended MC By-Laws.

[77] 15 U.S.C. 78q(b).

[78] *See* Section 7.05 of the Amended MC By-Laws.

[79] 15 U.S.C. 78s(h)(4).

[80] 15 U.S.C. 78f(b).

[81] *See* Section 7.06 of the Amended MC By-Laws.

[82] *See* Section 7.07 of the Amended MC By-Laws.

[83] *See* Section 7.08 of the Amended MC By-Laws.

[84] *See* Section 7.09 of the Amended MC By-Laws.

comply with Sections 6.02, 7.05, 7.06, 7.07 and 7.08 of the Amended MC By-Laws, which shall include obtaining a written agreement from such individuals, as a condition to their initial or continued employment or service as a director, that they will comply with or consent to, as the case may be, such provisions.

The purpose of the provisions set forth above in paragraphs (v)–(x) of this section is to assist both the Exchange and the Commission in exercising their respective regulatory oversight responsibilities over the affairs of the Exchange by, among other things, providing access to the books and records relating to the Exchange and ensuring that the officers, directors and employees of MC are aware of and take into account such responsibilities and cooperate with the Commission in connection therewith.

(xi) *Amendment*[85]. Under the Amended MC By-Laws, for so long as MC controls, directly or indirectly, the Exchange, before any change or addition to the By-Laws of MC shall be effective, the same shall be submitted to the Board of Governors of the Exchange and if said Board shall determine that the same constitutes a ''rule of an exchange'' as such term is defined in the Act, and the rules promulgated thereunder and must be filed with or filed with and approved by the Commission before the same may be effective, under Section 19 of the Act,[86] and the rules promulgated thereunder, then the same shall not be effective until filed with or filed with and approved by the Commission, as the case may be. The Exchange believes that this provision would provide the Exchange, and the Commission (if applicable), the ability to review any amendment to the Amended MC By-Laws prior to their being effective in order to help the Exchange and Commission to effectively carry out their respective regulatory responsibilities.

K. *Transparency.* In connection with the Transaction, both the Exchange and MC will adopt resolutions providing for greater transparency of their respective operations. Prior to each annual meeting at which directors or Governors, as the case may be, are elected, each company will distribute a proxy statement disclosing certain matters regarding each of the respective Board's activities for the preceding year, pertinent information about the independence of Governors and directors and compensation data for the Governors and five most highly compensated officers of the Exchange.

2 Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[87] in general and furthers the objectives of Section 6(b)(3)[88] in particular in that the proposed amendments to the Exchange Constitution are designed to assure a 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. The current Constitution of the Exchange is being amended to institute new governance structures for the Exchange. As stated previously, the proposed governance structure for the Exchange provides for a Board of Governors selected directly by its Members, who will also have the opportunity to vote on a ''pass-through'' basis on certain significant matters involving the Exchange, including the sale, issuance, transfer or other disposition of any equity security of the Exchange or of any notes or debt securities of the Exchange containing equity features or the issuance of any new trading rights by the Exchange. Under the new governance structure, among the six Industry Governors of the Exchange, two will be the Floor Governors; one will be the Membership Governor; one will be the Upstairs Governor; one will be the Listed Governor; and one will be the Management Governor. The Exchange believes that the proposed changes will assure a balanced structure of the Exchange Board of Governors and fair representation of various constituencies on the Exchange Board of Governors.

The new governance provisions will also provide that the Exchange Board of Governors will be largely independent and will have board committees composed primarily of independent Governors with substantial authority over compensation, audit, regulatory and corporate governance matters, as well as the nomination of Governors to serve on the Exchange Board of Governors. As a result, the Exchange believes that these proposed amendments to the Exchange Constitution are consistent with the objectives of Section 6(b)(5)[89] in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaging 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; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange also believes that the proposed amendments to the Exchange Constitution are consistent with Section 6(b)(8) of the Act[90] which requires that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With a new capital and governance structure, the Exchange will be better positioned to improve its technology and engage in value-enhancing transactions designed to facilitate its long-term success.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

By letter dated April 15, 2004, counsel for the Amex Seat Owners Association (''ASOA'') submitted written comments on a draft of the rule filing that was proposed to be transmitted to the Commission, which contained many of the same provisions as are contained in the current rule filing. ASOA objected to certain of such provisions, including: (a) the filing of the MC corporate governance documents as part of the Exchange's rule filing and (b) the determination by the Exchange Board of Governors as to whether an amendment to such MC governance documents would require a subsequent rule filing. The April 15 ASOA letter also raised certain questions regarding ambiguities in certain language contained in the rule filing, which have been clarified. By letter dated June 9, 2004, counsel for ASOA submitted additional comments on the then-current draft rule filing, which raised the following additional concerns: (a) The excessive scope of the responsibilities and liabilities of MC directors and officers for matters relating to the Exchange; and (b) the

[85] *See* Section 9.01 of the Amended MC By-Laws.

[86] 15 U.S.C. 78s.

[87] 15 U.S.C. 78f(b).

[88] 15 U.S.C. 78f(b)(3).

[89] 15 U.S.C. 78f(b)(5).

[90] 15 U.S.C. 78f(b)(8).

breadth of MC's obligations with regard to books and records that relate to the activities of the Exchange. The concerns raised by the ASOA letters were discussed with the Commission staff on several occasions, and the forms of the MC corporate governance documents attached as Exhibits to the Exchange's 19b–4 filing (which contain substantially similar provisions as those on which ASOA commented) reflect the outcome of those discussions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

In July 2004, the Board of Governors of the Exchange will consider approval of the final forms of the Exchange and MC governance documents, including the Exchange Constitution. The Exchange hereby consents to extension of the period of time specified in Section 19(b)(2) of the Act [91] until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required with respect to this proposed rule change.

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. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–50 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–50. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–50 and should be submitted on or before August 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[92]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17113 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–P

[91] 15 U.S.C. 78s(b)(2).

[92] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50048; File No. SR–CBOE–2004–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating To Extension of Linkage Fee Pilot Program

July 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one year until July 31, 2005, the current pilot program applicable to Options Linkage (''Linkage'') fees.

The proposed fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The Exchange's current fee structure for Principal (''P'') and Principal Acting as Agent (''P/A'') Orders [3] executed on the Exchange is operating under a pilot

[3] Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (''Plan'') and Exchange Rule 6.80(12) which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) ''P/A Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) ''P Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

program scheduled to expire on July 31, 2004.[4] Currently, because all Linkage orders received by the CBOE are for the account of a broker-dealer market maker on another exchange, the fees applicable to P and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to the CBOE outside of the Linkage, taking into account how those orders are handled at the CBOE. The Exchange now proposes extending the pilot program to July 31, 2005.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received any comments on this proposed rule change.

III. 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment from (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–40 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–40. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–40 and should be submitted on or before August 18, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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,[7] and, in particular, with the requirements of section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005, will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[11] that the proposed rule change (SR–CBOE–2004–40) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17114 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 49172 (February 2, 2004), 69 FR 6008 (February 9, 2004) (SR–CBOE–2004–06).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3 (a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50059; File No. SR–NASD–2004–021]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Reporting of Cancelled Trades

July 22, 2004.

On February 4, 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''), 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 require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 17,

[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, Nasdaq, to Katherine A. England, Assistant Director, Commission, dated May 18, 2004 (''Amendment No. 1''). Amendment No. 1 replaced Nasdaq's February 4, 2004 filing in its entirety.

2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] applicable to a national securities association.[6] In particular, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act[7] which requires, among other things, that the rules of a securities association be designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should improve the quality and accuracy of information disseminated by Nasdaq about transactions in its market. Under the proposal, members must notify Nasdaq, through a submission, when they cancel a trade previously reported to the Nasdaq Market Center.[8] The member that originally had the obligation to report the trade also will bear the responsibility to report the cancellation of the trade.[9] The Commission believes that, by assuring Nasdaq has timely notice of cancelled trades, this reporting requirement should improve the accuracy of the information disseminated by Nasdaq to market participants and should help to ensure that Nasdaq maintains an accurate audit trail.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (SR–NASD–2004–021) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17176 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 49844 (June 10, 2004), 69 FR 33980.

[5] 15 U.S.C. 78o–3.

[6] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3(b)(6).

[8] Under the proposal, members will not be required to submit a cancellation report if Nasdaq cancels a trade using its authority under NASD Rule 11890. In such situations, Nasdaq would submit the cancellation report.

[9] For cancelled trades executed through the Nasdaq Market Center execution service, which automatically submits trade reports, the member that would have been responsible for submitting the original report (but for the system reporting the trade) will be responsible for initiating the cancellation. For example, when a trade executed between two market makers in the Nasdaq Market Center execution service is subsequently cancelled, the sell side member is responsible for initiating the cancellation.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50054; File No. SR–PCX–2004–49]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Governing the Archipelago Exchange by Adding a New Order Modifier Entitled ''Don't Arb Me''

July 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 June 3, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, to add a new order type entitled the ''Don't Arb Me'' modifier. The ''Don't Arb Me'' modifier will increase processing capability for orders in exchange-listed securities that are traded-through by an away market block trade. The text of the proposed rule change appears below. New text is in italics.

* * * * *

Rule 7 Equities Trading

Orders and Modifiers

Rule 7.31 Orders and Modifiers

* * * * *

(dd) Don't Arb Me Modifier. A limit order in which the Corporation will re-price the order at the block price subsequent to the limit order being traded-through by another market center's block trade. The order shall be ranked in the Arca Book pursuant to Rule 7.36 and assigned a new time price priority as of the time of each reposting. This modifier will apply only to exchange-listed securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to include an additional processing capability for orders in exchange-listed securities in situations when an order is traded-through by another market's block trade. The Exchange believes that such capability will protect ArcaEx orders from being arbitraged by other market centers.

Currently, PCXE Rule 7.56 (''ITS Trade-Throughs and Locked Markets'') describes the interaction between markets in exchange-listed securities when an order in the ArcaEx Book is traded-through. This rule specifies that block trades[3] are generally exempted from the trade-through rule.[4] Pursuant to the Intermarket Trading System (''ITS'') Plan and PCXE rules, an ETP Holder that trades through another market with a block trade is obligated to send a commitment to the market center it traded through at the block price,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 7.57 (''Block Trade Policy''). Block trades are trades in excess of 10,000 shares or $200,000; effected at a price outside the bid or offer displayed from another ITS participating market center; and involves either a cross of block size or any other transaction of block size that is not the result of an execution at the current bid or offer on the Corporation.

[4] *See* PCXE Rule 7.56, Commentary .01.

unless one of the inapplicability conditions apply.[5]

According to the PCX, the rules permit away markets to send commitments to execute against ArcaEx superior quotes/prices after the away market trades through ArcaEx at inferior block prices. Specifically, an away market may send orders to execute at the superior ArcaEx price during the time period after the away market executes a block trade through ArcaEx, but before it sends the required ITS commitment to trade in response to the block trade-through. According to the Exchange, this enables away markets to execute at ArcaEx's superior price in order to arbitrage against the inferior block price.

An example of this scenario under the current rules is as follows:

- ArcaEx's best bid is 7,000 at $41.50.
- An away market puts up a block trade in the same symbol for 10,000 at $41.25.
- In the intervening timeframe before the away market sends a commitment at $41.25, away market participants send sell orders to execute against ArcaEx's quote at $41.50 and subsequently trade at $41.25 thereby arbitraging the $0.25 spread and taking advantage of ArcaEx's superior price.

The Exchange believes that the ''Don't Arb Me'' modifier is designed to protect better-priced ArcaEx orders from being taken advantage of in these circumstances. The new modifier would, in the instance of a block trade-through, immediately re-price the ArcaEx order at the block price. The order would then be displayed in the ArcaEx book pursuant to PCXE Rule 7.36 and assigned a new time, price priority as of the time of each reposting. The example below is an illustration of how the ''Don't Arb Me'' modifier will operate:

- Client sends an order to Buy 7,000 at $41.50 with the Don't Arb Me modifier.
- ArcaEx displays Buy 7,000 at $41.50.
- Away market sends a block trade to the tape in the same symbol for 10,000 at $41.25.
- ArcaEx immediately cancels the buy 7,000 at $41.50 and posts 7,000 at $41.25 with new time priority.
- An order is submitted to ArcaEx that trades with the 7,000 Buy order (at 41.25).

The Exchange believes that the implementation of the ''Don't Arb Me'' modifier will facilitate enhanced order interaction and foster price competition. According to the Exchange, the proposal promotes increased efficiency and effectiveness in its market operation, and enhances the investment choices available to investors over a broad range of trading scenarios. The Exchange notes that the ''Don't Arb Me'' modifier was created in response to ArcaEx participants' requests for additional functionality to deal with the problems described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and further the objectives of section 6(b)(5) of the Act,[7] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of section 11A(a)(1)(B)[8] of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–49. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–49 and should be submitted on or before August 18, 2004.

[5] *See* PCXE Rule 7.57(c) (creating carve outs to the obligation to send commitments).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1)(B).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17111 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 27, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Certificate of Competency.

Form No: 1531.

Frequency: On Occasion.

Description of Respondents: Small Business Owners.

Responses: 300.

Annual Burden: 2,400.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–17145 Filed 7–27–04; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by e-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing, North American Industry Classification System (NAICS) 335999. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 20, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–17146 Filed 7–27–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Power-Driven Handtool Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Power-Driven Handtool Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by E-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business

manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Power-Driven Handtool Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Power-Driven Handtool Manufacturing, North American Industry Classification System (NAICS) 333991. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 20, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–17147 Filed 7–27–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Other Communications Equipment Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by email at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Other Communications Equipment Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Other Communications Equipment Manufacturing, North American Industry Classification System (NAICS) 334290. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 20, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–17148 Filed 7–27–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Paint and Paint Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Paint and Paint Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

DATES: Comments and sources must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by email at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in

the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Paint and Paint Manufacturing. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for Paint and Paint Manufacturing, North American Industry Classification System (NAICS) 325510. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 20, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–17149 Filed 7–27–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4789]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dead Sea Scrolls''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Dead Sea Scrolls,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Houston Museum of Natural Science, Houston, Texas, from on or about October 1, 2004 until on or about January 2, 2005, at the Gulf Coast Exploreum Science Center, Mobile, Alabama from on or about January 20, 2005 until on or about April 24, 2005, and at possible additional venues yet to be determined, is in the national interest.

The action of the United States in this matter and the immunity based on the application of the provisions of law involved does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. *See* Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. of State Bulletin 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982).

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 21, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–17182 Filed 7–27–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4788]

Culturally Significant Objects Imported for Exhibition Determinations: ''Totems to Turquoise: Native North American Jewelry Arts of the Northwest and Southwest''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Totems to Turquoise: Native North American Jewelry Arts of the Northwest and Southwest,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, NY from on or about October 30, 2004 to on or about July 10, 2005, and at possible additional venues yet to be determined through December 2007, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 21, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–17180 Filed 7–27–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 4790]

United States—Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Joan Mahoney, Program Administrator, U.S.-Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; E-mail: *mahoneyjm@state.gov.*

The 2004 Program Announcement, including proposal guidelines, will be available starting August 1, 2004 on the Joint Board Web site: *http://*

www.usembassy.egnet.net/usegypt/joint-st.htm.

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin August 1, 2004. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2005 must be postmarked by November 8, 2004. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Elizabeth Daugharty,

Acting Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, and Chair, U.S.-Egypt S&T Joint Board, Department of State.

[FR Doc. 04–17183 Filed 7–27–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4791]

United States-Egypt Science and Technology Joint Board Public Announcement of a Science and Technology Program for Competitive Grants to Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

August 8, 2004.

AGENCY: Department of State.

ACTION: Notice.

DATES: Effective August 8, 2004.

FOR FURTHER INFORMATION CONTACT: Joan Mahoney, Program Administrator, U.S.-Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; E-mail: *mahoneyjm@state.gov.*

The 2004 Program guidelines for Junior Scientist Development visits will be available starting August 8, 2004 on the Joint Board Web site: *www.usembassy.egnet.net/usegypt/joint-st.htm.*

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin August 8, 2004. This program will provide modest grants for successfully competitive proposals for development visits by U.S. Junior Scientists to Egypt; and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years or for U.S. applicants only may also be currently enrolled in a PhD program or have received a Master's degree. Proposals considered for funding must be postmarked by October 25, 2004. All proposals, which fully meet the submission requirements, will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program Announcement/Application may be obtained upon request.

Elizabeth Daugharty,

Acting Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.-Egypt S&T Joint Board, Department of State.

[FR Doc. 04–17184 Filed 7–27–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17678; Notice 2]

Ford Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) determined that the certification labels on certain vehicles that it produced in 1998 through 2004 do not comply with S5.3.2 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Ford has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published with a 30-day comment period on May 24, 2004 in the **Federal Register** (69 FR 29627). NHTSA received one comment.

A total of approximately 908,548 model year 1999 through 2003 Ford Windstar multi-purpose passenger vehicles and approximately 86,321 model year 2004 Ford Freestar and Mercury Monterey multipurpose passenger vehicles produced between August 4, 1998 and March 24, 2004 are affected. S5.3.2 of FMVSS 120 requires that each vehicle shall identify either on the certification label or on the separate tire information label ''the [rim] size designation and, if applicable, the type designation of [r]ims * * *.'' The labeling on the affected vehicles does not include the rim size and type information required by S5.3.2.

Ford believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Ford states that the likelihood of an operator inadvertently installing an incorrect wheel on one of these vehicles is virtually nonexistent because the rim size and type information is marked on the wheels of the vehicle. Ford is not aware of any incidents relating to motor vehicle safety or any other evidence that this inadvertent omission of rim size and type data on the vehicle labeling has had a negative safety impact on the owners and/or operators of these vehicles.

One comment was received in response to the notice of receipt. The commenter, Barb Sachau of Florham Park, NJ, stated:

> I do not think approval for any exemptions at all should be granted. Ford tires have received a lot of bad publicity. Therefore I do not think this exemption is in the public interest. I also think this is major and not ''inconsequential.'' Why would Ford all of a sudden not have this rim information—seems very strange to me. I oppose and object to this request for an exemption.

The issue raised by the commenter related to the safety of tires on Ford vehicles. However, the petition addresses omission of information pertaining to rim size and type. The agency is not aware of any recent recalls involving rims used on Ford vehicles. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety.

The comment does not address this issue, and therefore is not persuasive in its argument that the petition should not be granted.

The agency agrees with Ford this noncompliance will not have an adverse effect on vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is whether the rim size and type information is readily available to potential users. As Ford states, the rim size and type are marked on the wheels of the vehicle, thus providing the information needed to ensure that the vehicles are equipped with the proper rims. Ford has not received any owner or field complaints regarding the label omission, and it has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Ford's petition is granted and the petitioner is exempted from the obligation of providing notification of and a remedy for the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: July 22, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–17107 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17901; Notice 2]

Yokohama Tire Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

Yokohama Tire Corporation (Yokohama) has determined that certain tires it manufactured in 2002 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Yokohama Tire Corporation on behalf of Yokohama Rubber Co., Ltd. has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published in the **Federal Register** on June 3, 2004 (69 FR 31452), with a 30-day comment period. NHTSA received no comments.

Yokohama Rubber Co., Ltd. produced size 185R14 8PR Y356 light truck tires during 2002 whose load range is ''D'' but are incorrectly labeled on the tire sidewall as having a load range ''C,'' adjacent to the correct ply rating ''8PR.'' Therefore, they do not comply with FMVSS No. 119 S6.5(d), which requires that ''each tire shall be marked on each sidewall with * * * (d) The maximum load rating and corresponding inflation pressure of the tire.'' Although 424 tires were manufactured with the incorrect load range label, 294 of the tires were found and quarantined to prevent sales and distribution. However, 130 tires are unaccounted for and are considered distributed and sold into the United States market. It is these 130 tires that are the subject of this petition.

Yokohama believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Yokohama states that reliance upon the misbranding of load range ''C'' would not pose any threat to motor vehicle safety since the tires' actual carrying capability by specification is load range ''D.'' Thus, the tires' true capability exceeds that of a load range ''C'' tire.

The agency agrees with Yokohama's statement that the incorrect markings do not present a serious safety concern. There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted, since the tires' actual carrying capacity is greater than the load range labeled on the tires. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 119 and all other informational markings as required by FMVSS No. 119 are present. Yokohama has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Yokohama's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: July 22, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–17108 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18610]

Notice of Receipt of Petition for Decision That Nonconforming 1999 Cagiva Gran Canyon 900 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 Cagiva Gran Canyon 900 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 Cagiva Gran Canyon 900 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is 30 days after publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) 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*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA

has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 1999 Cagiva Gran Canyon 900 motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 1999 Cagiva Gran Canyon 900 motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 Cagiva Gran Canyon 900 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1999 Cagiva Gran Canyon 900 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 Cagiva Gran Canyon 900 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, 123 *Motorcycle Controls and Displays*, and 205 *Glazing Materials*.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies, which incorporate headlamps that are certified to DOT requirements; (b) installation of amber front and red rear reflex reflectors, which are certified to DOT requirements.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: (a) installation of a tire information placard; (b) inspection of all vehicles to ensure compliance with rim marking requirements, and replacement of rims that are not properly marked.

The petitioner also states that a certification label must be affixed to the motorcycle to comply with the requirements of 49 CFR part 567.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–17189 Filed 7–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34518]

Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL

Central Illinois Railroad Company (CIRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41, *et seq.*, to operate a line of railroad owned by the City of Peoria and the Village of Peoria Heights, IL (the Cities), known as the Kellar Branch, and also known as the Peoria, Peoria Heights & Western Railroad. The line extends from EPS 80+15 (milepost 1.71) to EPS 516+21 (milepost 10.0), a distance of 8.29 miles in Peoria County, IL. CIRY states that the notice has been filed at the request of the Cities for CIRY to replace the current operator of the line, Pioneer Industrial Railway Company (PIRY), upon expiration of the operating agreement between the Cities and PIRY on July 10, 2004.[1]

Certification is made that CIRY's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. The transaction was scheduled to be consummated no earlier than July 5, 2004 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34518, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–16931 Filed 7–27–04; 8:45 am]

BILLING CODE 4915–01–P

[1] In the notice, CIRY indicated that PIRY has made it known that it will refuse to voluntarily give up its authority to operate over the branch, and that it will be necessary for the Cities to file an application for adverse discontinuance of PIRY's operation. On June 30, 2004, PIRY filed a petition to reject or revoke the notice or, alternatively, to stay its effectiveness. CIRY filed a reply on July 1, 2004. The stay request was denied by decision served on July 1, 2004. However, to assure coordination of dispatching of both PIRY's and CIRY's operations on the line, the decision required that CIRY certify to the Board that coordination protocols for dual operations were in place before CIRY could commence operations. The rejection/revocation request will be addressed in a separate Board decision.

Corrections

Federal Register

Vol. 69, No. 144

Wednesday, July 28, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket Number: WA–04–001; FRL–7668–6]

Approval and Promulgation of State Implementation Plans: Washington; Central Puget Sound Carbon Monoxide and Ozone Second 10-Year Maintenance Plans

Correction

In proposed rule document 04–12302 beginning on page 30847 in the issue of Tuesday, June 1, 2004, make the following correction:

On page 30850, in the third Table, the heading ''CENTRAL PUGET SOUND MAINTENANCE AREA WINTER DAY NO_X EMISSIONS (TONS) BY SOURCE CATEGORY'' should read ''CENTRAL PUGET SOUND MAINTENACE AREA WINTER DAY CO EMISSIONS (TONS) BY SOURCE CATEGORY''

[FR Doc. C4–12302 Filed 7–27–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Expansion of Psychosocial Support and Peer Counseling Services to HIV–Infected Women and Their Families in Botswana

Correction

In notice document 04–16412 beginning on page 43421 in the issue of Tuesday, July 20, 2004, make the following correction:

On page 43421, in the second column, in the sixth and seventh lines, under *Application Deadline:*, ''August 20, 2004'' should read, ''August 19, 2004.''

[FR Doc. C4–16412 Filed 7–27–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 28, 2004

Part II

Department of Defense

Department of the Army

32 CFR Part 578

Decorations, Medals, Ribbons, and Similar Devices; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 578

RIN 0702–AA41–U

Decorations, Medals, Ribbons, and Similar Devices

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army is proposing to revise our rules that prescribe policy, criteria, and administrative instructions concerning individual military awards and to incorporate laws enacted and policies approved since the rule was last published in 1956.

DATES: Comments must be submitted to the address shown below on or before September 27, 2004.

ADDRESSES: You may submit comments identified by ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line, by any of the following methods:

- Federal eRulemaking Portal: *http:www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Awards@hoffman.army.mil*. Include ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line of the message.
- Mail: HQ, U.S. Army Human Resources Command, Military Awards Branch, ATTN: AHRC–PDO–PA (Ms. Arlette King), 200 Stovall Street, Alexandria, VA 22332–0471.
- Facsimile: (703) 325–2581. Please cite ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line of comments.

FOR FURTHER INFORMATION CONTACT: Arlette King, Denise Harris or SFC Mizner at (703) 325–9171.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule prescribes policy, criteria, and administrative instructions concerning individual military awards and incorporates laws enacted and policies approved since the rule was last published in 1956.

B. Discussion of Proposed Rule

This proposed rule adds the provisions of 10 U.S.C. 1130, that allows the consideration of awards not previously considered or the upgrade of decorations previously approved (§ 578.5g and § 578.8g(2). The rule adds policy on the issuance of display Medals of Honor (§ 578.3). This rule adds the procedures for awarding U.S. awards to foreign military personnel (§ 578.8h). The rule updates the criteria for the Purple Heart limiting award only to members of the U.S. military; clarifies award for friendly fire; and authorizes award to individuals wounded while prisoners of foreign forces for World War II and Korea (§ 578.17). This rule adds the authority for Brigadier General commanders to award the Meritorious Service Medal to U.S. Army personnel assigned or attached to duty to their command or agency (Table 3). This rule adds the provisions of 10 U.S.C. 1183 that limits award of the Bronze Star Medal to service members receiving imminent danger pay (§ 578.16). This rule is being amended to add the following new individual decorations: Meritorious Service Medal (§ 578.18) and Army Achievement Medal (§ 578.21). It also adds the following service/campaign medals: Prisoner of War Medal (§ 578.22): Southwest Asia Service Medal (§ 578.27); Kosovo Campaign Medal (§ 578.28); Global War on Terrorism Expeditionary Medal (§ 578.29); Global War on Terrorism Service Medal (§ 578.30); Korea Defense Service Medal (§ 578.31); Armed Forces Service Medal (§ 578.32); Humanitarian Service Medal (§ 578.33); Military Outstanding Volunteer Service Medal (§ 578.34); Army Reserve Components Achievement Medal (§ 578.36); Army Reserve Components Overseas Training Ribbon (§ 578.37); Overseas Service Ribbon (§ 578.38); Army Service Ribbon (§ 578.39); and the Noncommissioned Officer Professional Development Ribbon (§ 578.40). It also adds the following unit awards: Presidential Unit Citation (§ 578.55); Valorous Unit Award (§ 578.56); Meritorious Unit Commendation (§ 578.57); and the Army Superior Unit Award (§ 578.58). The following special skill badges are added: Expert Field Medical Badge (§ 578.70); Parachute Rigger Badge (§ 578.75); Military Free Fall Parachutist Badge (§ 578.76); Flight Surgeon Badge (formerly Army Aviation Medical Officer Badge) (§ 578.78); Pathfinder Badge (§ 578.84); Air Assault Badge (§ 578.85); Aviation Badge (§ 578.86); Glider Badge (§ 578.91); Nuclear Reactor Operator Badge (§ 578.92); Special Forces Tab (§ 578.95); and the Physical Fitness Badge (§ 578.96). The rule adds the following identification badges: Presidential Service Badge and Certificate (§ 578.100); Vice Presidential Service Badge and Certificate (§ 578.101); Office of the Secretary of Defense Identification Badge (§ 578.102), Joint Chiefs of Staff Identification Badge (§ 578.103); Army Staff Identification Badge (§ 578.104); Guard, Tomb of the Unknown Soldier Identification Badge (§ 578.105); Army ROTC Nurse Cadet Program Identification Badge (§ 578.106); Drill Sergeant Identification Badge (§ 578.107); U.S. Army Recruiter Identification Badge (§ 578.108); Career Counselor Badge (§ 578.109); and Army National Guard Recruiting and Retention Identification Badge (§ 578.110). It also adds the following foreign/international awards: North Atlantic Treaty Organization Medal (§ 578.122); Multinational Force and Observers Medal (§ 578.123); Republic of Vietnam Campaign Medal (§ 578.124); Kuwait Liberation Medal-Saudi Arabia (§ 578.125); Kuwait Liberation Medal-Kuwait (§ 578.126); and the Republic of Korea War Service Medal (§ 578.127). The following certificates are added: Certificate of Appreciation to Employers (§ 578.130); Certificate for Badges (§ 578.131); and the Cold War Recognition Certificate (§ 578.132). The rule deletes the following medals which are obsolete and no longer awarded: Medal of Merit (formerly § 578.15) and National Security Medal (formerly (§ 578.16). The rule deletes the Joint Service Commendation Medal (formerly § 578.12) that is prescribed in Department of Defense 1348.33–M, Manual of Military Decorations and Awards. The rule deletes the following two civilian awards: Distinguished Civilian Service Medal (formerly § 578.7g) and Outstanding Civilian Service Medal (formerly § 578.7h) both are prescribed in Army Regulation 672–20, Incentive Awards. The rule deletes the Presidential Medal of Freedom (formerly § 578.17) that is governed and awarded by the President of the United States and not the Department of the Army.

C. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

E. Executive Order 12866

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this

proposed rule is not considered a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

Gina S. Farrisee,

Brigadier General, United States Army, The Adjutant General.

Lists of Subjects in 32 CFR Part 578

Decorations, medals, awards, Military personnel.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR Part 578 to read as follows:

PART 578—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES

Sec.

578.1 Purpose
578.2 Explanation of terms
578.3 Display sets of award elements and the Medal of Honor
578.4 U.S. Military Decorations
578.5 Award recommendations
578.6 Wartime criteria
578.7 Peacetime criteria
578.8 General rules
578.9 Medal of Honor
578.10 Distinguished Service Cross
578.11 Distinguished Service Medal
578.12 Silver Star
578.13 Legion of Merit
578.14 Distinguished Flying Cross
578.15 Soldier's Medal
578.16 Bronze Star Medal
578.17 Purple Heart
578.18 Meritorious Service Medal
578.19 Air Medal
578.20 Army Commendation Medal
578.21 Army Achievement Medal
578.22 Prisoner of War Medal
578.23 National Defense Service Medal
578.24 Antarctica Service Medal
578.25 Armed Forces Expeditionary Medal
578.26 Vietnam Service Medal
578.27 Southwest Asia Service Medal
578.28 Kosovo Campaign Medal
578.29 Global War on Terrorism Expeditionary Medal
578.30 Global War on Terrorism Service Medal
578.31 Korea Defense Service Medal
578.32 Armed Forces Service Medal
578.33 Humanitarian Service Medal
578.34 Military Outstanding Volunteer Service Medal
578.35 Army Good Conduct Medal
578.36 Army Reserve Components Achievement Medal
578.37 Army Reserve Components Overseas Training Ribbon
578.38 Overseas Service Ribbon
578.39 Army Service Ribbon
578.40 Noncommissioned Officer Professional Development Ribbon
578.41 Armed Forces Reserve Medal
578.42 Korean Service Medal
578.43 Medal of Humane Action
578.44 Army of Occupation Medal
578.45 World War II Victory Medal
578.46 European-African-Middle Eastern Campaign Medal
578.47 Asiatic-Pacific Campaign Medal
578.48 American Campaign Medal
578.49 Women's Army Corps Service Medal
578.50 American Defense Service Medal
578.51 Army of Occupation of Germany Medal
578.52 World War I Victory Medal
578.53 Service medals and ribbons no longer available for issue
578.54 United States Unit Awards
578.55 Presidential Unit Citation
578.56 Valorous Unit Award
578.57 Meritorious Unit Commendation
578.58 Army Superior Unit Award
578.59 Appurtenances to Military Decorations
578.60 Service ribbons
578.61 Lapel Buttons
578.62 Miniature Decorations
578.63 Supply, service and requisition of medals and badges
578.64 Original issue or replacement
578.65 Manufacture, sale and illegal possession
578.66 Badges and tabs; general
578.67 Combat Infantryman Badge
578.68 Combat Medical Badge
578.69 Expert Infantryman Badge
578.70 Expert Field Medical Badge
578.71 Parachutist Badge
578.72 Parachutist Badge-Basic
578.73 Senior Parachutist Badge
578.74 Master Parachutist Badge
578.75 Parachute Rigger Badge
578.76 Military Free Fall Parachutist Badge
578.77 Army Aviator Badge
578.78 Flight Surgeon Badge
578.79 Diver Badge
578.80 Explosive Ordnance Disposal Badge
578.81 Explosive Ordnance Disposal Badge-Basic
578.82 Senior Explosive Ordnance Disposal Badge
578.83 Master Explosive Ordnance Disposal Badge
578.84 Pathfinder Badge
578.85 Air Assault Badge
578.86 Aviation Badge
578.87 Aviation Badge-Basic
578.88 Senior Aviation Badge
578.89 Master Aviation Badge
578.90 Driver and Mechanic Badge
578.91 Glider Badge (rescinded)
578.92 Nuclear Reactor Operator Badge (rescinded)
578.93 Marksmanship Qualification Badge
578.94 Ranger Tab
578.95 Special Forces Tab
578.96 Physical Fitness Badge
578.97 U.S. Civilian Marksmanship Program
578.98 President's Hundred Tab
578.99 Identification Badges
578.100 Presidential Service Badge and Certificate
578.101 Vice Presidential Service Badge and Certificate
578.102 Office of the Secretary of Defense Identification Badge
578.103 Joint Chiefs of Staff Identification Badge
578.104 Army Staff Identification Badge
578.105 Guard, Tomb of the Unknown Soldier Identification Badge
578.106 Army ROTC Nurse Cadet Program Identification Badge
578.107 Drill Sergeant Identification Badge
578.108 U.S. Army Recruiter Identification Badge
578.109 Career Counselor Badge
578.110 Army National Guard Recruiting and Retention Identification Badge
578.111 U.S. Army Reserve Recruiter Identification Badge
578.112 Foreign and International Decorations and Awards to U.S. Army Personnel—General
578.113 Individual Foreign Decorations
578.114 Foreign Unit Decorations
578.115 Foreign Badges
578.116 United Nations Service Medal
578.117 Inter-American Defense Board Medal
578.118 Philippine Defense Ribbon
578.119 Philippine Liberation Ribbon
578.120 Philippine Independence Ribbon
578.121 United Nations Medal
578.122 North Atlantic Treaty Organization Medal
578.123 Multinational Force and Observers Medal
578.124 Republic of Vietnam Campaign Medal
578.125 Kuwait Liberation Medal—Saudi Arabia
578.126 Kuwait Liberation Medal—Kuwait
578.127 Republic of Korea War Service Medal
578.128 Certificates for Decorations
578.129 Certificate of Achievement
578.130 Certificate of Appreciation to Employers
578.131 Certificate for Badges
578.132 Cold War Recognition Certificate

Authority: Sec. 3012, Pub. L. 84–1028, 70A Stat. 157; 10 U.S.C. 3013.

§ 578.1 Purpose.

The primary purpose of the awards program is to provide tangible evidence of public recognition for acts of valor and for exceptional service or achievement. Medals constitute one of the principal forms for such evidence; in the United States Army, medals are of the following categories:

(a) Military decorations are awarded on a restricted individual basis in recognition of and as a reward for heroic, extraordinary, outstanding, and meritorious acts, achievements, and services; and such visible evidence of recognition is cherished by recipients. Decorations are primarily intended to recognize acts, achievements, and services in time of war.

(b) The Army Good Conduct Medal is awarded in recognition of exemplary behavior, efficiency, and fidelity during enlisted status in active Federal military service.

(c) Service medals are awarded generally in recognition of honorable performance of duty during designated campaigns or conflicts. Award of decorations, and to a lesser degree, award of the Army Good Conduct Medal

and of service medals, provide a potent incentive to greater effort, and are instrumental in building and maintaining morale.

§ 578.2 Explanation of terms.

The following definitions are furnished for clarity and uniformity in the determination and award of decorations:

(a) Above and beyond the call of duty. Exercise of a voluntary course of action, the omission of which would not justly subject the individual to censure for failure in the performance of duty. It usually includes the acceptance of existing danger or extraordinary responsibilities with praiseworthy fortitude and exemplary courage. In its highest degrees it involves the voluntary acceptance of additional danger and risk of life.

(b) Active Federal military service. The term ''active Federal military service'' means all periods of active duty, Active Guard Reserve (AGR) service and, except for service creditable for the Armed Forces Reserve Medal, excludes periods of active duty for training (ADT) and full-time training duty (FTTD). Service as a cadet at the United States Military Academy is considered to be active duty for the purposes of military awards and decorations.

(c) Active Guard Reserve. Army National Guard of the U.S. (ARNGUS) and U.S. Army Reserve (USAR) personnel serving on active duty (AD) under 10 U.S.C. and Army National Guard personnel serving on full-time National Guard duty (FTNGD) under 32 U.S.C. These personnel are on FTNGD or AD (other than training) for 180 days or more for the purpose of organizing, administering, recruiting, instructing, or training the Reserve Components and are paid from National Guard Personnel, Army or Reserve Personnel Army appropriations.

(d) Area of operation. The foreign territory upon which troops have actually landed or are present and specifically deployed for the direct support of the designated military operation; adjacent water areas in which ships are operating, patrolling, or providing direct support of operations; and the airspace above and adjacent to the area in which operations are being conducted.

(e) Award. Recognition given to individuals or units for certain acts or services, or badges, accolades, emblems, citations, commendations, streamers, and silver bands. Also an adjectival term used to identify administrative functions relating to recognition (for example, awards boards, award recommendations, and so forth).

(f) Award precondition. Any eligibility criterion not specified by this regulation which must be met before awarding a decoration.

(g) Biographical sketch. Identification of an individual that includes as a minimum: Full name, Social Security Number (SSN), date and place of birth, marital status, education, and military service.

(h) Bravery. Quality or state showing courage; level of conduct which is expected of professional Army soldiers.

(i) Combat heroism. Act or acts of heroism by an individual engaged in actual conflict with an armed enemy, or in military operations which involve exposure to personal hazards, due to direct enemy action or the imminence of such action.

(j) Combat zone. The region where fighting is going on; the forward area of the theater of operations where combat troops are actively engaged. It extends from the frontline to the front of the communications zone.

(k) Decoration. Distinctively designed mark of honor denoting heroism or meritorious/outstanding service/achievement for individuals and units.

(l) Direct participation. ''Hands-on'' activity at the site, or sites, of the military act or operation. The individual must be physically present at the designated location, having contributed to and influenced the action.

(m) Direct support. Services being supplied the combat forces in the area of operations by ground units, ships, and aircraft providing supplies and equipment to the forces concerned, provided it involves actually entering the designated area; and ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.

(n) Distinguished himself or herself by. A person to have distinguished himself or herself must, by praiseworthy accomplishment, be set apart from other persons in the same or similar circumstances. Determination of this distinction requires careful consideration of exactly what is or was expected as the ordinary, routine, or customary behavior and accomplishment for individuals of like rank and experience for the circumstances involved.

(o) Duty of great responsibility. Duty which, by virtue of the position held, carries the ultimate responsibility for the successful operation of a major command, activity, agency, installation, or project. The discharge of such duty must involve the acceptance and fulfillment of the obligation so as to greatly benefit the interests of the United States.

(p) Duty of responsibility. Duty, which by virtue of the positions held, carries a high degree of the responsibility for the successful operation of a major command, activity, agency, installation, or project, or which requires the exercise of judgment and decision affecting plans, policies, operations, or the lives and well being of others.

(q) Extraordinary heroism. Act or acts of heroism or gallantry involving the risk of life. Minimum level of valorous performance in combat consistent with a recommendation for the Distinguished Service Cross.

(r) Foreign Decoration. Any order, device, medal, badge, insignia, emblem or award, tendered by or received from a foreign government.

(s) Foreign government. Includes any unit of a foreign governmental authority, including any foreign national, State, local and municipal Government; any international or multinational organization whose membership is composed of any unit of foreign government described above; and any agent or representative of any such unit or organization while acting as such.

(t) Gallantry and intrepidity at the risk of life. Fearless spontaneous conduct at the certain risk of life, above and beyond the call of duty, which clearly sets the soldier apart from all other comrades. Minimum level of valorous performance in combat consistent with a recommendation for the Medal of Honor.

(u) Gallantry in action. Spirited and conspicuous acts of heroism and courage. Minimum level of valorous performance in combat consistent with a recommendation for the Silver Star.

(v) Heroism. Extreme courage demonstrated in attaining a noble end. Varying levels of documented heroic actions are necessary to substantiate recommendations for the Bronze Star Medal with ''V,'' Air Medal with ''V,'' and the Army Commendation Medal with ''V.''

(w) In connection with military operations against an armed enemy. This phrase covers all military operations including combat, support, and supply which have a direct bearing on the outcome of an engagement or engagements against armed opposition. To perform duty or to accomplish an act of achievement in connection with military operations against an armed enemy, the individual must have been subjected either to personal hazard as a result of direct enemy action, or the imminence of such action, or must have had the conditions under which his

duty or accomplishment took place complicated by enemy action or the imminence of enemy action.

(x) Key individual. A person who is occupying a position that is indispensable to an organization, activity, or project.

(y) Medal. A term used to—

(1) Include the three categories of awards, namely: decorations, Army Good Conduct Medal, and service medals.

(2) Refer to the distinctive physical device of metal and ribbon which constitutes the tangible evidence of an award.

(z) Meritorious Achievement. An act which is well above the expected performance of duty. The act should be an exceptional accomplishment with a definite beginning and ending date. The length of time is not a primary consideration; however, speed of accomplishment of an important task can be a factor in determining the value of an act.

(aa) Meritorious Service. Service which is distinguished by a succession of outstanding acts of achievement over a sustained period of time. Individual performance must exceed that expected by virtue of grade and experience, based on accomplishments during an entire tour of duty.

(bb) Military merit. Demonstrated conduct or character deserving of recognition.

(cc) Officer. Except where expressly indicated otherwise, the word ''officer'' means ''commissioned or warrant officer.''

(dd) Operation. A military action, or the carrying out of a strategic, tactical, service, training, or administrative military mission; the process of carrying on combat including movement, supply, attack, defense, and maneuvers needed to gain the objectives of any battle or campaign.

(ee) Outstanding or unusually meritorious performance. Performance of duty determined by the employing component to have contributed to an unusually significant degree toward the furtherance of good relations between the United States and the foreign government tendering the decoration. This requires that the service be of national significance to the foreign government and that it be performed under exceptionally difficult, extraordinary, or hazardous conditions.

(ff) Peacetime criteria. (1) In a period when the United States is not engaged in the prosecution of a formal declared war.

(2) Applied outside a combat zone when the United States is engaged in military operations against an armed enemy, but is not prosecuting a formally declared war, except that in the communications zone those individuals whose duties are in connection with military operations against an armed enemy may be considered under wartime criteria.

(3) A period in specified areas where U.S. troops are engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(gg) Primary next of kin. Primary next of kin are, in order of precedence, surviving spouse, eldest child, father or mother, eldest brother or sister, or eldest grandchild.

(hh) Reserve Components of the Army. The Army National Guard of the United States and the U.S. Army Reserve.

(ii) U.S. Individual Army decorations. U.S. Individual Army decorations are the Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star, Legion of Merit, Distinguished Flying Cross, Soldier's Medal, Bronze Star Medal, Purple Heart, Meritorious Service Medal, Air Medal, Army Commendation Medal, and the Army Achievement Medal.

(jj) U.S. unit decorations. U.S. unit decorations are the Presidential Unit Citation, Valorous Unit Award, Meritorious Unit Commendation, and Army Superior Unit Award.

(kk) Valor. Heroism performed under combat conditions.

(ll) Wartime criteria. (1) A period of formally declared war and for 1 year after the cessation of hostilities.

(2) A period of military operations against an armed enemy and for 1 year after cessation of hostilities. Only those individuals actually in the combat zone or those in the communications zone whose duties involve direct control or support of combat operations are to be considered under wartime criteria.

(3) A period of national emergency declared by the President or by the Congress.

578.3 Display sets of award elements and the Medal of Honor.

(a) Government agencies. Upon approval by the Secretary of the Army, samples of military decorations may be furnished, without charge, for one display at the headquarters of each Army and higher field commander, in the offices of the chiefs of governmental agencies not under military jurisdiction where opportunity for the public to view the display is assured, and in each office of Headquarters, Department of the Army (HQDA) with activities that include matters pertaining to decorations.

(b) Civilian institutions. Upon approval by the Secretary of the Army, samples of military decorations may be furnished, at cost price, to museums, libraries, and to national headquarters of historical, numismatic, and military societies; and to institutions of such public nature as will assure an opportunity for the public to view the exhibits under circumstances beneficial to the Army. All decorations furnished to civilian institutions for exhibition purposes will be engraved with the words, ''For Exhibition Purposes only.''

(c) Requests. Letter requests for decorations for exhibit or display will be made to Commander, U.S. Army Human Resources Command (USA HRC), ATTN: AHRC–PDO–PA, 200 Stovall Street, Alexandria, VA 22332–0471.

(d) Display. Service medals for service prior to World War II will not be provided for display purposes since only minimum essential quantities are available for issue to authorized recipients.

(e) Purchase of medals. Except for the Medal of Honor, all other decorations, service medals, and ribbons can be purchased from private vendors who have been issued a certificate of authority by the Institute of Heraldry. A list of certified vendors can be obtained from HQ, USA HRC (see 578.3(c)).

(f) Display sets of the Medal of Honor. Upon written requests, The Adjutant General of the Army can approve issue of a display Medal of Honor to government agencies (defined in paragraphs (a) and (b) of this section). Adequate security arrangement must be provided for the medal so that it will not be lost through vandalism or theft. Maximum exposure of the medal to the public must be ensured, on a free of charge basis, under circumstances beneficial to the Army.

§ 578.4 U.S. Military Decorations.

To whom awarded, see Table 1 below.

TABLE 1

Decorations listed in order of precedence	Awarded for:		Awarded to:			
	Heroism	Achievement or service	Military		Civilian	
			United States	Foreign	United States	Foreign
Medal of Honor	Combat		War.[1]			
Distinguished Service Cross	Combat		War	War.		
Distinguished Service Medal		War Peace	War Peace	War Peace	War[2]	War.[2]
Silver Star	Combat		War	War	War[2]	War.[2]
Legion of Merit		War Peace	War Peace	War Peace.[5]		
Distinguished Flying Cross	Combat Noncombat.	War Peace[4]	War Peace.	War.		
Soldier's Medal	Noncombat		War Peace[4]	War Peace[4]		
Bronze Star Medal	Combat[3]	War Peace[4]	War Peace[4]	War Peace.[4]		
Purple Heart	For wounds received as the result of hostile action.		War Peace.[7,8]			
Meritorious Service Medal		Peace	Peace	Peace.		
Air Medal	Combat[3] Noncombat.	War Peace[4]	War Peace[4]	War	War[2]	War.[2]
Army Commendation Medal	Combat[3] Noncombat.	War Peace	War Peace[6]	War Peace.[6]		
Army Achievement Medal		Peace	Peace[6]	Peace.[6]		

Notes:
[1] The Medal of Honor is awarded only to U.S. military personnel.
[2] Under limited circumstances. Recommendations will be forwarded to HQ, USA HRC for processing.
[3] Awarded with Bronze ''V'' Device for valor in combat.
[4] Awarded for peacetime when no formal war has been declared but the U.S. is engaged in military operations against an armed enemy.
[5] Awarded to foreign military personnel in one of four degrees.
[6] Not awarded to general officers.
[7] Awarded to military personnel wounded by terrorists or while members of a peacekeeping force.
[8] Approval authority is the Secretary of the Army.

§ 578.5 Award recommendations.

(a) It is the responsibility and privilege of any individual having personal knowledge of an act, achievement, or service believed to warrant the award of a decoration to submit a recommendation for consideration. It is usually desirable that the intended recipient not be informed of a pending recommending or given an implied promise of an award prior to final approval and clearance. This is especially true when the intended recipient is a foreigner.

(b) The Department of the Army (DA) Form 638 (Recommendation for Award) will be used to initiate, process and approve award recommendations of all U.S. Army individual decorations, to include valor and heroism decorations.

(c) Narrative description of meritorious service or achievement for awards of the Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM), and Army Achievement Medal (AAM) will be limited to bullet format in the space allowed on the DA Form 638. Bullet format or narratives may be used for the Legion of Merit (LM). Narratives are required for all other awards and will be added as an addendum to the recommendation. Narrative should be prepared on 8½ by 11-inch bond paper and is limited to one double-spaced typewritten page except for recommendations of the Distinguished Service Medal and above. Narratives for valor must contain a description of the following elements: Terrain and weather of the area in which the action took place; enemy conditions, to include morale, proximity, firepower, casualties and situation prior to, during and after the act; the effect of the act on the enemy; the action of comrades in the immediate vicinity of the act and the degree of their participation in the act; if the act occurred in aerial flight, the type and position of the aircraft and the individual's crew position; the degree to which the act was voluntary; the degree to which the act was outstanding and exceeded what was normally expected of the individual; all unusual circumstances; and overall effects or results of the act.

(d) Heroism award recommendations will contain statements of eyewitnesses, preferably in the form of certificates, affidavits, or sworn statements; extracts from official records; sketches; maps; diagrams; photographs; and so forth, which support and amplify stated facts for the heroism award.

(e) Recommendations will be forwarded through command channels to the commander authorized to approve or disapprove it. Each intermediate commander/supervisor will recommend approval or disapproval, and cite specific reasons whenever disapproval is recommended.

(f) Except for the provisions of 10 U.S.C. 1130 outlined in paragraph (g) of this section and lost awards, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as ''signed by the initiating official and endorsed by a higher official in the chain of command.''

(g) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

§ 578.6 Wartime criteria.

The Medal of Honor is awarded only by the President. Other decorations are awarded by the President, the Secretary of Defense, and the Secretary of the Army. When wartime conditions erupt, authority to further delegate decorations approval authority will be requested from the Secretary of the Army. Initial delegation will be requested consistent with the award approval authority outlined in Table 2 below.

TABLE 2

[Delegation of award approval—wartime criteria]

Awards	Approval authority	May further delegate	Awarded to
The primary purpose of this table is to outline the various awards and decorations approval authorities for use during the immediate stages of Army combat operations. Once delegation, this authority is reviewed every 30, 60 or 90 days during combat operations to determine if further delegation is expedient and justified. Wartime delegation if withdrawn from approval authorities upon redeployment of the unit. This table is not absolute and is subject to change as necessary by the Secretary of the Army. Award approval levels outlined in Table 3 are applicable to Table 2.			
Medal of Honor	President of the United States	N/A	U.S. Army personnel.
DSC & all lesser decorations	Secretary of the Army or others as designated by the Secretary of the Army.	N/A	a. U.S. Army Active and Reserve Component personnel. b. U.S. Navy, Marine Corps, Air Force, and Coast Guard personnel with concurrence of the appropriate service secretary.
DSC, SS, LM, DFC and SM	CG of a U.S. Army Force (Serving in the rank of General) (see note 1).	To Senior Army Commander and commanders of a separate force in the rank of LTG, authority to award the SS, DFC and SM (see note 1).	U.S. Army personnel and members of the other armed services and members of the armed forces of friendly foreign nations in the ranks comparable to the grade of O–6 (COL) or lower provided concurrence is obtained from that Service or foreign government.
BSM, AM, ARCOM	Senior Army Commander and commanders of a separate force serving in the rank of LTG (see note 1).	MG and BG (serving in MG positions) commanders of separate units, BSM, AM and ARCOM (see note 2).	U.S. Army personnel and members of the armed forces of friendly foreign nations in the ranks comparable to the grade of 0–6 (COL) and below, provided concurrence is obtained from that Service or foreign government.
PH	CG of any separate unit and Hospital commanders receiving casualties.	To any field grade commander who has orders issuing authority.	Member of the Army and member of other Services provided concurrence is obtained from that Service.
PUC, VUA, MUC	As provided in § 578.55; § 578.56 and § 578.57.	Not further delegated	U.S. and foreign allied units (see § 578.55; § 57856; and § 578.57.
Campaign Participation Credit	Senior Army commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to active duty.
Assault landing Credit	Senior Army Commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to Active duty. (DA General Orders Issued).
Combat Badges	Commanding General of any separate unit.	To any field grade commander who has orders issuing authority.	The CIB may be awarded only to members of the Army (see § 578.67). See § 578.67, § 578.68, § 578.69, § 578.71, § 578.76, § 578.89, and § 578.95 for eligibility requirements for other combat badges. See also Table 9 on who may be awarded these badges.

Notes:

1. The senior Army commander (SAC) upon arrival in the theater of operations, or as soon thereafter as practical, will submit a request to CDR, USA HRC (see 578.3(c)), requesting this delegation be activated.
2. Authority to approve award of the ARCOM under wartime criteria may be delegated to Colonel level commanders
3. Approval of the MSM and AAM in the area of combat operations is rescinded. These are peacetime-only decorations.

§ 578.7 Peacetime criteria.

Awards for peacetime service are made by the President, the Secretary of Defense, and the Secretary of the Army. When peacetime criteria apply, authority to award decorations is automatically delegated as shown in Table 3 below.

TABLE 3

[Delegation of award approving authority—peacetime criteria]

	May award	To
Commanders and Principal HQDA Agency Officials:		
Chief of Staff, U.S.	DSM and all lesser	All U.S. Army personnel and personnel of other Services (see note 2).
General	LM, MSM, ARCOM, and AAM	1. U.S. Army personnel. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant General	LM, MSM, ARCOM, and AAM	1. U.S. Army personnel upon retirement or for posthumous awards only (except general grade officers). 2. U.S. Army personnel assigned and attached for duty to their command or agency. 3. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Major General	LM (see note 1), MSM, ARCOM, AAM.	1. U.S. Army personnel assigned and attached for duty to their duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Brigadier General	MSM, ARCOM, AAM	1. U.S. Army personnel and attached for duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Colonel	ARCOM, AAM	1. U.S. Army personnel assigned and attached for duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant Colonel	AAM	1. U.S. Army personnel assigned and attached for duty to their command. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Project Managers, Program Managers, Product Managers, and Program Executive Officers:		
Major Generals and civilian equivalent Senior Executive Service (SES).	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Brigadier Generals and civilian equivalent SES.	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Colonels and civilian equivalent General Schedule (GS) 15.	ARCOM and AAM	Service members assigned to their projects (see note 2).
Lieutenant Colonels	AAM	Service members assigned to their projects (see note 2).

Notes:

1. Major Army commanders and officials of principal HQDA agencies in the grade of Major General have authority to approve awards of the Legion of Merit, to retiring and deceased persons, other than general officers, assigned to their commands or agencies.
2. See paragraph 1–36, AR 600–8–22 for instructions on awarding Army decorations to members of the other U.S. Services.

§ 578.8 General rules.

(a) Awards for civilian service. Awards for DA civilians are governed by Army Regulation (AR) 672–20, Incentive Awards. AR 672–20 provides implementing instructions for incentive awards, honorary awards and devices, awards from nonfederal organizations, and medals for public service.

(b) Posthumous awards. Awards may be made following the death of the person being honored in the same manner as they are made for a living person except that the orders and citation will indicate that the award is being made posthumously. The engraved medal and certificate will not contain the word posthumous. Orders announcing the award, together with the certificate, medal, citation and related documents will be forwarded to the appropriate commander for presentation. Eligible classes of next of kin are listed in the order of their precedence in § 578.2(gg).

(c) Interim awards and awards of a lesser decoration. (1) To ensure that a deserving act, achievement, or service receives recognition, the appropriate authority may promptly award a suitable lesser military decoration pending final action on a recommendation for a higher award, except for retiring U.S. Army general officers. When a higher award is approved, the approving authority will revoke the interim award in the same orders published for the higher award. The decoration will be returned by the recipient, unless the higher award is approved posthumously, in which case the next of kin will be permitted to retain both awards.

(2) The authority taking final action may award the decoration recommended, award a lesser decoration (or consider the interim award as adequate recognition), or in the absence of an interim award, disapprove award of any decoration.

(d) Duplication of awards. (1) Only one decoration will be awarded to an individual or unit for the same act, achievement, or period of meritorious service.

(2) The award of a decoration in recognition of a single act of heroism or meritorious achievement does not preclude an award for meritorious service at the termination of an assignment. Recommendations for award of a decoration for meritorious

service will not refer to acts of heroism or meritorious achievements, which have been previously recognized by award or decoration.

(3) Continuation of the same or similar type service already recognized by an award for meritorious service or achievement will not be the basis for a second award. If appropriate, an award may be made to include the extended period of service by superseding the earlier award, or the award previously made be amended to incorporate the extended period service.

(e) Conversion of awards. Awards of certain decorations (Silver Star, Bronze Star Medal, Purple Heart, and Army Commendation Medal) on the basis of existing letters, certificates, and/or orders, as hereinafter authorized will be made only upon letter application of the individuals concerned to the National Personnel Records Center (NPRC), 9700 Page Avenue, St. Louis, MO 63132–5100.

(f) Character of service. No decoration shall be awarded or presented to any individual whose entire service subsequent to the time of the distinguished act, achievement, or service shall not have been honorable. The Act of July 9, 1918 (40 Stat. 871) as amended (10 U.S.C. 1409); the Act of July 2, 1926 (44 Stat. 789), as amended (10 U.S.C. 1429)

(g) Time limitations. (1) Except for the provisions of 10 U.S.C. 1130 and lost awards addressed below, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as ''signed by the initiating official and endorsed by a higher official in the chain of command.''

(2) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

(3) To be fully effective, an award must be timely. Undue delay in submitting a recommendation may preclude its consideration. It is highly desirable that a recommendation be placed in military channels and acted upon as quickly as possible. If circumstances preclude submission of a completely documented recommendation, it is best to submit it as soon as possible and note that additional data will be submitted later. However, to ensure prompt recognition, interim awards should be considered and are encouraged as addressed above.

(4) No military decoration, except the Purple Heart and exceptions for decorations approved under 10 U.S.C. 1130, will be awarded more than 3 years after the act or period of service to be honored.

(5) These time limitations do not apply to retroactive and conversion awards made in confirmation of recognition of previously issued orders, letters, or certificates or in exchange of decorations hereinafter authorized.

(6) In cases where it can be conclusively proven that formal submission of a recommendation for award was not made within the time limitations indicated above, because either the person recommending or the person being recommended was in a prisoner of war (POW), missing in action (MIA) or in a medically incapacitated status, award of the Silver Star or lesser decorations may be approved without regard to elapsed time since the act, achievement, or service occurred, that is to be honored.

(7) If the Secretary of the Army determines that a statement setting forth the distinguished act, achievement, or service, and a recommendation for official recommendation recognition was made and supported by sufficient evidence within 2 years after the distinguished service, and that no award was made because the statement was lost, or through inadvertence the recommendation was not acted upon; he or she may, within 2 years after the date of the determination, award any appropriate military decoration. In each case, the following will be provided:

(i) Conclusive evidence of the formal submission of the recommendation into military channels.

(ii) Conclusive evidence of the loss of the recommendation or the failure to act on the recommendation through inadvertence.

(iii) A copy of the original recommendation, or its substantive equivalent. As a minimum, the recommendation should be accompanied by statements, certificates, or affidavits corroborating the events or services involved. It is emphasized that the proponent must provide Commander, USA HRC (see § 578.3(c)), with adequate information for Secretarial evaluation of the deed or service to determine if an award is to be made. The person signing a reconstructed award recommendation must be identified clearly in terms of his or her official relationship to the intended recipient at the time of the act or during the period of service to be recognized.

(h) *U.S. awards to foreign military personnel.* (1) It is the Department of Defense (DOD) policy to recognize individual acts of heroism, extraordinary achievement or meritorious achievement on the part of service members of friendly foreign nations when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign by Armed Forces of the United States. Such acts or achievement shall be recognized through the award of an individual U.S. decoration.

(2) U.S. campaign and service medals shall not be awarded to members of foreign military establishments.

(3) Foreign military personnel in ranks comparable to the grade of 0–6 and below, at the time the act was performed and at the time the decoration is presented, may be awarded the following decorations: Silver Star; Distinguished Flying Cross; Bronze Star Medal; or the Air Medal for valorous acts in actual combat in direct support of military operation; the Soldier's Medal, for heroic acts in direct support of operations, but not involving actual combat; and the Legion of Merit (see § 578.13 for the Legion of Merit to foreign military personnel).

(i) *Announcement of awards*—(1) *Decorations and the Army Good Conduct Medal.* (i) Awards made by the President, the Secretary of Defense, and the Secretary of the Army will be announced in DA General Orders (DAGO).

(ii) Awards of decorations and the Army Good Conduct Medal made by principal HQDA officials will be announced in permanent orders.

(iii) Awards of decorations and the Army Good Conduct Medal made according to delegated authority will be announced in permanent orders by the commanders authorized to make the awards.

(2) *Service medals and service ribbons.* Service medals and service ribbons are administratively awarded to individuals who meet the qualifying criteria. Orders are not required.

(3) *Badges.* Permanent awards of badges, except basic marksmanship qualification badges, identification badges, and the Physical Fitness Badge will be announced in permanent orders by commanders authorized to make the award or permanent orders of HQDA.

(j) *Engraving of awards.* The grade, name, and organization of the awardee are engraved on the reverse of the Medal of Honor. The name only of the awardee is engraved on the reverse side of every other decoration, the POW Medal and the Army Good Conduct Medal. Normally engraving will be accomplished prior to presentation. When this is impracticable, the awardee will be informed that he or she may mail the decoration or Army Good Conduct Medal to the Commander, U.S. Soldier Systems Team, P.O. Box 57997, Philadelphia, PA 19111–7997, for engraving at Government expense.

(k) *Presentation of decorations.* (1) The Medal of Honor is usually presented to living awardees by the President of the United States at the White House. Posthumous presentation to the next of kin normally is made in Washington, DC by the President or his or her personal representative.

(2) Other U.S. military decorations will be presented with an appropriate air of formality and with fitting ceremony.

(3) Foreign decorations will not be presented by members of the U.S. Army to designated recipients whether awardees or next of kin.

(4) Conversion awards, service medals, and service ribbons usually are not presented with formal ceremony. However, such presentation may be made at the discretion of the local commander.

(5) Whenever practical, badges will be presented to military personnel in a formal ceremony as provided in Field Manual (FM) 22–5. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(6) Presentation of the Army Good Conduct Medal to military personnel may be made at troop formations. (See FM 22–5.) Ceremonies will not be conducted to present the Army Good Conduct Medal to former military personnel or next of kin.

(7) The Army Lapel Button will be formally presented at troop formations or other suitable ceremonies. The U.S. Army Retired Lapel Button will be presented at an appropriate ceremony prior to their departure for retirement. These buttons may be presented to a separating soldier at the same time as the Army Good Conduct Medal and any other approved decoration.

(l). *Act of presentation.* In the act of presentation, a decoration may be pinned on the clothing of the awardee whether in uniform or civilian clothing or on the next-of-kin in the case of a presentation following the recipient's death; however, this will not be construed as authority to wear the decoration for any person other than the individual honored. As an alternative to pinning the decoration, especially on next-of-kin, it may be handed to the recipient in an opened decoration container.

§ 578.9 Medal of Honor.

(a) *Criteria.* The Medal of Honor (10 U.S.C. 3741) was established by Joint Resolution of Congress, July 12, 1962 (amended by Act of July 9, 1918 and Act of July 25, 1963) is awarded by the President in the name of Congress to a person who, while a member of the Army, distinguished himself or herself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit. Eligibility is limited to members of the Army of the United States in active Federal military service.

(b) *Description.* A gold-finished bronze star, one point down, 1 9/16 inches in diameter with rays terminating in trefoils, surrounded by a laurel wreath in green enamel, suspended by two links from a bar bearing the inscription ''Valor'' and surmounted by an eagle grasping laurel leaves in one claw and arrows in the other. In the center of the star is the head of Minerva surrounded by the inscription ''United States of America.'' Each ray of the star bears an oak leaf in green enamel. On the reverse of the bar are stamped the words ''The Congress To.'' The medal is suspended by a hook to a ring fastened behind the eagle. The hook is attached to a light-blue moired silk neckband, 1 3/16 inches in width and 21 3/4 inches in length, behind a square pad in the center made of the ribbon with the corners turned in. On the ribbon bar are 13 white stars arranged in the form of a triple chevron, consisting of two chevrons of 5 stars and one chevron of 3 stars. A hexagonal rosette of light-blue ribbon ½ inch circumscribing diameter, with a fan-shaped ribbon insert showing white stars, is included for wear on civilian clothing.

(c) *Medal of Honor Roll.* The Medal of Honor Roll was established by Act of Congress, April 27, 1916, as amended by 38 U.S.C. 1562. It provides that each Medal of Honor awardee may have his or her name entered on the Medal of Honor Roll. Each person whose name is placed on the Medal of Honor Roll is certified to the Veterans Administration as being entitled to receive a special pension of $600 per month for life, if the person desires. Payment will be made by the Veterans Administration beginning as of the date of application thereof (38 U.S.C. 1562). The payment of this special pension is in addition to, and does not deprive the pensioner of any other pension, benefit, right, or privilege to which he or she is or may thereafter be entitled. The awardee will submit a DD Form 1369 (Application for Enrollment on the Medal of Honor Roll and for the Pension Authorized by the Act of Congress) to have his or her name placed on the Medal of Honor Roll and to receive the special pension. The application will bear the full personal signature of the awardee, or in cases where the awardee cannot sign due to disability or incapacity, the signature of the awardee's legally designated representative, and be forwarded to Commander, USA HRC (see § 578.3(c)). Applicant will receive a DD Form 1370A (Certificate of Enrollment on the Medal of Honor Roll).

(d) *Additional benefits.* (1) Supplemental uniform allowance. Enlisted recipients of the Medal of Honor are entitled to a supplemental uniform allowance. (See AR 700–84.)

(2) Air transportation for Medal of Honor awardees. (See DOD Regulation 4515.13–R.)

(3) Commissary privileges for Medal of Honor recipients and their eligible family members. (See AFI 36–3026(1).)

(4) Identification cards for Medal of Honor recipients and their eligible family members. (See AR 600–8–14.)

(5) Admission to U.S. Service Academies. Children of Medal of Honor awardees, otherwise qualified, are not subject to quota requirements for admission to any of the U.S. Service Academies. (See U.S. Service Academies annual catalogs.)

(6) Exchange privileges for Medal of Honor recipients and their eligible family members. (See AFI 36–3026(1).)

(7) Burial honors for Medal of Honor recipients are identical to those who become deceased while on active duty. (See AR 600–8–1.)

§ 578.10 Distinguished Service Cross.

(a) Criteria. The Distinguished Service Cross was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963), 10 U.S.C. 3742. It is awarded to a person who, while serving in any capacity with the Army, distinguishes himself or herself by extraordinary heroism not justifying the award of a Medal of Honor while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party. The act or acts of heroism must have been so notable and have involved risk of life so extraordinary as to set the individual apart from his comrades.

(b) Description. A cross of bronze 2 inches in height and 1 13/16 inches in width with an eagle on the center and a scroll below the eagle bearing the inscription ''For Valor.'' On the reverse, the center of the cross is circled by a wreath. The cross is suspended by a ring from moired silk ribbon, 1 3/8 inches in length and 1 3/8 inches in width, composed of a band of red (1/8-inch), white (1/16-inch), blue (1-inch), white (1/16-inch), and red (1/8-inch). (Sec. 3742, 70A Stat. 215; 10 U.S.C. 3742)

§ 578.11 Distinguished Service Medal.

(a) Criteria. (1) The Distinguished Service Medal was established by Act of Congress on July 9, 1918 (10 U.S.C. 3743). It is awarded to any person who, while serving in any capacity with the U.S. Army, has distinguished himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility. The performance must be such as to merit recognition for service which is clearly exceptional. Exceptional performance of normal duty will not alone justify an award of this decoration.

(2) For service not related to actual war the term ''duty of great responsibility'' applies to a narrower range of positions than in time of war and requires evidence of conspicuously significant achievement. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of high positions of great importance.

(3) Awards may be made to persons other than members of the Armed Forces of the United States for wartime services only, and then only under exceptional circumstances with the express approval of the President, in each case.

(b) Description. The coat of arms of the United States in bronze surrounded by a circle of dark-blue enamel 1 1/2 inches in diameter, bearing the inscription ''For Distinguished Service MCMXVIII.'' On the reverse, a blank scroll upon a trophy of flags and weapons. The medal is suspended by a bar from a moired silk ribbon, 1 3/8 inches in length and 1 3/8 inches in width, composed of a bank of scarlet (5/8-inch), a stripe of dark-blue (1/16-inch), a band of white (5/8-inch), a stripe of dark-blue (1/16-inch), and a band of scarlet (5/16 inch. (Sec. 3743, 70A Stat. 216; 10 U.S.C. 3743)

§ 578.12 Silver Star.

(a) Criteria. The Silver Star was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963, 10 U.S.C. 3746). It is awarded to a person who, while serving in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The required gallantry, while of lesser degree than that required for the Distinguished Service Cross, must nevertheless have been performed with marked distinction. It is also awarded upon letter application to Commander, USA HRC (see § 578.3(c)), to those individuals who, while serving in any capacity with the U.S. Army, received a citation for gallantry in action in World War I published in orders issued by a headquarters commanded by a general officer.

(b) Description. A bronze star 1 1/2 inches in circumscribing diameter. In the center thereof is a 3/16-inch diameter raised silver star, the center lines of all rays of both stars coinciding. The reverse has the inscription ''For Gallantry in Action.'' The star is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon 1 3/8 inches in length and 1 3/8 inches in width, composed of stripes of blue (3/32-inch), white (3/64-inch), blue (7/32-inch), white (7/32-inch), red (7/32-inch), white (7/32-inch), blue (7/32-inch), white (/64-inch), and blue (3/32). (Sec. 3746, 70A Stat. 216; 10 U.S.C. 3746)

§ 578.13 Legion of Merit.

The Legion of Merit was established by Act of Congress July 20, 1942 (10 U.S.C. 1121). It is awarded to any member of the Armed Forces of the United States or of a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievement.

(a) Criteria for members of Armed Forces of the United States. The performance must have been such as to merit recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, or assignment, and experience of an individual is not an adequate basis for this award.

(b) For service not related to actual war, the term ''key individuals'' applies to a narrower range of positions than in time of war and requires evidence of significant achievement. In peacetime, service should be in the nature of a special requirement or of an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of important positions.

(c) Awards will be made without reference to degree.

(d) Criteria for members of the Armed Forces of foreign nations. The LM in the degrees described below, may be awarded to foreign military personnel who distinguish themselves by ''exceptional meritorious conduct in performance of outstanding service'' to the United States in accordance with Executive Order (E.O.) 9260.

(e) The LM awarded to members of the Armed Forces of foreign nations is awarded in the following degrees:

(1) Chief Commander: A domed five-pointed American white star plaque of heraldic form bordered in purplish-red enamel 2 15/16 inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. The reverse is engraved with the words ''United States of America.''

(2) Commander: A five-pointed American white star of heraldic form bordered in purplish-red enamel 2 1/4-inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. A bronze wreath connects an oval suspension ring to a neck ribbon. The reverse of the five-pointed star is enameled in white bordered in purplish-red enamel; in the center is a disk surrounded by the words ''Annuit Coeptis'' and ''MDCCLXXXII,'' and on the scroll are

the words ''United States of America.'' The moired silk neck ribbon is 21¼ inches in length and 1 15/16 inches in width composed of a bank of purplish-red (1 13/16-inches) with edges of white (1/16-inch).

(3) Officer: A five-pointed American white star of heraldic form bordered in purplish-red enamel 1⅞-inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with modeled, crossed arrows pointing outward between each arm of the star and the wreath, and an all-bronze device of the same design as the pendant ¾ inch in diameter on the center of the suspension ribbon. On the reverse is a disk surrounded by the words ''Annuit Coeptis'' and ''MDCCLXXXII,'' and on the scroll are the words ''United States of America.'' The pendant is suspended by a moired silk ribbon 1⅞ inches in length and 1⅜ inches in width, composed of a bank of purplish-red (1¼-inches) with edges of white (1/16-inch).

(4) Legionnaire: Same as prescribed in paragraph (e)(3) of this section, except the all-bronze device is not worn on the ribbon. (Sec. 1121, 70A Stat. 88; 10 U.S.C. 1121, E.O. 9260, October 29, 1942, 7 FR 8819, 3 CFR, 1943 Cum. Supp.)

§ 578.14 Distinguished Flying Cross.

(a) Criteria. The Distinguished Flying Cross was established by Act of Congress July 2, 1926, (10 U.S.C. 3749). It is awarded to any person who, while serving in any capacity with the Army of the United States, distinguished himself or herself by heroism or extraordinary achievement while participating in aerial flight. The performance of the act of heroism must be evidenced by voluntary action above and beyond the call of duty. The extraordinary achievement must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his comrades, or from other persons in similar circumstances. Awards will be made only to recognize single acts of heroism or extraordinary achievement and will not be made in recognition of sustained operational activities against an armed enemy.

(b) Description. On a bronze 1½-inch cross pattee, a four-bladed propeller 1 11/16 inches across the blades; in the reentrant angles, rays forming a 1-inch square. The cross is suspended by a plain, straight link from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of blue (7/64-inches), white (9/64-inch), blue (11/32-inch), white (3/64-inch), red (3/32-inch), white (3/64-inch), blue (11/32-inch), white (9/64-inch), and blue (7/64-inch). (Sec. 3749, 70A Stat. 217; 10 U.S.C. 3749, E.O. 4601, March 1, 1927, as amended by E.O. 7786, January 8, 1938, 3 FR 39).

§ 578.15 Soldier's Medal.

(a) Criteria. The Soldier's Medal was established by Act of Congress July 2, 1926, (10 U.S.C. 3750). It is awarded to any person of the Armed Forces of the United States or of a friendly foreign nation who, while serving in any capacity with the Army of the United States, including Reserve Component soldiers not serving in a duty status, as defined in 10 U.S.C. 101(d), at the time of the heroic act, who distinguished himself or herself by heroism not involving actual conflict with an enemy. The same degree of heroism is required as that for an award of the Distinguished Flying Cross. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards will not be made solely on the basis of having saved a life.

(b) Description. On a 1⅜-inch bronze octagon, an eagle displayed, standing on a fasces, between two groups of stars of six and seven, above the group of six a spray of leaves. On the reverse is a shield paly of 13 pieces on the chief, the letters ''U.S.'' supported by sprays of laurel and oak, around the upper edge the inscription ''Soldier's Medal,'' and across the face the words ''For Valor.'' The medal is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of two outside stripes of blue (⅜-inch), the center containing 13 white and red stripes of equal width (7 white and 6 red). (Sec. 3750, 70A Stat. 217; 10 U.S.C. 3750)

§ 578.16 Bronze Star Medal.

(a) Criteria. The Bronze Star Medal was established by Executive Order 9419, February 4, 1944 (superseded by E.O. 11046, August 24,1962 and amended by 10 U.S.C. 1133). It is awarded to any person who, while serving in any capacity in or with the Army of the United States after December 7, 1941, distinguished himself or herself by heroic or meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Per 10 U.S.C. 1133, award of the Bronze Star Medal is limited to members of the Armed Forces of the United States who receive imminent danger pay.

(1) Heroism. Awards may be made for acts of heroism, performed under circumstances described above, which are of lesser degree than required for the award of the Silver Star.

(2) Meritorious achievement and service. Awards may be made to recognize single acts of merit and meritorious service. The lesser degree than that required for the award of the LM, must nevertheless have been meritorious and accomplished with distinction.

(3) Awards may be made, by letter application to NPRC, 9700 Page Avenue, St. Louis, MO 63132–5100, enclosing documentary evidence, if possible, to each member of the Armed Forces of the United States who, after December 6,1941, has been cited in orders or awarded a certificate for exemplary conduct in ground combat against an armed enemy between December 7, 1941 and September 2, 1945, inclusive, or whose meritorious achievement has been other wise confirmed by documents executed prior to July 1, 1947. For this purpose, an award of the Combat Infantryman Badge or Medical Badge is considered as a citation in orders. Documents executed since August 4, 1944 in connection with recommendations for the award of decorations of higher degree than the Bronze Star Medal will not be used to establish a basis for the award under this paragraph.

(4) Upon letter application, award of the Bronze Star Medal may be made to eligible soldiers who participated in the Philippine Islands Campaign between December 7, 1941 to May 10, 1942. Performance of duty must have been on the island of Luzon or the Harbor Defenses in Corregidor and Bataan. Only soldiers who were awarded the Distinguished Unit Citation (redesignated the Presidential Unit Citation on November 3, 1966) may be awarded this decoration. Letter application should be sent to NPRC (see paragraph (a) (3) of this section).

(b) Description. A bronze star 1½ inches in circumscribing diameter. In the center thereof is a 3/16-inch diameter raised bronze star, the center line of all rays of both stars coinciding. The reverse has the inscription ''Heroic or Meritorious Achievement.'' The star is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of white (1/32-inch), red (9/16-inch), white

(1/32-inch), blue (1/8-inch), white (/32-inch), red (9/16-inch), and white (1/32-inch). A bronze block letter ''V'' 1/4 inch in height with serifs at the top of the members is worn on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Not more than one ''V'' device will be worn. When one or more oak-leaf clusters appear on the same ribbon the ''V'' device is worn on the wearer's right. (E.O. 9419, February 4, 1944, 9 FR 1495)

§ 578.17 Purple Heart.

(a) Criteria. The Purple Heart was established by General George Washington at Newburgh, New York, on August 7, 1782, during the Revolutionary War. It was reestablished by the President of the United States per War Department General Orders (WDGO) 3, 1932 and is currently awarded pursuant to Executive Order 11016, April 25, 1962; Executive Order 12464, February 23, 1984; Public Law 98–525, October 19, 1984. Public Law 103–160, November 30, 1993; Public Law 104–106, February 10, 1996; and Public Law 105–85, November 18, 1997. It is awarded in the name of the President of the United States to any member of the Armed Forces of the United States who, while serving under competent authority in any capacity with one of the U.S. Armed Services after April 5, 1917 who has been wounded or killed, or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States.

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(4) As a result of an act of any such enemy of opposing armed forces.

(5) As the result of an act of any hostile foreign force.

(6) After March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack.

(7) After March 28, 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force.

(b) While clearly an individual decoration, the Purple Heart differs from all other decorations in that an individual is not ''recommended'' for the decoration; rather he or she is entitled to it upon meeting specific criteria.

(1) A Purple Heart is authorized for the first wound suffered under conditions indicated above, but for each subsequent award an Oak Leaf Cluster will be awarded to be worn on the medal or ribbon. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent.

(2) A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, however, the wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.

(3) When contemplating an award of this decoration, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite, but is not sole justification for award.

(4) Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

(i) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(ii) Injury caused by enemy placed mine or trap.

(iii) Injury caused by enemy released chemical, biological, or nuclear agent.

(iv) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(v) Concussion injuries caused as a result of enemy generated explosions.

(5) Examples of injuries or wounds which clearly do not qualify for award of the Purple Heart are as follows:

(i) Frostbite or trench foot injuries.

(ii) Heat stroke.

(iii) Food poisoning not caused by enemy agents.

(iv) Chemical, biological, or nuclear agents not released by the enemy.

(v) Battle fatigue.

(vi) Disease not directly caused by enemy agents.

(vii) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(viii) Self-inflicted wounds, except when in the heat of battle, and not involving gross negligence.

(ix) Post traumatic stress disorders.

(x) Jump injuries not caused by enemy action.

(6) It is not intended that such a strict interpretation of the requirement for the wound or injury to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must also take into consideration the circumstances surrounding an injury, even if it appears to meet the criteria. Note the following examples:

(i) In a case such as an individual injured while making a parachute landing from an aircraft that had been brought down by enemy fire; or, an individual injured as a result of a vehicle accident caused by enemy fire, the decision will be made in favor of the individual and the award will be made.

(ii) Individuals injured as a result of their own negligence; for example, driving or walking through an unauthorized area known to have been mined or placed off limits or searching for or picking up unexploded munitions as war souvenirs, will not be awarded the Purple Heart as they clearly were not injured as a result of enemy action, but rather by their own negligence.

(7) Members killed or wounded in action by friendly fire, 10 U.S.C. 1129.

(i) For purposes of award of the Purple Heart, the Secretary of the Army shall treat a member of the Armed Forces described in paragraph (a) of this section in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(ii) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(iii) This section applies to members of the Armed Forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded, as described in paragraph (b) of this section, on or after December 7, 1941 and before November 30, 1993, the Secretary of the Army shall award the Purple Heart under provisions of paragraph (a) of this section in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(c) A Purple Heart will be issued to the next of kin of each person entitled to a posthumous award. Issue will be

made automatically by the CG, USA HRC, upon receiving a report of death indicating entitlement.

(d) Upon written application to NPRC (see § 578.16(a)(3)) award may be made to any member of the Army, who during World War I, was awarded a Meritorious Service Citation Certificate signed by the Commander in Chief, American Expeditionary Forces, or who was authorized to wear wound chevrons. Posthumous awards to personnel who were killed or died of wounds after April 5, 1917 will be made to the appropriate next of kin upon application to the CG, USA HRC (see § 578.3(c) for address).

(e) Any member of the Army who was awarded the Purple Heart for meritorious achievement or service, as opposed to wounds received in action, between December 7, 1941 and September 22, 1943, may apply for award of an appropriate decoration instead of the Purple Heart.

(f) For those who became Prisoners of War during World War II, the Korean War and after April 25, 1962, the Purple Heart will be awarded to individuals wounded while prisoners of foreign forces, upon submission by the individual to the Department of the U.S. Army of an affidavit that is supported by a statement from a witness, if this is possible. Documentation and inquiries should be directed to Commander, USA HRC (see § 578.3 (c) for address).

(g) Any member of the U.S. Army who believes that he or she is eligible for the Purple Heart, but through unusual circumstances no award was made, may submit an application through military channels, to Commander, USA HRC (see § 578.3 (c) for address). Application will include complete documentation, to include evidence of medical treatment, pertaining to the wound.

(h) Description. On a purple heart within a bronze border, a profile head in relief of General George Washington in military uniform. Above the heart is a shield of General Washington's coat of arms between two sprays of leaves in green enamel. On the reserve below the shield and leaves without enamel is a raised bronze heart with the inscription ''For Military Merit.'' The entire device is 1 11/16 inches in length. The medal is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon 1 3/8 inches in length and 1 3/8 inches in width consisting of a purple (pansy) center with white edges (1/8-inch).

§ 578.18 Meritorious Service Medal.

(a) Criteria. The Meritorious Service Medal was established by Executive Order 11448, January 16, 1969 as amended by Executive Order 12312, July 2, 1981. It is awarded to any member of the Armed Forces of the United States or to any member of the Armed Forces of a friendly foreign nation who, while serving in a non-combat area after January 16, 1969, has distinguished himself or herself by outstanding meritorious achievement or service.

(b) Description. A Bronze medal, 1 1/2 inches in diameter overall, consisting of six rays issuant from the upper three points of a five-pointed star with beveled edges and containing two smaller stars defined by incised outlines; in front of the lower part of the star an eagle with wings upraised standing upon two upward curving branches of laurel tied with a ribbon between the feet of the eagle. The reverse has the encircled inscriptions ''UNITED STATES OF AMERICA'' and ''MERITORIOUS SERVICE''. The moired ribbon is 1 3/8 inches wide and consists of the following stripes: 1/8 inch Crimson 67112; 1/4 inch White 67101; center 5/8 inch Crimson; 1/4 inch White; and 1/8 inch Crimson.

§ 578.19 Air Medal.

(a) Criteria. The Air Medal was established by Executive Order 9158, May 11, 1942 as amended by Executive Order 9242–A, September 11, 1942. It is awarded to any person who, while serving in any capacity in or with the U.S. Army, has distinguished himself or herself by meritorious achievement while participating in aerial flight. Awards may be made to recognize single acts of merit or heroism, or for meritorious service as described.

(1) Awards may be made for acts of heroism in connection with military operations against an armed enemy or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party, which are of a lesser degree than required for award of the Distinguished Flying Cross.

(2) Awards may be made for single acts of meritorious achievement, involving superior airmanship, which are of a lesser degree than required for award of the Distinguished Flying Cross, but nevertheless were accomplished with distinction beyond that normally expected.

(3) Awards for meritorious service may be made for sustained distinction in the performance of duties involving regular and frequent participation in aerial flight for a period of at least 6 months. In this regard, accumulation of a specified number of hours and missions will not serve as the basis for award of the Air Medal. Criteria in § 578.19(a)(1), concerning conditions of conflict are applicable to award of the Air Medal for meritorious service.

(4) Award of the Air Medal is primarily intended to recognize those personnel who are on current crewmember or non-crewmember flying status which requires them to participate in aerial flight on a regular and frequent basis in the performance of their primary duties. However, it may also be awarded to certain other individuals whose combat duties require regular and frequent flying in other than a passenger status, or individuals who perform a particularly noteworthy act while performing the function of a crewmember, but who are not on flying status as prescribed in AR 600–106. These individuals must make a discernible contribution to the operational land combat mission or to the mission of the aircraft in flight. Examples of personnel whose combat duties require them to fly include those in the attack elements of units involved in air-land assaults against an armed enemy and those directly involved in airborne command and control of combat operations. Involvement in such activities, normally at the brigade/group level and below, serves only to establish eligibility for award of the Air Medal; the degree of heroism, meritorious achievement or exemplary service determines who should receive the award. Awards will not be made to individuals who use air transportation solely for the purpose of moving from point to point in a combat zone.

(5) Numerals, starting with 2 will be used to denote second and subsequent awards of the Air Medal.

(b) Description. A bronze compass rose 1 11/16-inches circumscribing diameter suspended by the pointer and charged with an eagle volant carrying two lightning flashes in its talons. The points of the compass rose on the reverse are modeled with the central portion plain. The medal is suspended from a moired silk ribbon 1 3/8 inches in length and 1 3/8 inches in width, composed of a band of ultramarine blue (1/8-inch), a band of golden orange (1/4-inch), a band of ultramarine blue (5/8-inch), a band of golden orange (1/4-inch), and a band of ultramarine blue (1/8-inch), by a ring engaging the pointer. (E.O. 9158, May 11, 1942, 7 FR 3541, as amended by E.O. 9242A, September 11, 1942, 7 FR 7874)

§ 578.20 Army Commendation Medal.

(a) Criteria. The Army Commendation Medal (ARCOM) was established by War Department (WD) Circular 377, on December 18, 1945 (amended in DAGO 10, March 31, 1960). It is awarded to

any members of the Armed Forces of the United States who, while serving in any capacity with the Army after December 6, 1941, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service. Award may be made to a member of the Armed Forces of a friendly foreign nation who, after June 1, 1962, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service, which has been of mutual benefit to a friendly nation and the United States.

(1) Awards of the ARCOM may be made for acts of valor performed under circumstances described above which are of lesser degree than required for award of the Bronze Star Medal. These acts may involve aerial flight.

(2) An award of the ARCOM may be made for acts of non-combat related heroism, which do not meet the requirements for an award of the Soldier's Medal.

(3) The ARCOM will not be awarded to general officers.

(4) Awards of the ARCOM may be made on letter application to NPRC (see § 578.16(a)(3) for address), to any individual commended after December 6, 1941 and before January 1, 1946 in a letter, certificate, or order of commendation, as distinguished from letter of appreciation, signed by an officer in the grade or position of a major general or higher. Awards of the Army Commendation Ribbon and of the Commendation Ribbon with Metal Pendant are re-designated by DAGO 10, March 31, 1960, as awards of the ARCOM, without amendments of certificates or of orders previously issued.

(5) The Commander, Eighth U.S. Army is authorized to award the Army Commendation Medal for meritorious service to Korean Augmentation to U.S. Army (KATUSA) personnel.

(b) Description. On a 1⅜ inch bronze hexagon, one point up, an American bald eagle with wings displayed horizontally grasping three crossed arrows and bearing on its breast a shield paly of 13 pieces and a chief. On the reverse between the words ''For Military'' and ''Merit'' a panel, all above a sprig of laurel. A moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of white (3/32-inch), green (25/64-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (25/64-inch), and white (3/32-inch).

§ 578.21 Army Achievement Medal.

(a) Criteria. The Army Achievement Medal (AAM) was established by the Secretary of the Army, April 10, 1981. It is awarded to any member of the Armed Forces of the United States, or to any member of the Armed Forces of a friendly foreign nation, who while serving in any capacity with the Army in a non-combat area on or after August 1, 1981, distinguished himself or herself by meritorious service or achievement of a lesser degree than required for award of the Army Commendation Medal.

(b) The AAM will not be awarded to general officers.

(c) Description. A Bronze octagonal medal, 1½ inches in diameter, with one angle at the top centered. On the obverse is a design consisting of the elements of the DA plaque and the date ''1775'' at the bottom. On the reverse, in three lines, are the words ''FOR MILITARY ACHIEVEMENT'' above a space for inscription and below there are two slips of laurel. The moired ribbon is 1⅜ inches wide and consists of the following stripes: 1/8 inch Green 67129; 1/16 inch White 67101; 1/8 inch Green; 1/16 inch White; 9/32 inch Ultramarine Blue 67118; center 1/16 inch White; 9/32 inch Ultramarine Blue; 1/16 inch White; 1/8 inch Green; 1/16 inch White; and 1/8 inch Green.

§ 578.22 Prisoner of War Medal.

(a) Criteria. The POW Medal is authorized by Public Law 99–145, 10 U.S.C. 1128, November 8, 1985, as amended by 10 U.S.C. 1128, November 29, 1989. It is authorized for any person who, while serving in any capacity with the U.S. Armed Forces, was taken prisoner and held captive after April 5, 1917.

(1) The POW Medal is to be issued only to those U.S. military personnel and other personnel granted creditable U.S. military service, who were taken prisoner and held captive—

(i) While engaged in an action against an enemy of the United States.

(ii) While engaged in military operations involving conflict with an opposing foreign force.

(iii) While serving with friendly forces engaged in an armed conflict against an opposing force in which the United States is not a belligerent party.

(iv) By foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(2) U.S. and foreign civilians who have been credited with U.S. military service which encompasses the period of captivity are also eligible for the medal. The Secretary of Defense authorized on January 27, 1990, the POW Medal for the Philippine Commonwealth Army and Recognized Guerrilla Unit Veterans who were held captive between December 7, 1941, and September 26, 1945. DD Form 2510–1 (Prisoner of War Medal Application/Information-Philippine Commonwealth Army and Recognized Guerrilla Veterans) was developed as the application for Filipino Veterans who fit this category.

(3) For purposes of this medal, past armed conflicts are defined as World War I, World War II, Korean War, Vietnam Conflict, Grenada, Panama, Persian Gulf War, and Somalia. Hostages of terrorists and persons detained by governments with which the United States is not engaged actively in armed conflict are not eligible for the medal.

(4) Any person convicted of misconduct or a criminal charge by a U.S. military tribunal, or who receives a less than honorable discharge based upon actions while a prisoner of war, or whose conduct was not in accord with the Code of Conduct, and whose actions are documented by U.S. military records is ineligible for the medal. The Secretary of the Army is the authority for deciding eligibility in such cases.

(5) No more than one POW Medal will be awarded. For subsequent award of the medal, service stars will be awarded and worn on the suspension and service ribbon of the medal. A period of captivity terminates on return to U.S. military control. Escapees who do not return to U.S. military control and are recaptured by an enemy do not begin a new period of captivity for subsequent award of the POW Medal. (Service stars are described in § 578.59)

(6) The POW Medal may be awarded posthumously.

(7) The primary next of kin of eligible prisoners of war who die in captivity may be issued the POW Medal regardless of the length of stay in captivity.

(8) Personnel officially classified as Missing in Action (MIA) are not eligible for award of the POW Medal. The POW Medal will only be awarded when the individual's prisoner of war status has been officially confirmed and recognized as such by the DA. Likewise, the return of remains, in and of itself, does not constitute evidence of confirmed prisoner of war status.

(b) Award of the POW Medal to active military personnel, veterans, retirees

and their next of kin—(1) Active military personnel. Award of the POW Medal to military personnel in an active war will be processed by the Commander, USA HRC (see § 578.3 (c)), after coordination with the Repatriation and Family Affairs Division.

(2) Veterans, retirees and their next of kin. All requests for the POW Medal will be initiated by eligible former POWs, or their next of kin, using a personal letter or DD Form 2510 (Prisoner of War Medal Application/ Information). Applications should be forwarded to the NPRC (see § 578.16(a)(3) for address).

(c) Description. A purple heart within a Gold border, 1⅜ inches wide, containing a profile of General George Washington. Above the heart appears a shield of the Washington Coat of Arms (a White shield with two Red bars and three Red stars in chief) between sprays of Green leaves. The reverse consists of a raised Bronze heart with the words ''FOR MILITARY MERIT'' below the coat of arms and leaves. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch White 67101; 1⅛ inches Purple 67115; and ⅛ inch White 67101.

§ 578.23 National Defense Service Medal.

(a) Criteria. The National Defense Service Medal (NDSM) was established by Executive Order 10448, April 22, 1953, as amended by Executive Order 11265, January 11, 1966 and Executive Order 12776, October 18, 1991. It is awarded for honorable active service for any period between June 27, 1950 and July 27, 1954, both dates inclusive; between January 1, 1961 and August 14, 1974, both dates inclusive; between August 2, 1990 and November 30, 1995, both dates inclusive; and from September 11, 2001 to a date to be determined.

(1) For the purpose of this award, the following persons will not be considered as performing active service:

(i) Army National Guard and U.S. Army Reserve forces personnel on short tours of duty to fulfill training obligations under an inactive duty training program.

(ii) Any service member on temporary duty or temporary active duty to serve on boards, courts, commissions, and like organizations.

(iii) Any service member on active duty for the sole purpose of undergoing a physical examination.

(2) In addition to the conditions listed above, Executive Order 12776 extended award of the NDSM to all members of the Army National Guard and United States Army Reserve who were part of the selected Reserve in good standing during the period August 2, 1990 to November 30, 1995. During this period, soldiers in the following categories will not be considered eligible:

(i) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired Reserve whose active duty service was for the sole purpose of undergoing a physical examination.

(ii) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired reserve whose active duty service was for training only, or to serve on boards, courts, commissions and like organizations.

(3) On March 28, 2003, the President signed an amendment to Executive Order 10448 that extends the eligibility criteria for award of the NDSM to members of the selected Reserve of the Armed Forces of the United States in good standing during the period beginning September 11, 2001 to a date to be determined to be eligible for award of the NDSM.

(4) Any member of the Army National Guard or U.S. Army Reserve who, after December 31, 1960, becomes eligible for the award of the Armed Forces Expeditionary Medal or the Vietnam Service Medal, is also eligible for award of the NDSM. The NDSM may be awarded to members of the Reserve Component who are ordered to Federal active duty regardless of the duration (except for categories listed above).

(5) To signify receipt of a second or subsequent award of the NDSM, a service star will be worn on the service ribbon by U.S. Army personnel so qualified. Second or third award of the NDSM is authorized for soldiers who served in one or more of the three time periods as listed in paragraph (a) of this section. It is not authorized for soldiers who met the criteria in one time period, left active duty and returned during the same period of eligibility. (Service stars are described in § 578.59)

(6) Cadets of the U.S. Military Academy are eligible for the NDSM, during any of the inclusive periods listed above, upon completion of the swearing-in ceremonies as a cadet.

(7) The NDSM may be awarded posthumously.

(b) Description. On a Bronze medal, 1¼ inches in diameter, an eagle displayed with inverted wings standing on a sword and palm branch, all beneath the inscription ''NATIONAL DEFENSE''. On the reverse is a shield taken from the Coat of Arms of the United States with an open wreath below it, the right side of oak leaves and the left side of laurel leaves. The ribbon is 1⅜ inches wide and consists of the following stripes: 7/16 inch Scarlet 67111; 1/32 inch White 67101; 1/32 inch Old Glory Blue 67178; 1/32 inch White; 1/32 inch Scarlet; center ¼ inch Golden Yellow 67104; 1/32 inch Scarlet; 1/32 inch White; 1/32 inch Old Glory Blue; 1/32 inch White; and 7/16 inch Scarlet.

§ 578.24 Antarctica Service Medal.

(a) Criteria. The Antarctica Service Medal (ASM) was established by Public Law 86–600 (DA Bulletin. 3, 1960). It is awarded to any person who, after January 2, 1946 and before a date to be announced, meets any of the following qualifications:

(1) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who, is a member of a direct support or exploratory operation in Antarctica.

(2) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who participates in or has participated in a foreign Antarctic expedition in Antarctica in coordination with a United States expedition and who is or was under the sponsorship and approval of competent U.S. Government authority.

(3) Any member of the Armed Forces of the United States who participates in or has participated in flights as a member of the crew of an aircraft flying to or from the Antarctic continent in support of operations in Antarctica.

(4) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who serves or has served on a U.S. ship operating south of latitude 60 degrees S. in support of U.S. programs in Antarctica.

(5) Any person, including citizens of foreign nations, not fulfilling any above qualification, but who participates in or has participated in a United States expedition in Antarctica at the invitation of a participating United States Agency. In such case, the award will be made by the Secretary of the Department under whose cognizance the expedition falls provided the commander of the military support force as senior U.S. representative in Antarctica considers that the individual has performed outstanding and exceptional service and shared the hardship and hazards of the expedition.

(b) Personnel who remain on the Antarctic Continent during the winter months will be eligible to wear a clasp or a disc as described below:

(1) A clasp with the words ''Wintered Over'' on the suspension ribbon of the medal:

(2) A 5/16 inch diameter disc with an outline of the Antarctic continent

inscribed thereon fastened to the bar ribbon representing the medal.

(3) The appurtenances in paragraphs (b)(1) and (2) of this section are awarded in bronze for the first winter, in gold for the second winter and in silver for personnel who ''winter over'' three or more times.

(c) Subsequent to June 1, 1973, minimum time limits for the award are 30 days under competent orders to duty at sea or ashore, south of latitude 60 degrees S. Each day of duty under competent orders at any outlying station on the Antarctic continent will count as 2 days when determining award eligibility. Effective July 1, 1987, flight crews of aircraft providing logistics support from outside the Antarctic area may qualify for the award after 15 missions (one flight in and out during any 24-hour period equals one mission). Days need not be consecutive.

(d) No person is authorized to receive more than one award of the ASM. Not more than one clasp or disc will be worn on the ribbon. Antarctica is defined as the area south of latitude 60 degrees S. The ASM takes precedence immediately after the Korean Service Medal.

(e) Description. The medal is bronze, 1¼ inches in diameter, with a view of a polar landscape and the standing figure in Antarctica clothing facing to the front between the horizontally placed words ''ANTARCTICA'' on the figure's right and ''SERVICE'' on the figure's left. On the reverse is a polar projection with geodesic lines of the continent of Antarctica across which are the horizontally placed words ''COURAGE'', ''SACRIFICE'', and ''DEVOTION'', all within a circular decorative border of penguins and marine life. The Suspension Ribbon Clasp: On a metal clasp, 1¼ inches in width and ¼ inch in height, inscribed with the words ''WINTERED OVER'' in raised letters within a 1/32 inch rim. The metal color of the clasp is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The Service Ribbon Attachment: On a metal disc, 5/16 inch in diameter, a superimposed delineation of the Antarctic continent. The metal color of the ribbon attachment is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The ribbon is 1⅜ inches wide and consists of a 3/16 inch Black stripe on each edge and graded from a White stripe in the center to a Pale Blue, Light Blue, Greenish Blue, and Medium Blue.

§ 578.25 Armed Forces Expeditionary Medal.

(a) Criteria. The Armed Forces Expeditionary Medal (AFEM) was established by Executive Order 10977, dated December 4, 1961 (DA Bulletin. 1, 1962) and Executive Order 11231, July 8, 1965. This medal is authorized for:

(1) U.S. military operations.

(2) U.S. operations in direct support of the United Nations.

(3) U.S. operations of assistance for friendly foreign nations.

(b) Requirements. The AFEM is awarded for services after July 1, 1958, meeting the following qualifications:

(1) Personnel must be a bona fide member of a unit and engaged in the operation, or meet one or more of the following criteria:

(i) Have served not less than 30 consecutive days in the area of operations.

(ii) Be engaged in direct support of the operation for 30 consecutive days or 60 nonconsecutive days, provided this support involves entering the area of operations. The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 non-consecutive days.

(iii) Serve for the full period where an operation is of less than 30 days duration.

(iv) Be engaged in actual combat, or duty which is equally as hazardous as combat, during the operation with armed opposition, regardless of time in the area.

(v) Participate as a regularly assigned crewmember of an aircraft flying into, out of, within, or over the area in support of the military operation.

(2) If the criteria above have not been fulfilled the individual must be recommended, or attached to a unit recommended, by the chief of a service or the commander of a unified or specified command for award of the medal. Such recommendations may be made to the Joint Chiefs of Staff (JCS) for duty of such value to the operation as to warrant particular recognition.

(c) The designated U.S. military operations, areas, and dates are provided in Table 4 below:

TABLE 4

Area	Dates	Explanation
Quemoy and Matsu Islands	August 23, 1956 to June 1, 1963.	
Lebanon	July 1, 1958 to November 1, 1958.	
Taiwan Straits	August 23, 1958 to January 1, 1959.	
Berlin	August 14, 1961 to June 1, 1963.	
Cuba	October 24, 1962 to June 1, 1963.	
Congo	November 23 to 27, 1964.	
Dominican Republic	April 28, 1965 to September 21, 1966.	
Korea	October 1, 1966 to June 30, 1974.	
Cambodia—Operation EAGLE PULL	April 11 to 13, 1975	Evacuation of Cambodia.
Vietnam—Operation FREQUENT WIND	April 29 to 30, 1975	Evacuation of Vietnam (see § 578.26(e) for conversion of AFEM to VSM.)
Mayaguez Operation	May 15, 1975.	
Grenada—Operation URGENT FURY	October 23, 1983 to November 21, 1983.	The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 nonconsecutive days.
Libya—Operation ELDORADO CANYON	April 12, 1986 to April 17, 1986.	
Panama—Operation JUST CAUSE	December 20, 1989 to January 31, 1990.	
Haiti—Operation UPHOLD DEMOCRACY	September 16, 1994 to March 31, 1995.	

(d) Designated U.S. operations in direct support of the United Nations are provided in Table 5 below:

TABLE 5

Area	Dates	Explanation
Congo	July 14, 1960 to September 1, 1962.	
Somalia—Operations RESTORE HOPE and UNITED SHIELD.	December 5, 1992 to March 31, 1995.	
Former Republic of Yugoslavia—Operations JOINT ENDEAVOR and JOINT GUARD.	June 1, 1992 to June 20, 1998	Only for participants deployed in Bosnia-Herzegovina and Croatia.
Former Republic of Yugoslavia—Operation JOINT FORGE.	June 21, 1998 to a date to be determined.	

(e) Designated U.S. operations of assistance for a friendly foreign nation are provided in Table 6 below:

TABLE 6

Area	Dates	Explanation
Vietnam	July 1, 1958 to July 3, 1965.	
Laos	April 19, 1961 to October 7, 1962.	
Cambodia	March 29, 1973 to August 15, 1973.	
Thailand	March, 29 1973 to August 15, 1973.	Only those in direct support of Cambodia operations.
El Salvador	January 1, 1981 to February 1, 1992.	
Lebanon	June 1, 1983 to December 1, 1987.	
Persian Gulf—Operation EARNEST WILL	July 24, 1987 (the date of the Bridgeton incident) to August 1, 1990.	The area of operations is the area from 20 degrees north latitude northward to 30 degrees, 30 minutes, north latitude and from 46 degrees, 36 minutes, east longitude eastward to 63 degrees east longitude. These geographical limits include the Persian Gulf, Bahrain, Kuwait, the Gulf of Oman and most of Saudi Arabia.
Southwest Asia:		
—Operation SOUTHERN WATCH	December 1, 1995 to a date to be determined.	
—Maritime Intercept Operation	December 1, 1995 to a date to be determined.	
—Vigilant Sentinel	December 1, 1995 to February 15, 1997.	
—Operation NORTHERN WATCH	January 1, 1997 to a date to be determined.	
—Operation DESERT THUNDER	November 11, 1998 to December 22, 1998.	
—Operation DESERT FOX	December 16, 1998 to December 22, 1998.	
—Operation DESERT SPRING	December 22, 1998 to December 31, 1998 to a date to be determined.	

(f) One bronze service star is worn to denote subsequent award of the AFEM. To be eligible for additional awards, service must be rendered in more than one of the designated areas and dates specified in paragraphs (c), (d), and (e) of this section. No two awards will be made for service in the same designated area.

(g) Arrowhead Device. The arrowhead device is a bronze replica of an Indian arrowhead ¼-inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault landing credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. It is worn on the service and suspension ribbons of the AFEM when the unit is credited with assault landing credit. Only one arrowhead device will be worn on the ribbon.

(h) Description. The medal is bronze, 1¼ inches in diameter, an eagle, with wings addorsed and inverted, standing on a sword loosened in its scabbard, and super-imposed on a radiant compass rose of eight points, all within the circumscription ''ARMED FORCES'' above and ''EXPEDITIONARY SERVICE'' below with a sprig of laurel on each side. On the reverse is the shield from the United States Coat of Arms above two laurel branches separated by a bullet, all within the circumscription ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/32 inch Green 67129; 3/32 inch Golden Yellow 67104; 3/32 inch Spicebrown 67196; 3/32 inch Black 67138; 7/32 inch Bluebird 67117; 1/16 inch Ultramarine Blue 67118; 1/16 inch White 67101; 1/16 inch Scarlet; 7/32 inch Bluebird; 3/32 inch Black; 3/32 inch Spicebrown; 3/32 inch Golden Yellow; and 3/32 inch Green.

§ 578.26 Vietnam Service Medal.

(a) Criteria. The Vietnam Service Medal (VSM) was established by Executive Order 11231, July 8, 1965. It is awarded to all members of the Armed Forces of the United States serving in Vietnam and contiguous waters or airspace thereover, after July 3, 1965 through March 28, 1973. Members of the Armed Forces of the United States in Thailand, Laos, or Cambodia, or the

airspace thereover, during the same period and serving in direct support of operations in Vietnam are also eligible for this award.

(b) Qualifications. To qualify for award of the VSM an individual must meet one of the following qualifications:

(1) Be attached to or regularly serve for 1 or more days with an organization participating in or directly supporting military operations.

(2) Be attached to or regularly serve for 1 or more days abroad a Naval vessel directly supporting military operations.

(3) Actually participate as a crewmember in one or more aerial flights into airspace above Vietnam and contiguous waters directly supporting military operations.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days in Vietnam or contiguous areas, except that time limit may be waived for personnel participating in actual combat operations.

(c) No person will be entitled to more than one award of the VSM.

(d) Individuals qualified for the AFEM for reason of service in Vietnam between July 1, 1958 and July 3, 1965 (inclusive) shall remain qualified for that medal. Upon request (unit personnel officer) any such individual may be awarded the VSM instead of the AFEM. In such instances, the AFEM will be deleted from the list of authorized medals in personnel records. No person will be entitled to both awards for Vietnam service.

(e) Service members who earned the AFEM for Operation FREQUENT WIND between April 29–30, 1975, may elect to receive the Vietnam Service Medal instead of the AFEM. No service member may be issued both medals for service in Vietnam.

(f) Vietnam and contiguous waters, as used herein, is defined as an area which includes Vietnam and the water adjacent thereto within the following specified limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21 degrees N. latitude, 108 degrees; 15′E. longitude; thence, southward to 18 degrees; N. latitude, 108 degrees; 15′E. longitude; thence southeastward to 17 degrees 30′N. latitude, 111 degrees E. longitude; thence southward to 11 degrees N. latitude; 111 degrees E. longitude; thence southwestward to 7 degrees N. latitude, 105 degrees E. longitude; thence westward to 7 degrees N. latitude, 103 degrees; E. longitude; thence northward to 9 degrees 30′N. latitude, 103 degrees E. longitude, thence northeastward to 10 degrees 15′N. latitude, 104 degrees 27′E. longitude; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

(g) The VSM may be awarded posthumously.

(h) The boundaries of the Vietnam combat zone for campaign participation credit are as defined in paragraph (d) of this section.

(i) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(j) *Description.* The medal is Bronze, 1¼, inches in diameter, an oriental dragon behind a grove of bamboo trees above the inscription ''REPUBLIC OF VIETNAM SERVICE.'' On the reverse, a crossbow surmounted by a torch above the arched inscription ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Primitive Green 67188; 5⁄16 inch Air Force Yellow 67103; 1⁄16 inch Old Glory Red 67156; 5⁄32 inch Air Force Yellow; center 1⁄16 inch Old Glory Red; 5⁄32 inch Air Force Yellow; 1⁄16 inch Old Glory Red; 5⁄16 inch Air Force Yellow; and ⅛ inch Primitive Green.

(k) The Vietnam campaigns are provided in Table 7 below:

TABLE 7

Campaigns	Inclusive dates	Streamer Inscription
Vietnam Advisory Campaign	March 15, 1962 to March 7, 1965	Vietnam Advisory 1962–1965.
Vietnam Defense Campaign	March 8, 1965 to December 24, 1965	Vietnam Defense 1965.
Vietnam Counteroffensive	December 25, 1965 to June 30, 1966	Vietnam Counteroffensive 1965–1966.
Vietnam Counteroffensive Phase II	July 1, 1966 to May 31, 1967 (see footnote below).	Vietnam Phase II 1966, 1967.
Vietnam Counteroffensive Phase III	June 1, 1967 to January 29, 1968	Vietnam Counteroffensive, Phase III, 1967–1968.
Tet Counteroffensive	January 30, 1967 to April 1, 1968	Tet Counteroffensive 1968.
Vietnam Counteroffensive Phase IV	April 2, 1968 to June 30, 1968	Vietnam Counteroffensive, Phase IV 1968.
Vietnam Counteroffensive Phase V	July 1, 1968 to November 1, 1968	Vietnam Counteroffensive, Phase V 1968.
Vietnam Counteroffensive Phase VI	November 2, 1968 to February 22, 1969	Vietnam Counteroffensive, Phase VI 1968–1969.
Tet 69 Counteroffensive	February 23, 1969 to June 8, 1969	Tet 69/Counteroffensive, 1969.
Vietnam Summer–Fall 1969	June 9, 1969 to October 31, 1969	Vietnam Summer–Fall 1969.
Vietnam Winter–Spring 1970	November 1, 1969 to April 30, 1970	Vietnam Winter–Spring 1970.
Sanctuary Counteroffensive	May 1, 1970 to June 30, 1970	Sanctuary Counteroffensive 1970.
Vietnam Counteroffensive Phase VII	July 1, 1970 to June 30, 1971	Vietnam Counteroffensive, Phase VII, 1970–1971.
Consolidation I	July 1, 1971 to November 30, 1971	Consolidation I 1971.
Consolidation II	December 1, 1971 to March 29, 1972	Consolidation II 1971–1972.

TABLE 7—Continued

Campaigns	Inclusive dates	Streamer Inscription
Vietnam Cease-Fire	March 30, 1972 to January 28, 1973	Vietnam Cease-Fire 1972–1973.

Footnote: Arrowhead device authorized only for members of the 173d Airborne Brigade who actually participated in the landing in the vicinity of Katum, Republic of Vietnam, between the hours of 0800–0907, inclusive on February 27, 1967. A bronze service star affixed to the Parachutist Badge is authorized for members of the 173d Airborne Brigade for participation in combat parachute jump on February 22, 1967 per Department of the Army General Orders 18, 1979.

§ 578.27 Southwest Asia Service Medal.

(a) The Southwest Asia Service Medal (SWASM) was established by Executive Order 12754, March 12, 1991. It is awarded to all members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace thereover, on or after August 2, 1990 to November 30, 1995. Southwest Asia and contiguous waters, as used herein, is defined as an area which includes the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10 degrees N. latitude and west of 68 degrees E. longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates.

(b) Members of the Armed Forces of the United States serving in Israel, Egypt, Turkey, Syria, and Jordan (including the airspace and territorial waters) between January 17, 1991 and April 11, 1991, will also be eligible for this award. Members serving in these countries must have been under the command and control of U.S. Central Command or directly supporting military operations in the combat theater.

(c) To be eligible, a service member must meet one or more of the following criteria:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore (military) operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Be actually participating as a crew member in one or more aerial flights directly supporting military operations in the areas designated in paragraphs (a) and (b) this section.

(4) Be serving on temporary duty for 30 consecutive days or 60 nonconsecutive days. These time limitations may be waived for people participating in actual combat operations.

(d) The SWASM may be awarded posthumously to any person who lost his or her life while, or as a direct result of, participating in Operation DESERT SHIELD or Operation DESERT STORM without regard to the length of such service, if otherwise eligible.

(e) One bronze service star will be worn on the suspension and service ribbon of the SWASM for participation in each designated campaign. Service stars are described in § 578.59. The designated campaigns for Southwest Asia are provided in Table 8 below:

TABLE 8

Campaign	Inclusive dates	Streamer inscription
Defense of Saudi Arabia	August 2, 1990 to January 16, 1991	Defense of Saudi Arabia 1990–1991.
Liberation and Defense of Kuwait	January 17, 1991 to April 11, 1991	Liberation and Defense of Kuwait 1991.
Southwest Asia Cease-Fire	April 12, 1991 to November 30, 1995	Southwest Asia Cease-Fire, 1991–1995.

(f) See AR 670–20 for the Civilian Service in Southwest Asia Medal.

(g) Description. The medal is Bronze 1¼ inches wide, with the words ''SOUTHWEST ASIA SERVICE'' across the center background. Above the center is a desert scene with a tank, armored personnel carrier, helicopter and camels with the rising sun in the background. Below the center is a seascape with ship, tanker, aircraft and clouds in the background. On the reverse, is an upraised sword entwined with a palm frond and ''UNITED STATES OF AMERICA'' around the edge. The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Black 67138; ⅛ inch Chamois 67142; 1/16 inch Old Glory Blue 67178; 1/16 inch White 67101; 1/16 inch Old Glory Red 67156; 3/16 inch Chamois; 3/32 inch Myrtle Green 67190; center 1/16 inch Black; 3/32 inch Myrtle Green; 3/16 inch Chamois; 1/16 inch Old Glory Red; 1/16 inch White; 1/16 inch Old Glory Blue; ⅛ inch Chamois; and 1/16 inch Black.

§ 578.28 Kosovo Campaign Medal.

(a) Criteria. The Kosovo Campaign Medal (KCM) was established by Executive Order 13154, May 3, 2000. It is awarded to members of the Armed Forces of the United States who, after March 24, 1999, meet the following criteria:

(1) Participated in or served in direct support of Kosovo Operation(s): ALLIED FORCE; JOINT GUARDIAN; ALLIEDHARBOUR; SUSTAIN HOPE/SHINING HOPE; NOBLE ANVIL; or Kosovo TASK FORCE(S): HAWK, SABER; or HUNTER within the Kosovo Air Campaign or Kosovo Defense Campaign areas of eligibility.

(i) Kosovo Air Campaign. The Kosovo Air Campaign began on March 24, 1999 and ended on June 10, 1999. The area of eligibility for the Air Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, Bosnia, Croatia, Hungary, Romania, Greece, Bulgaria, Italy and Slovenia; and the waters and air space of the Adriatic and Ionian Sea north of the 39th North latitude.

(ii) Kosovo Defense Campaign. The Kosovo Defense Campaign began on June 11, 1999 to a date to be determined. The area of eligibility for the Defense Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, and the waters and air space of the Adriatic Seas within 12 nautical miles of the Montenegro, Albania, and Croatia coastlines south of 42 degrees and 52 minutes North latitude.

(2) Service members must be bona fide members of a unit participating in or be engaged in direct support of the operation for 30 consecutive days in the area of eligibility or for 60 nonconsecutive days provided this support involves entering the operations area of eligibility for meet one or more of the following criteria:

(i) Be engaged in actual combat, or duty that is equally as hazardous as combat duty, during the operation with armed opposition, regardless of time in the area of eligibility;

(ii) While participating in the operation, regardless of time, is wounded or injured and requires medical evacuation from the area of eligibility.

(iii) While participating as a regularly assigned aircrew member flying sorties into, out of, within, or over the area of eligibility in direct support of the military operations.

(b) The KCM may be awarded posthumously to any person who lost his or life without regard to the length of such service.

(c) One bronze service star will be worn on the suspension and service ribbon of the KCM for participation in each campaign (Kosovo Air Campaign and Kosovo Defense Campaign). Qualification for a second bronze service star requires meeting the criteria for both campaigns. The 30 consecutive or 60 nonconsecutive days that begin during the Air Campaign and continues into the Defense Campaign entitles a member to only one bronze service star.

(d) Description. The medal is bronze, 1⅜ inches in diameter, with the stylized wreath of grain, reflecting the agricultural domination of the area and its economy, symbolizes the basic human rights while highlighting the desire of all for peace, safety and prosperity. The rocky terrain, fertile valley, and mountain pass refer to the Dinartic Alps and the Campaign Theater of operations. The sunrise denotes the dawning of a new age of unity and hope; the right to forge a future of freedom, progress and harmony, thus fulfilling the goal of the Alliance. On the reverse an outline of the Yugoslavian Province of Kosovo, denoting the area of conflict, is combined with a NATO star and highlighted compass cardinal points, signifying the Alliance participants who stabilized the region and provided massive relief. The inscription ''IN DEFENSE OF HUMANITY'' reinforces the objective of the action. The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 1$^{5}/_{32}$ inches Old Glory Blue 67178; $^{7}/_{64}$ inch Scarlet 67111; $^{5}/_{32}$ inch White 67101; $^{7}/_{64}$ inch Old Glory Blue 67178; $^{15}/_{32}$ inch Scarlet 67111.

§ 578.29 Global War on Terrorism Expeditionary Medal.

(a) The Global War on Terrorism Expeditionary Medal (GWOTEM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who deploy abroad for service in the Global War on Terrorism operations on or after September 11, 2001 to a date to be determined. Operations approved for the GWOTEM are provided in paragraph (g) of this section.

(b) Procedures. (1) The Secretary of Defense in consultation with the Chairman, Joint Chiefs of Staff will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) The general area of eligibility (AOE) encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States. The Secretary of Defense, when recommended by the Chairman, Joint Chiefs of Staff, shall designate the specific area of eligibility per qualifying operation.

(3) Because counter-terrorism operations are global in nature, the AOE for an approved operation may be deemed to be non-contiguous. The Combatant Commander has the authority to approve award of the medal for units and personnel deployed within his or her theater. Under no conditions will units or personnel within the United States, the general region excluded in paragraph (b)(2) of this section be deemed eligible for the GWOTEM.

(c) Criteria. Service members must be assigned, attached or mobilized to a unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the AOE, or meet one of the following criteria:

(1) Be engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action, regardless of time in the AOE.

(2) While participating in the designated operation, regardless of time, is killed, wounded or injured requiring medical evacuation from the AOE.

(3) Service members participating as a regularly assigned air crew member flying sorties into, out of, within, or over the AOE in direct support of Operations Enduring Freedom and/or Iraqi Freedom are eligible to qualify for award of the GWOTEM. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30 or 60 day requirement.

(d) General. (1) The GWOTEM may be awarded posthumously.

(2) Service members may be awarded both the GWOTEM and the Global War on Terrorism Service Medal (GWOTSM) if they meet the criteria for both awards; however, the qualifying period of service used to establish eligibility for one award cannot be used to justify eligibility for the other award.

(3) Order of precedence. The GWOTEM will be worn before the GWOTSM and both shall directly follow the Kosovo Campaign Medal (KCM) (*i.e.*, KCM, GWOTEM, GWOTSM, Korea Defense Service Medal (KDSM), *etc.*).

(4) Subsequent awards. Only one award of the GWOTEM may be authorized to any individual; therefore, an appurtenance (*e.g.*, oak leaf cluster, bronze service star) is authorized for wear on the GWOTEM.

(f) Battle stars. (1) Battle stars may be applicable for service members who were engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action. Only the Combatant Commander can initiate a request for a Battle Star. The request will contain the specific unit(s) or individual(s) engaged in actual combat, the duration for which actual combat was sustained, and a detailed description of the actions against the enemy.

(2) The Chairman, Joint Chiefs of Staff (CJCS) is the approving authority for Battle Stars.

(3) The approval of battle stars by the CJCS is the authority for the senior Army commander in the combat theater to approve campaign participation credit. See paragraph 7–18, Table 7–1 and Figure 7–1, AR 600–8–22.

(g) Approved operations. Initial award of the GWOTEM is limited to service members deployed abroad in Operations Enduring Freedom and Iraqi Freedom in the following designated specific geographic areas of eligibility (AOE): Afghanistan, Bahrain, Bulgaria (Bourgas), Crete, Cyprus, Diego Garcia, Djibouti, Egypt, Eritrea, Ethiopia, Iran, Iraq, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Oman, Pakistan, Philippines, Qatar, Romania (Constanta), Saudi Arabia, Somalia, Syria, Tajikstan, Turkey (east of 35 degrees east latitude), Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, that portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees longitude, Bab El Mandeb, Gulf of Aden, Gulf of Aqaba, Gulf of Oman, Gulf of Suez, that portion of the Mediterranean Sea east of 28 degrees east longitude, Persian Gulf, Red Sea, Strait of Hormuz, and Suez Canal.

(h) Description.—(1) *Ribbon*. The different topographies our Armed Forces operate in are represented by the colors tan for the deserts, green for the grass or woodlands, blue for the waterways and white for the snowy

regions. Blue also alludes to the atmosphere, the zone of airstrikes. Gold is emblematic of excellence and high achievement. The red, white and blue stripes at center highlight this nation's role in the global war on terrorism.

(2) *Obverse*. The eagle, strong, keen of eye and vigilant, represents the United States and our resolve to make the world safe from the terrorism. The polestar and globe highlight the worldwide scope of this mission to secure our freedoms.

(3) *Reverse*. The torch and fasces denote freedom and justice. The laurel represents honor and high esteem.

§ 578.30 Global War on Terrorism Service Medal.

(a) The Global War on Terrorism Service Medal (GWOTSM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who have participated in or served in support of the Global War on Terrorism operations on or after September 11, 2001 to a future date to be determined. Operations approved for the GWOTSM are provided in paragraph (e) of this section.

(b) Procedures. (1) The Secretary of Defense in consultation with Chairman, Joint Chiefs of Staff, will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) The Combatant Commander has the authority to award the medal for approved operations to units and personnel within his or her theater. To be eligible personnel must have participated in or served in support of an approved operation.

(c) Criteria. All soldiers serving on active duty, include Reserve Component soldiers mobilized, or National Guard soldiers activated on or after September 11, 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days during operations outlined in paragraph (e) of this section are authorized the GWOTSM.

(d) General. (1) The GWOTSM may be awarded posthumously.

(2) Personnel may receive both the GWOTEM and the GWOTSM if they meet the requirements of both awards; however, the qualifying period used to establish eligibility for one cannot be used to justify eligibility for the other award.

(3) Order of precedence. The GWOTSM will be worn directly below the GWOTEM and both shall directly follow the Kosovo Campaign Medal.

(4) Subsequent awards. Only one award of the GWOTSM may be authorized for any individual; therefore, an appurtenance (*e.g.*, oak leaf cluster, bronze service star) is not authorized.

(e) Approved operations. Initial approved operations for the Global War on Terrorism Service Medal are Airport Security Operations from September 27, 2001 through May 31, 2002 and Operations NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM.

(f) Description—(1) *Ribbon.* The dark red stripe denotes sacrifice. The gold stripes symbolize achievement. The blue stripes signify justice.

(2) *Obverse.* The obverse has a stylized globe, the universal symbol of the world. Surmounting the globe is six arrows exemplifying fighting power and readiness, also representing the area that terrorism is being fought; diplomatic, military, financial, intelligence, investigative and law enforcement. Below, an olive branch exemplifies peace and an oak branch emphasizing strength and protection.

(3) *Reverse.* The reverse is inscribed ''FOR INTERNATIONAL RESPONSES AGAINST TERRORISM'' between three stars commemorate achievement and below the year ''2002''.

§ 578.31 Korea Defense Service Medal.

(a) Eligibility requirements. The Korea Defense Service Medal (KDSM) was authorized by Section 543, 2003 National Defense Authorization Act. It is awarded to members of the Armed Forces who have served on active duty in support of the defense of the Republic of Korea from July 28, 1954 to a date to be determined.

(1) The area of eligibility encompasses all land area of the Republic of Korea, and the contiguous water out to 12 nautical miles, and all air spaces above the land and water areas.

(2) The KDSM period of eligibility is July 28, 1954, to a future date to be determined by the Secretary of Defense.

(b) Specific. Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive or for 60 nonconsecutive days, or meet the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) Is wounded or injured in the line of duty and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, or within the area of eligibility in direct support of military operations. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30- or 60-day requirement.

(4) Personnel who serve in operations and exercises conducted in the area of eligibility are considered eligible for the award as long as the basic time criteria is met. Due to the extensive time period for KDSM eligibility, the nonconsecutive service period for eligibility remains cumulative throughout the entire period.

(c) Awarding. (1) The KDSM may be awarded posthumously.

(2) Only one award of the KDSM is authorized for any individual.

(d) Precedence. The KDSM shall be positioned below the Global War on Terrorism Service Medal in precedence; and shall be positioned above the Armed Forces Service Medal.

(e) Description. The ribbon is dark green represents the land of Korea, blue indicates overseas service and commitment to achieving peace. Gold denotes excellence, white symbolizes idealism and integrity. The obverse is a bronze-color disc bearing a Korean ''circle dragon'' within an encircling scroll inscribed ''Korea Defense Service Medal'' with, in base, two sprigs, laurel to dexter side, bamboo to sinister. The four-clawed dragon is a traditional symbol of Korea and represents intelligence and strength of purpose. The sprig of laurel denotes honorable endeavor and victory, the bamboo refers to the land of Korea. The reverse is a representation of the land mass of Korea surmounted by two swords points up saltirewise within a circlet garnished of five points. The swords placed saltirewise over a map of Korea signify defense of freedom in that country and the readiness to engage in combat to that end. The circlet enclosing the device recalls the forms of five-petal symbols common in Korean armory.

§ 578.32 Armed Forces Service Medal.

(a) Criteria. The Armed Forces Service Medal (AFSM) was established by Executive Order 12985, January 11, 1996. It is awarded to members of the Armed Forces of the United States who, after June 1, 1992 meet the following criteria:

(1) Participate, or have participated, as members of U.S. military units, in a U.S. military operation that is deemed to be a significant activity; and

(2) Encounter no foreign armed opposition or imminent threat of hostile action.

(b) Eligibility requirements. To qualify for award of the AFSM service members must be bona fide members of a unit participating for one or more days in the operation within the designated area of eligibility, or meet one or more of the following criteria:

(1) Be engaged in direct support for 30 consecutive days in the area of eligibility (or for the full period when an operation is of less than 30 days duration) or for 60 nonconsecutive days provided this support involves entering the area of eligibility.

(2) Participate as a regularly assigned crew member of an aircraft flying into, out of, within, or over the area of eligibility in support of the operation.

(c) Qualifying operations. (1) The AFSM may be authorized for significant U.S. military activities for which no other U.S. campaign or service medal is appropriate, such as—

(i) Peacekeeping operations.

(ii) Prolonged humanitarian operations.

(2) The AFSM may be awarded for U.S. military operations in direct support of the United Nations (UN) or the North Atlantic Treaty Organization (NATO), and for operations of assistance to friendly foreign nations.

(d) General criteria. (1) The AFSM provides recognition to participants who deploy to the designated area of eligibility for the qualifying operation. Outstanding or meritorious performance of non-deployed or remotely located support units and individuals is not justification for award of the AFSM. Such performance may be recognized by appropriate unit and/or individual decorations.

(2) Because the AFSM may be awarded for a prolonged humanitarian operation, distinction between the AFSM and the Humanitarian Service Medal (HSM) must be maintained. The following rules apply:

(i) The HSM is an individual U.S. service medal, presented to individuals who are physically present at the site of immediate relief and who directly contribute to and influence the humanitarian action. The HSM is only awarded for service during the identified ''period of immediate relief''; eligibility for the HSM terminates once (if) the humanitarian action evolves into an ''established ongoing operation beyond the initial emergency condition.''

(ii) The AFSM is a theater award, authorized for presentation to all participants who meet the eligibility requirements established for a designated operation.

(iii) For operations in which all deployed participants are awarded the HSM and for which the ''period of immediate relief'' coincides with the duration of significant deployed operations, award of the AFSM is not authorized.

(iv) Humanitarian operations for which some (or all) participants are awarded the HSM, which continue beyond the ''period of immediate relief,'' may be recognized by award of the AFSM. The AFSM may be awarded for the entire period of the operation; individuals awarded the HSM for direct participation during the ''period of immediate relief'' are also eligible for the AFSM if awarded.

(e) Limitations on awarding the AFSM. The following limitations apply when determining whether the AFSM should be awarded for a particular mission or operation or when determining eligibility for award to an individual:

(1) The AFSM shall be awarded only for operations for which no other U.S. campaign or service medal is approved.

(2) For operations in which personnel for only one Service participates, the AFSM shall be awarded only if there is no other suitable award available to that Service.

(3) The military service of the individual on which qualification for the award of the AFSM is based shall have been honorable.

(4) Award of the AFSM is not authorized for participation in national or international exercises.

(5) The AFSM will not be awarded for NATO or United Nations operations not involving significant, concurrent U.S. military support operations.

(f) Approval and designation of area of eligibility—(1) Approval of operations. The Chairman of the Joint Chiefs of Staff (CJCS) shall designate U.S. military operations subsequent to June 1, 1992 that qualify for the AFSM.

(2) Designation of area of eligibility. (i) The CJCS shall specify the qualifying area of eligibility for award of the AFSM.

(ii) Prior to submission to the CJCS for consideration, the proposed qualifying area of eligibility will be coordinated with the Joint Chiefs of Staff and the Commander in Chiefs (CINCs) to ensure all appropriate locations are included.

(iii) Upon the recommendation of a CINC and in coordination with the Joint Chiefs of Staff, the CJCS may adjust the area of eligibility to reflect changes in the location, scope and degree of participation of forces deployed to, and in direct support of, an operation for which the AFSM has been awarded.

(g) Subsequent awards. No more than one medal shall be awarded to any one Service member. One bronze service star is worn to denote second and subsequent awards of the AFSM. To be eligible for additional awards, service must be rendered in more than one designated area and period of service. No two awards will be made for service in the same designated area. (Service stars are described in 5 578.59)

(h) Manner of wearing. The AFSM shall take precedence immediately after the Southwest Asia Service Medal.

(i) Posthumous awards. The AFSM may be awarded posthumously to eligible soldier's primary next of kin (primary next of kin is defined in the Glossary).

(j) Designated U.S. military operations, area and dates are as follows:

(1) Operations PROVIDE PROMISE, JOINT ENDEAVOR, ABLE SENTRY, DENY FLIGHT, MARITME MONITOR, and SHARP GUARD, from November 20, 1995 to December 19, 1996.

(2) Operation JOINT GUARD from December 20, 1996 to June 20, 1998.

(3) Operation JOINT FORGE from June 21, 1998 to a date to be determined.

(4) Operation UNITED NATIONS MISSION in HAITI; US FORCES in HAITI and U.S. SUPPORT GROUP—HAITI from April 1, 1995 to January 31, 2000.

(5) Operation PROVIDE COMFORT from December 1, 1995 to December 31, 1996.

(k) See AR 672–20 for the Armed Forces Civilian Service Medal.

(l) Description. The medal is Bronze, 1¼ inches in diameter with a demi-torch (as on the Statue of Liberty) encircled at the top by the inscription ''ARMED FORCES SERVICE MEDAL'' on the obverse side. On the reverse side is an eagle (as on the seal of the DOD) between a wreath of laurel in base and the inscription ''IN PURSUIT OF DEMOCRACY'' at the top. The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Goldenlight 67107; ⅛ inch Jungle Green 67191; ⅛ inch Green 67129; ⅛ inch Mosstone 67127; ⅛ inch Goldenlight; Center ¼ inch Bluebird 67117; ⅛ inch Goldenlight; ⅛ inch Mosstone; ⅛ inch Green; ⅛ inch Jungle Green; and 1/16 inch Goldenlight.

§ 578.33 Humanitarian Service Medal.

(a) Criteria. The Humanitarian Service Medal (HSM) was established by Executive Order 11965, January 19, 1977. It is awarded to members of the Armed Forces of the United States who, after April 1, 1975, distinguished themselves by meritorious direct participation in a DOD approved significant military act or operation of a humanitarian nature. It is not awarded for participation in domestic disturbances involving law enforcement, equal rights to citizens, or protection of properties.

(b) To be eligible, a service member must meet the following requirements:

(1) Must be on active duty at the time of direct participation in a DOD approved humanitarian act or operation. ''Active duty'' means full-time duty in the active military service of the United States. It includes duty on the active duty list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned per 10 U.S.C. 101(22). This includes service as a cadet at the U.S. Military Academy. Members of the Army National Guard are eligible provided that the use of active forces has been authorized in the act or operation.

(2) Must have directly participated in the humanitarian act or operation within the designated geographical area of operation and within specified time limits. ''Direct participation'' is defined as ''hands on'' activity at the site or sites of the military act or operation. Specifically excluded from eligibility for this medal are personnel or elements remaining at geographically separated military headquarters.

(3) Must provide evidence which substantiates direct participation in a DOD approved humanitarian act or operation except when by-name eligibility lists are published. Acceptable evidence includes the following:

(i) Certificates, letters of commendation or appreciation.

(ii) Officer or enlisted evaluation reports.

(iii) Copies of TDY or special duty orders reflecting participation within the specified timeframe and geographical location cited.

(iv) After-action reports, situation reports, rosters, unit files or any other records or documentation which verify the service members participation.

(v) Statements from commanders, supervisors, or other officials who were in a position to substantiate the service members direct participation in the area of operation.

(c) The HSM is a U.S. service medal and does not preclude or conflict with other service medals or decorations awarded on the basis of valor, achievement or meritorious service.

(d) No person will be awarded more than one HSM for participation in the same military act or operation.

(e) A service star will be worn to denote direct participation in second or subsequent humanitarian acts or operations. The approved HSM operations are provided in AR 600–8–22 and the HQDA Military Awards Branch Web site https://www.perscomonline.army.mil/tagd/awards/HSM.doc

(f) See AR 672–20 for Civilian Award for Humanitarian Service.

(g) Description. The medal is Bronze, 1¼ inches in diameter, surmounted by an open hand, palm up, extending to the upper left. On the reverse is a sprig of oak in a left oblique slant between the inscription ''FOR HUMANITARIAN SERVICE'' in three horizontal lines, and ''UNITED STATES ARMED FORCES'' in an arc around the base. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Imperial Purple 67161; 1/16 inch White 67101; 5/16 inch Bluebird 67117; ¼ inch Flag Blue 67124; 5/16 inch Bluebird; 1/16 inch White; and 3/16 inch Imperial Purple.

§ 578.34 Military Outstanding Volunteer Service Medal.

(a) Criteria. The Military Outstanding Volunteer Service Medal (MOVSM) was established by Executive Order 12830, January 9, 1993. It may be awarded to members of the Armed Forces of the United States and their Reserve Components, who subsequent to December 31, 1992, perform outstanding volunteer community service of a sustained, direct and consequential nature.

(b) To qualify for award of the MOVSM a service members volunteer service must meet the following requirements:

(1) Be to the civilian community, to include the military family community.

(2) Be significant in nature and produce tangible results.

(3) Reflect favorably on the Military Service and the DOD.

(4) Be of a sustained and direct nature.

(c) While there is no specific time period to qualify for the MOVSM (for example, 500 hours of community service within 24 calendar months), approval authorities shall ensure the service to be honored merits the special recognition afforded by this medal. The MOVSM is intended to recognize exceptional community support over time and not a single act or achievement. Further, it is intended to honor direct support of community activities. For the purpose of this award, attending membership meetings or social events of a community service group is not considered qualifying service, while manning a community crisis action telephone line is considered qualifying service.

(d) Approval authority for award of the MOVSM will be commanders (overseas and CONUS (continental United States) serving in the rank of Lieutenant Colonel or higher. Before the recommendation is forwarded to the award approval authority, the recommender must certify that the service member meets the eligibility criteria for award of the MOVSM. Substantiating documentation, such as record of hours contributed, letters or certificates from activity supervisors, or other proof of the service member's volunteer services may be attached as enclosures to the recommendation.

(e) Description. The medal is Bronze, 1⅜ inches in diameter bearing on the obverse, five annulets interlaced enfiled by a star and environed by a wreath of laurel. On the reverse is a sprig of oak between the inscription ''OUTSTANDING VOLUNTEER SERVICE'' at the top and ''UNITED STATES ARMED FORCES'' at the bottom. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Bluebird 67117; ⅛ inch Goldenlight 67107; 3/16 inch Bluebird; 1/16 inch Green 67129; 5/32 inch Goldenlight; center 1/16 inch Green; 5/32 inch Goldenlight; 1/16 inch Green; 3/16 inch Bluebird; ⅛ inch Goldenlight; and ⅛ inch Bluebird.

§ 578.35 Army Good Conduct Medal.

(a) Criteria. The Army Good Conduct Medal (AGCM) was established by Executive Order 8809, June 28, 1941 and was amended by Executive Order 9323, 1943 and by Executive Order 10444, April 10, 1953. It is awarded for exemplary behavior, efficiency, and fidelity in active Federal military service. It is awarded on a selective basis to each soldier who distinguishes himself or herself from among his or her fellow soldiers by his exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders.

(b) Personnel eligible. (1) Active Component enlisted soldiers.

(2) Active Guard Reserve (AGR) enlisted personnel serving on extended periods of active duty (other than for training) under 10 U.S.C. and 32 U.S.C. are eligible for award of the AGCM for qualifying service beginning on or after September 1, 1982, provided no period of the service has been duplicated by the same period of service for which the soldier has been awarded the Army Reserve Components Achievement Medal (ARCAM). The AGCM qualification period may commence anytime during the 3 years immediately preceding the September 1, 1982

effective date provided no portion of service for the AGCM is included in a period of service for which the ARCAM was awarded.

(3) Retroactively to eligible Army of the United States (AUS) enlisted personnel.

(4) Other Army enlisted personnel as may be directed by the Secretary of the Army.

(c) Awarding authority. Unit commanders are authorized to award the AGCM to enlisted personnel serving under their command jurisdiction who meet the established criteria. Send requests for award of the AGCM for former soldiers to NPRC (see § 578.8(e) for address). Requests for award of the AGCM for Army National Guard and Army Reserve members for periods of active duty based on qualifying prior active Federal military service (Regular Army and AUS) will be forwarded through normal command channels to the Commander, USA HRC-St. Louis, ATTN: ARPC–PSP–R, One Reserve Way, St. Louis, MO 63132–5200. Separation transfer points will review the records of enlisted personnel being separated to determine whether they qualify for the AGCM. Where possible, make a reasonable effort to contact the unit commander before awarding the medal to qualified members.

(d) Basis for approval. The immediate unit commander's decision to award the AGCM will be based on his or her personal knowledge and of the individual's official records for periods of service under previous commanders during the period for which the award is to be made. The lack of official disqualifying comment by such previous commanders qualifies the use of such period toward the award by current commander.

(e) Qualifying periods of service. Any one of the following periods of continuous enlisted active Federal military service qualifies for award of the AGCM or of an AGCM Clasp (see paragraph (h) of this section in conjunction with the criteria in paragraph (f) of this section):

(1) Each 3 years completed on or after August 27, 1940.

(2) For first award only, 1 year served entirely during the period December 7, 1941 to March 2, 1946.

(3) For first award only, upon termination of service on or after June 27, 1950, of less than 3 years but more than 1 year.

(4) For first award only, upon termination of service, on or after June 27, 1950, of less than 1 year when final separation was by reason of physical disability incurred in line of duty.

(5) For first award only, for those individuals who died before completing 1 year of active Federal military service if the death occurred in the line of duty.

(f) Character of service. Throughout a qualifying period, each enlisted soldier must meet all of the following criteria for an award:

(1) The immediate commander evaluates the soldier's character as above reproach.

(2) The record of service indicates that the soldier has—

(i) Willingly complied with the demands of the military environment.

(ii) Been loyal and obedient to their superiors.

(iii) Faithfully supported the goals of their organization and the Army.

(iv) Conducted themselves in such an exemplary manner as to distinguish them from their fellow soldiers.

(3) While any record of non-judicial punishment could be in conflict with recognizing the soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander analyzes the record, giving consideration to the nature of the infraction, the circumstances under which it occurred and when. Conviction by court-martial terminates a period of qualifying service; a new period begins following the completion of sentence imposed by court-martial.

(4) In terms of job performance, the soldier's efficiency must be evaluated and must meet all requirements and expectations for that soldier's grade, Military Occupational Specialty (MOS), and experience.

(5) Individuals whose retention is not warranted under standards prescribed in AR 604–10, or for whom a bar to reenlistment has been approved under the provisions of AR 601–280, chapter 6 (specifically for the reasons enumerated in paragraphs 6–4a, b, and d), are not eligible for award of the AGCM.

(g) Additional implementing instructions. (1) Qualifying periods of service (paragraph (e) of this section) must be continuous enlisted active Federal military service. When an interval in excess of 24 hours occurs between enlistments, that portion of service before to the interruption is not creditable toward an award.

(2) Release from enlisted status for entry into service as a cadet or midshipman at any U.S. service academy, or discharge from enlisted status for immediate entry on active duty in an officer status is considered termination of service for awarding the AGCM. A minimum of 12 months enlisted service is required and must have been completed for first award of the AGCM; otherwise, the full 3 years of qualifying enlisted service is required.

(3) A qualified person scheduled for separation from active Federal military service should receive the award at his or her last duty station. Such award is authorized up to 30 days before the soldier's departure en route to a separation processing installation in CONUS or overseas. Orders announcing such advance awards will indicate the closing date for the award prefixed with date of separation, on or about, as the response to the ''Dates or period of service'' lead line. Example: From October 31, 1977 to date of separation on or about October 30, 1980. For soldiers who are granted terminal leave prior to retirement or End Tour of Service (ETS), orders awarding second and subsequent awards of the AGCM may be issued up to 90 days before retirement or ETS date.

(4) An award made for any authorized period of less than 3 years must be for the total period of obligated active Federal military service. This applies to first award only, all other awards of the AGCM require 3 full years qualifying service.

(5) Discharge under provisions of AR 635–200 for immediate (re)enlistment is not termination of service.

(h) Disqualification for the Army Good Conduct Medal. (1) Conviction by courts-martial terminates a period of qualifying service; a new period begins the following day after completion of the sentence imposed by the court-martial.

(2) Individual whose retention is not warranted under standards prescribed in AR 604–10, or for whom a bar to reenlistment has been approved under the provisions of AR 601–280, chapter 6 (specifically for the reasons enumerated in, paragraphs 6–4a, b, and d, AR 601–280), are not eligible for award of the AGCM.

(3) In instances of disqualification as determined by the unit commander, the commander will prepare a statement of the rationale for his or her decision. This statement will include the period of disqualification and will be referred to the individual according to AR 600–37. The unit commander will consider the affected individual's statement. If the commander's decision remains the same, the commander will forward his or her statement, the individual's statement, and his or her consideration for filing in the individual's military record.

(4) Disqualification for an award of the AGCM can occur at any time during a qualifying period (for example, when manner of performance or efficiency declines). The custodian of the soldier's

record will establish the new ''beginning date'' for the soldier's eligibility for award of the AGCM, annotate the date on the soldier's DA Form 2–1, and submit an automated transaction. These procedures do not apply if soldier disqualified under the provisions of paragraph (h)(2) of this section.

(i) Subsequent awards and clasps. A clasp is authorized for wear on the AGCM to denote a second or subsequent award. Clasps authorized for second and subsequent award are:

(1) Award: 2d; Clasp: Bronze, 2 loops;

(2) Award: 3d; Clasp: Bronze, 3 loops;

(3) Award: 4th; Clasp: Bronze, 4 loops;

(4) Award: 5th; Clasp: Bronze, 5 loops;

(5) Award: 6th; Clasp: Silver, 1 loop;

(6) Award: 7th; Clasp: Silver, 2 loops;

(7) Award: 8th; Clasp: Silver, 3 loops;

(8) Award: 9th; Clasp: Silver, 4 loops;

(9) Award: 10th; Clasp: Silver, 5 loops;

(10) Award: 11th; Clasp: Gold, 1 loop;

(11) Award: 12th; Clasp: Gold, 2 loops;

(12) Award: 13th; Clasp: Gold, 3 loops;

(13) Award: 14th; Clasp: Gold, 4 loops; and

(14) Award: 15th; Clasp: Gold, 5 loops.

(j) Army Good Conduct Medal certificate policy. (1) The DA Form 4950 (Good Conduct Medal Certificate) may be presented to enlisted soldiers only on the following occasions:

(i) Concurrent with the first award of the AGCM earned on or after January 1, 1981.

(ii) Concurrent with retirement on or after January 1, 1981.

(2) When presented at retirement, the DA Form 4950 will reflect the last approved award of the AGCM earned by the soldier before retirement. The number of the last earned will be centered immediately beneath the line ''THE GOOD CONDUCT MEDAL;'' for example, ''Sixth Award.'' The period shown on the certificate will be the period cited in the last award earned by the soldier. The words ''UPON HIS OR HER RETIREMENT'' may be typed below the soldier's name.

(3) The DA Form 4950 will not be presented for second or subsequent awards of the AGCM except as provided in paragraph (j)(2) of this section.

(4) DA Form 4950 is available from the U.S. Army Publications Distribution Center, St. Louis, MO.

(k) Retroactive award. (1) Retroactive award to enlisted personnel, and to officer personnel who qualified in an enlisted status, is authorized provided evidence is available to establish qualification. Where necessary, to correct conflicting or duplicate awards, previous general or permanent orders may be revoked and new orders published, citing this paragraph as authority.

(2) Requests for retroactive awards to enlisted persons which cannot be processed due to lack of information will be forwarded to Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301, by the commander having command jurisdiction. Upon receipt of eligibility information from U.S. Army Enlisted Records and Evaluation Center (USAEREC), the commander can take action to confirm retroactive award of the AGCM by publication of orders, or by informing the soldier of findings of ineligibility.

(l) Description. The medal is Bronze, 1¼ inches in diameter, with an eagle, wings spread, standing on a closed book and sword, encircled by the words ''EFFICIENCY HONOR FIDELITY''. On the reverse is a five-pointed star and a scroll between the words ''FOR GOOD'' and ''CONDUCT'', surrounded by a wreath formed by a laurel branch on the left and an oak branch on the right. Clasps are placed on the ribbon to represent subsequent awards. The ribbon is A 1⅜ inch ribbon consisting of the following stripes: 1/16 inch Soldier Red 67157; 1/16 inch White 67101; 1/16 inch Soldier Red; 1/16 inch White; 1/16 inch Soldier Red; 1/16 inch White; center 5/8 inch Soldier Red; 1/16 inch White; inch Soldier Red; 1/16 inch White; 1/16 inch Soldier Red; 1/16 inch White; and 1/16 inch Soldier Red.

§ 578.36 Army Reserve Components Achievement Medal.

(a) Criteria. The Army Reserve Components Achievement Medal (ARCAM) was established by the Secretary of the Army on March 3, 1971 and amended by Department of the Army General Orders (DAGO) 4, 1974. It is awarded for exemplary behavior, efficiency, and fidelity while serving as a member of an Army National Guard (ARNG) or USAR troop program unit (TPU) or as an individual mobilization augmentee (IMA). The first design bears the inscription ''United States Army Reserve,'' the other design bears the inscription, ''Army National Guard.''

(b) Personnel eligible. The ARCAM is authorized for award to Army personnel including Active Guard Reserve (AGR) officers in the rank of colonel and below. Individual must have been a member of an ARNG unit or USAR TPU, excluding enlisted soldiers in an AGR status. AGR enlisted soldiers are eligible for the AGCM under the provisions of § 578.35(b). The medal is also awarded to USAR soldiers serving as IMA after completing qualifying service and on recommendation of the unit commander or HQDA official to which the IMA is assigned.

(c) Award approval authority. Approval authority for award of the ARCAM for ARNG units and USAR TPU soldiers is the soldier's unit commander. Commander, USA HRC-St. Louis, One Reserve Way, St. Louis, MO 63132–5200, is the approval authority for award of the ARCAM to USAR IMA soldiers. Orders are not published for the award of this medal. Approved ARCAM is announced using an official memorandum. The records custodian will then annotate the records.

(d) Peacetime and wartime applicability. The ARCAM is awarded to eligible Army Reserve Component soldiers during times of peace and war. However, during periods of war, the length of qualifying service is subject to change at the discretion of the Secretary of the Army.

(e) Basis or criteria for approval. (1) Between March 3,1972 and March 28, 1995, the medal was authorized on completion of 4 years' service with a Reserve Component unit. Individual must have completed 4 years of qualifying service on or after March 3, 1972 and before March 28, 1995. A qualifying year of service is one in which a Reserve soldier earns a minimum of 50 retirement points during his/her retirement year. Qualifying service for computation purposes is based only by retirement ending year dates.

(2) Effective March 28, 1995, the period of qualifying service for award of the ARCAM is reduced from 4 to 3 years. That is, soldiers completing 3 years of qualified service on or after March 28, 1995 are eligible for ARCAM consideration. This change is not retroactive.

(3) All awards of the ARCAM must be made under the following conditions: (i) Such years of qualifying service must have been consecutive. A period of more than 24 hours between Reserve enlistments or officer's service will be considered a break in service. Credit toward earning the award must begin anew after a break in service. Service while attending Officer Candidate School or Warrant Officer Candidate school will be considered enlisted service, and termination will occur when the soldier is commissioned or appointed a warrant officer.

(ii) Although only unit service may be credited for award of this medal, consecutive Ready Reserve service

between periods of unit service will not be considered as a break in service and service in the first unit may be added to service in the second unit to determine total qualifying service.

(iii) Soldiers who are ordered to active duty in the AGR program will be awarded the ARCAM if they have completed 2 of the 3 years required (Army Good Conduct Medal eligibility starts on the effective date of the AGR order). Soldiers with less than 2 years will not receive an award. Service lost may be recovered if the soldier is separated honorably from the AGR program and reverts to troop program unit service, for example, a soldier serves 1 year and 6 months of qualifying service and is ordered to an AGR tour. This service is not sufficient for award of the ARCAM. When the soldier leaves the AGR program that 1 year and 6 months is granted towards the next award of the ARCAM. Only the State adjutant general may determine that the AGR service was not sufficiently honorable enough to revoke the previously earned time, regardless of the type of separation given.

(iv) The member must have exhibited honest and faithful service as is in accordance with the standards of conduct, courage and duty required by law and customs of the service, of a member of the same grade as the individual to whom the standard is being applied.

(4) A member must be recommended for the award by his or her unit commander whose recommendation is based on personal knowledge of the individual and the individual's official records of periods of service under prior commanders during the period for which the award is made.

(5) A commander may not delay award or extend the qualifying period for misconduct. A determination that service is not honorable as prescribed negates the entire period of the award.

(f) Unqualified service. (1) Service performed in the Reserve Components of the U.S. Air Force, Navy, Marine Corps, or Coast Guard may not be credited for award of the ARCAM.

(2) Release from Army Reserve Component status for entry into service as a cadet or midshipman at any U.S. service academy or discharge from Army Reserve Component for immediate entry in the Regular Army, in an officer or enlisted status, is considered termination of service for the purpose of qualifying for the ARCAM.

(3) Service while in an enlisted AGR status may not be credited for award of the ARCAM.

(g) Subsequent awards and Oak Leaf Clusters. Second and succeeding awards of the ARCAM are denoted by Oak Leaf Clusters.

(h) Description. The medal is Bronze, 1¼ inches in diameter, consisting of a faceted twelve-pointed star with a beveled edge, the points surmounting a wreath of laurel and bearing on a disc within a smaller wreath of laurel, a torch between two swords crossed saltirewise, points up and flanked by two mullets. The reverse has the cuirass from the DA seal centered below ''ARMY NATIONAL GUARD'' or ''UNITED STATES ARMY RESERVE'' and above ''FOR ACHIEVEMENT''. The ribbon is 1⅜ inches wide ribbon consisting of the following stripes: 5/16 inch Old Gold 67105; 1/8 inch Ultramarine Blue 67118; 1/16 inch White 67101; center 3/8 inch Scarlet 67111; 1/16 inch White; 1/8 inch Ultramarine Blue; and 5/16 inch Old Gold.

§ 578.37 Army Reserve Components Overseas Training Ribbon.

(a) Criteria. The Army Reserve Components Overseas Training Ribbon (ARCOTR) was established by the Secretary of the Army on July 11, 1984. It is awarded to members of the Reserve Components of the Army, (Army National Guard and U.S. Army Reserve), for successful completion of annual training (AT) or active duty for training (ADT) for a period not less than 10 consecutive duty days on foreign soil. ARNG and USAR soldiers who accompany the Reserve Component (RC) unit (including unit cells) to which they are assigned or attached as full-time unit support (FTUS) during overseas training are also eligible for the award.

(b) Effective July 11, 1984, all members of the ARNG and USAR are eligible for this award if they were active Reserve status members of the Army National Guard, U.S. Army Reserve (not on active duty in the Active Army), or AGR FTUS soldiers at the time their unit underwent AT or ADT on foreign soil.

(c) AGR personnel, not assigned to a TPU, are also eligible for award of the ARCOTR provided they are ordered overseas specifically as advance party to, simultaneously with, or in support of mop-up operations of RC units training overseas. Ten consecutive days overseas must be met. Other AGR members overseas for any other reason are not eligible for the ARCOTR.

(d) The ARCOTR may be awarded retroactively to those personnel who successfully completed AT or ADT on foreign soil in a Reserve status prior to July 11, 1984 provided they have an active status as defined above on or after July 11, 1984.

(e) Soldiers must be credited with completion of at least 10 consecutive duty days outside the 50 States, the District of Columbia and U.S. possessions and territories in the performance of duties in conjunction with Active Army, joint services, or Allied Forces. The day of departure counts; the day of return does not.

(f) The ARCOTR is a training ribbon, which does not conflict with service medals or decorations.

(g) Numerals will be used to denote second and subsequent awards of the ARCOTR. (See § 578.59 Appurtenances to military decorations)

(h) Description. The ribbon is 1⅜ inches in width; however, it is mounted on the ribbon bar horizontally so that the horizontal center stripe is 3/32 inch Old Glory Red with a 3/64 inch White stripe on each side. The remainder of the ribbon is Ultramarine Blue.

§ 578.38 Overseas Service Ribbon.

(a) Criteria. The Overseas Service Ribbon (OSR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of overseas tours.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard and Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who were credited with a normal overseas tour completion before August 1, 1981 provided they had an Active Army status as defined above on or after August 1, 1981.

(c) Soldiers must be credited with a normal overseas tour completion according to AR 614–30. Service member who had overseas service with another branch of service (U.S. Navy, Air Force, or Marine Corps) must be credited with a normal overseas tour completion by that service to qualify for award of the Army OSR.

(d) The OSR will not be awarded for overseas service recognized with another U.S. service medal except under the following circumstances:

(1) If a soldier was credited with an overseas tour for a Permanent Change of Station (PCS) in Germany and during the PCS tour was deployed to an area in support of a designated contingency operation (for example, Operation Joint Endeavor or Operation Desert Storm) he or she would be entitled to the OSR for completion of the PCS tour in Germany and a campaign medal for their participation in the contingency operation, if they met the criteria for the medal.

(2) If a soldiers completes a PCS tour in a long or short tour area per AR 614–30 (for example, Saudi Arabia) and was engaged in direct support of a contingency operation (for example, Operation SOUTHERN WATCH) he or she would be entitled to an OSR for the PCS tour and a campaign medal (for example, AFEM for Operation SOUTHERN WATCH) for participation in the contingency operation, if they met the criteria for the medal.

(e) Numerals will be used to denote second and subsequent awards of the OSR.

(f) Posthumous award of the OSR. For first award of the OSR only, an individual may be posthumously awarded (on or after August 1, 1981) the OSR before completion of the overseas tour, provided the soldier's death is ruled ''Line of duty-Yes.''

(g) Description. The Army Overseas Service ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 3/16 inch National Flag Blue 67124, 5/16 inch Grotto Blue 67165, 1/16 inch Golden Yellow 67104, ¼ inch Brick Red 67113, 1/16 inch Golden Yellow, 5/16 inch Grotto Blue, and 3/16 inch National Flag Blue.

§ 578.39 Army Service Ribbon.

(a) Criteria. The Army Service Ribbon (ASR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of initial entry training.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard, and U.S. Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who completed the required training before August 1, 1981 provided they had an Active Army status as defined above on or after August 1, 1981.

(c) Officers will be awarded this ribbon upon successful completion of their basic/orientation or higher level course. For those officer personnel assigned a specialty, special skill identifier, or MOS based on civilian or other service acquired skills, this ribbon will be awarded upon honorable completion of 4 months active service.

(d) Enlisted soldiers will be awarded this ribbon upon successful completion of their initial MOS producing course. For those enlisted soldiers assigned a MOS based on civilian or other service acquired skills, this ribbon will be awarded on honorable completion of 4 months active service.

(e) Only one award of the ASR is authorized, regardless of whether a soldier completes both officer and enlisted initial entry training.

(f) For first award only, an individual may be posthumously awarded (on or after August 1, 1981) the Army Service Ribbon prior to completion of the requisite training or time in service, provided the soldier's death is ruled ''Line of duty-Yes.''

(g) Description. The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 7/32 inch Scarlet 67111, 5/32 Orange 67110, 3/32 inch Golden Yellow 67104, 1/8 inch Emerald 67128, Ultramarine Blue 67118, 1/8 inch Emerald, 3/32 inch Golden Yellow, 5/32 inch Orange, and 7/32 inch Scarlet.

§ 578.40 Noncommissioned Officer Professional Development Ribbon.

(a) Criteria. The Noncommissioned Officer (NCO) Professional Development Ribbon (NPDR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of Active Army, ARNG, and USAR soldiers for successful completion of designated NCO professional development courses.

(b) Subsequent awards. The NPDR consist of the basic ribbon with numeral devices of 2, 3, or 4, which signify satisfactory completion of the respective levels of NCO professional development courses. Numerals used in conjunction with this service ribbon are the same type as those used for subsequent awards of the Air Medal.

(c) Policy. (1) A change approved in February 1989 completely revamped the wear policy of numerals on ribbons and award suspension elements. Also, simultaneously U.S. Army Training and Doctrine Command (TRADOC) announced that the First Sergeant Course is not a recognized element of the NCO Professional Development Training System. Because of the impact of these two far-reaching policy changes, no grandfathering is allowed for Active Army or RC soldiers concerning the wear of numerals on the NPDR. Only the numerals 2, 3, and 4 are authorized for wear on the ribbon.

(2) Once a service member has been awarded the NPDR upon graduation from Primary Leadership Development Course (PLDC) or Primary Leadership Development Course-RC, subsequent appropriate numerals will be awarded to identify completion of higher level NCO Education System (NCOES) or RC NCOES courses.

(3) Senior NCOs selected by the U.S. Army Sergeants Major Academy (USASMA) who complete equivalent resident courses conducted by the other Services will wear the NPDR with numeral 4.

(4) Soldiers who have been authorized by their local commanders to attend local NCO courses or training conducted by the other Services and who qualify for or are awarded another Service's training ribbon will not wear the other Service's ribbons on the Army uniform.

(5) Soldiers who have attended NCO development courses, other than Senior Level, conducted by another Service while in the Army will not be granted Army course equivalency recognition.

(6) Soldiers must successfully complete one or more of the courses listed in (d) below which are further described in AR 351–1. Graduates of NCO Academy courses conducted prior to 1976 for the Active Army, and 1980 for Reserve Components, will be given credit for the Primary Level only.

(7) Acceptable evidence of graduation is a diploma, certificate, or a letter signed by an appropriate service school official.

(8) Effective March 30, 1989, a service member will be awarded the NPDR with the numeral which identifies the highest level of NCOES or RC-NCOES successfully completed as follows—Bar Ribbon Device=Primary Level; 2=Basic Level; 3=Advanced Level; and 4=Senior Level.

(d) Requirements. Effective August 1, 1981, all Active Army, Army National Guard and Army Reserve soldiers in an active status are eligible for this award for satisfactory completion of the respective NCOES or RC-NCOES courses as follows:

(1) Primary level—Primary NCO Course, Combat Arms (PNCOC), Primary Leadership Course (PLC), Primary Technical Courses (Service School—PTC), and Primary Leadership Development Course (PLDC) for award of the basic ribbon.

(2) Basic level—Basic NCO Course, Combat Arms (BNCOC), Basic Technical Courses (Service School—BTC), and Basic NCO Course (CS/CSS-BNCOC) for award of numeral 2.

(3) Advanced level—Advanced NCO Courses (Service School—ANCOC) for award of numeral 3.

(4) Senior level—U.S. Army Sergeants Major Academy (USASMA) for award of numeral 4. (See paragraph (c)(3) of this section).

(e) Special instructions. Special instructions for ARNG and USAR are as follows:

(1) Primary Level—Primary NCO Course, Combat Arms-Reserve Components (PNCOC-RC), and effective October 1, 1985 Primary Leadership Development Course-Reserve Components (PLDC-RC).

(2) Basic Level—Basic NCO Course-Reserve Components (CS/CSS BNCOC-

RC) through September 30, 1985 (PNCOC-RC and BNCOC-RC combined for CA/CS/CSS). Effective October 1, 1987 Basic NCO Course/Reserve Components (CA, CS, CSS) as developed and implemented.

(f) Description. The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 3/16 inch Green 67129, ⅛ inch Yellow 67108, 3/16 inch Green, 1/16 inch Yellow; ¼ inch Flag Blue 67124, 1/16 inch Yellow, 3/16 inch Green, ⅛ inch Yellow, and 3/16 inch Green.

§ 578.41 Armed Forces Reserve Medal.

(a) Criteria. The Armed Forces Reserve Medal (AFRM) was established by Executive Order 10163, as announced in DA Bulletin 15, 1950, and was amended by Executive Order 10439, announced in DA Bulletin 3, 1953 and Executive Order 13013, dated August 6, 1996.

(b) The reverse side of this medal is struck in two designs for award to personnel whose Reserve Component service has been primarily in the organized Reserve or primarily in the National Guard. The first design portrays the Minute Man from the Organized Reserve Crest; the other design portrays the National Guard insignia.

(c) The AFRM is awarded for honorable and satisfactory service as a member or former member of one or more of the Reserve Components of the Armed Forces of the United States, including the Coast Guard Reserve and the Marine Corps Reserve, for a period of 10 years under the following conditions:

(1) Such years of service must have been performed within a period of 12 consecutive years.

(2) Each year of active or inactive status honorable service prior to July 1, 1949 in any Reserve Component listed in AR 135–180, will be credited toward award. For service performed on or after July 1, 1949, a member must accumulate, during each anniversary year, a minimum of 50 retirement points as prescribed in AR 135–180.

(3) Service in a regular component of the Armed Forces, including the Coast Guard, is excluded except that service in a Reserve Component which is concurrent in whole or in part with service in a regular component will be included. (Example: regular component enlisted soldier with a Reserve commission.)

(4) Any period during which Reserve service is interrupted by one or more of the following will be excluded in computing, but will not be considered as a break in the period of 12 years:

(i) Service in a regular component of the Armed Forces.

(ii) During tenure of office by a State official chosen by the voters of the entire State, territory, or possession.

(iii) During tenure of office of member of the legislative body of the United States or of any State, territory, or possession.

(iv) While service as judge of a court of record of the United States, or of any State, territory, possession, or the District of Columbia.

(5) Members called to active duty. On or after August 1, 1990, the member was called to active duty and served under 10 U.S.C. 12301(a), 12302, 12304, 12406, or, in the case of the U.S. Coast Guard Reserve, 14 U.S.C. 712. The member volunteered and served on active duty in support of specific U.S. military operations or contingencies designated by the Secretary of Defense, as defined in 10 U.S.C. 101(a) (13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are eligible for the award of the ''M'' Device.

(d) The Ten-year-device is authorized for wear on the AFRM to denote each succeeding 10-year period as follows:

(1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(e) ''M'' Device. The ''M'' Device is authorized for wear on the AFRM by members of the Reserve Components who are called or who volunteer and serve or active duty in support of specific U.S. military operations or contingencies designed by the Secretary of Defense, as defined in of 10 U.S.C. 101(a)(13).

(1) When a member qualifies for the ''M'' Device, the Bronze ''M'' shall be awarded, positioned on the ribbon and medal, and a number shall be included on the ribbon and medal. No more than one AFRM may be awarded to any one person. Multiple periods of service during one designated contingency (under provisions of § 578.41(c) shall count as one ''M'' Device award.

(2) If no ''M'' Device is authorized, the appropriate hourglass shall be positioned in the center of the ribbon. If no hourglass is authorized, the ''M'' Device shall be positioned in the center of the ribbon, followed by Arabic numerals indicating the number of times the device has been awarded, starting with the second award, no number is worn for the first award.

(3) If both the hourglass and the ''M'' Device are awarded, the hourglass shall be positioned in first position on the ribbon (at the wearer's right), the ''M'' Device in the middle position, and the number of times the ''M'' Device has been awarded in the remaining position (at the wearer's left).

(f) Description. The medal is Bronze, 1¼ inches in diameter, with a flaming torch in front of a crossed powder horn and a bugle within a circle composed of thirteen stars and thirteen rays. On the reverse is a different design for each of the reserve components. The reverse of all medals have the inscription ''ARMED FORCES RESERVE'' around the rim. Organized Reserve: On a wreath, the Lexington Minuteman statue as it stands on the Common in Lexington, Massachusetts encircled by thirteen stars. National Guard: The National Guard insignia (two crossed fasces superimposed on an eagle displayed with wings reversed. Air Force Reserve: The crest from the Air Forces seal (on a wreath, an eagle displayed in front of a cloud form). Naval Reserve: The center device of the Department of the Navy seal (an eagle displayed on an anchor in front of a ship in full sail). Marine Corps Reserve: The Marine Corps insignia (eagle perched on a globe superimposed on an anchor). Coast Guard Reserve: The central design of the Coast Guard seal (crossed anchors superimposed by a shield within an annulet).

(1) The devices are Bronze hourglass to indicate 10 years service; silver hourglass to indicate 20 years service; gold hourglass to indicate 30 years service; letter ''M'' to indicate mobilization in support of U.S. Military operations or contingencies designated by the Secretary of Defense; and a numeral to indicate number of times mobilized.

(2) The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Bluebird 67117; 1/32 inch Chamois 67142; 1/16 inch Bluebird; 1/32 inch Chamois; 1/16 inch Bluebird; ⅜ inch Chamois; center ⅛ inch Bluebird; ⅜ inch Chamois; 1/16 inch Bluebird; 1/32 inch Chamois; 1/16 inch Bluebird; 1/32 inch Chamois; and 1/16 inch Bluebird.

§ 578.42 Korean Service Medal.

(a) Criteria. The Korean Service Medal (KSM) was established by Executive Order 10179, dated November 8, 1950. It is awarded for service between June

27, 1950 and July 27, 1954, under any of the following conditions:

(1) Within the territorial limits of Korea or in waters immediately adjacent thereto.

(2) With a unit under the operational control of the Commander in Chief, Far East, other than one within the territorial limits of Korea, which has been designated by the Commander in Chief, Far East, as having directly supported the military efforts in Korea.

(3) Was furnished an individual certificate by the Commander in Chief, Far East, testifying to material contribution made in direct support of the military efforts in Korea.

(b) The service prescribed must have been performed under any of the following conditions:

(1) On permanent assignment.

(2) On temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy under conditions other than those prescribed in paragraphs (a)(1) and (2) of this section, provided a combat decoration has been awarded or an individual certificate has been furnished by the commander of an independent force or of a division, ship, or air group, or comparable or higher unit, testifying to such combat credit.

(c) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evader or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control. (§ 578.59 Appurtenances to military decorations)

(d) The arrowhead device is authorized for wear on the KSM to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. Additional information on the arrowhead device is in § 578.59.

(e) Description. The medal is Bronze, 1¼, inches in diameter, a Korean gateway, encircled by the inscription ''KOREAN SERVICE''. On the reverse is the Korean symbol taken from the center of the Korean National flag with the inscription ''UNITED STATES OF AMERICA'' and a spray of oak and laurel encircling the design. The ribbon is 1⅜ inches wide and consisting of the following stripes: 1/32 inch White 67101; 19/32 inch Bluebird 67117; center ⅛ inch White; 19/32 inch Bluebird; and 1/32 inch White.

§ 578.43 Medal of Humane Action.

(a) Criteria. The Medal of Humane Action was established by the act of Congress July 20, 1949 (63 Stat. 477). It is awarded to members of the Armed Forces of the United States and to other persons when recommended for meritorious participation, for service while participating in the Berlin airlift or in direct support thereof.

(b) Service must have been for at least 120 days during the period June 26, 1948 and September 30, 1949, inclusive, with the following prescribed boundaries of area of Berlin airlift operations:

(1) Northern boundary. 54th parallel north latitude;

(2) Eastern boundary. 14th meridian east longitude;

(3) Southern boundary. 48th parallel north latitude;

(4) Western boundary. 5th meridian west longitude.

(c) Posthumous award may be made to any person who lost his life while, or as a direct result of, participating in the Berlin airlift, without regard to the length of such service, if otherwise eligible.

(d) See DA Pamphlet 672–1 for the list of Army units entitled to the Berlin Airlift Device.

(e) Description. The medal is Bronze is 1¼, inches in diameter. The miniature medal is ⅝ inch in diameter. On the obverse, in the center, a C–54 airplane (as viewed from above) within a wreath of wheat connected at the bottom by a coat of arms. On the reverse, an eagle, shield and arrows from the seal of the DOD, beneath the words ''FOR HUMANE ACTION'' and above the inscription in four lines, ''TO SUPPLY NECESSITIES OF LIFE TO THE PEOPLE OF BERLIN GERMANY''. The ribbon to the Medal for Humane Action is 1⅜ inches in width and consists of the following stripes: 9/32 inch black; 1/16 inch white; 9/32 inch teal blue; 3/64 inch white; 1/32 inch scarlet; 3/64 inch white; 9/32 inch teal blue; 1/16 inch white; and 9/32 inch black.

§ 578.44 Army of Occupation Medal.

(a) Criteria. The Army of Occupation Medal (AOM) was established by War Department General Orders (WDGO) 32, 1946. It is awarded for service for 30 consecutive days at a normal post of duty (as contrasted to inspector, visitor, courier, escort, passenger, temporary duty, or detached service) while assigned to any of the following:

(1) Army of Occupation of Germany (exclusive of Berlin) between May 9, 1945 and May 5, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(2) Service for the prescribed period with a unit which has been designated in DA general orders as having met the requirement for the Berlin airlift device.

(3) Service for which the individual was awarded the Berlin airlift device in orders issued by appropriate field authority.

(4) Army of Occupation of Austria between May 9, 1945 and July 27, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(5) Army of Occupation of Berlin between May 9, 1945 and October 2, 1990. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(6) Army of Occupation Italy between May 9, 1945 and September 15, 1947 in the compartment of Venezia Giulia E. Zara or Province of Udine, or with a unit in Italy as designated in DAGO 4, 1947. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(7) Army of Occupation of Japan between September 3, 1945 and April 27, 1952 in the four main islands of Hokkaido, Honshu, Shikoku, and Kyushu, the surrounding smaller islands of the Japanese homeland, the Ryukyu Islands, and the Bonin-Volcano Islands. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945. In addition, service which meets the requirements for the

KSM as prescribed in § 578.42 will not be counted in determining eligibility for this medal.)

(8) Army of Occupation of Korea between September 3, 1945 and June 29, 1949, inclusive. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945.)

(b) Clasps and the Berlin airlift device are authorized for wear on the Army of Occupation Medal. They are as follows:

(1) *Army of Occupation Medal Clasp.* Soldiers who served in the European Theater during the occupation of Europe will wear the clasp inscribed ''Germany.'' Soldiers who served in the Far East Theater during the occupation of the Far East will wear the Clasp inscribed ''Japan.'' Clasps bearing other inscriptions are not authorized. (The Army of Occupation Medal Clasp is described in § 578.59.)

(2) *Berlin Airlift Device.* This device is awarded for service of 92 consecutive days with a unit credited with participation in the Berlin airlift, or by competent field authority on an individual basis. Qualifying service must have been entirely within the period from June 26, 1948 to September 30, 1949, inclusive. Orders announcing award of the Berlin Airlift device will specifically award the Army of Occupation Medal to persons not otherwise eligible therefor.

(c) Description. The medal is Bronze, 1¼ inches in width. On the obverse, the Remagen Bridge abutments below the words ''ARMY OF OCCUPATION''. On the reverse, Fujiyama with a low hanging cloud over two Japanese junks above a wave scroll and the date ''1945''. A Bronze clasp ⅛-inch wide and 1½ inches in length with the word ''GERMANY'' or ''JAPAN'' is worn on the suspension ribbon to indicate service in Europe or the Far East. NAVY: On the obverse is Neptune mounted on a composite creature of a charging horse and a sea serpent with a trident grasped in right hand above wave scrolls. Around the bottom of the medal are the words ''OCCUPATION SERVICE''. The reverse is the same as the China Service Medal and is an eagle perched on the shank of a horizontal anchor with a branch of laurel entwined around the anchor. On the left is the word ''FOR'' and to the right is the word ''SERVICE'' and around the top is the inscription ''UNITED STATES NAVY''. MARINE CORPS: The medal for the Marine Corps is the same as the Navy, except the inscription around the top of the reverse is ''UNITED STATES MARINE CORPS''. The ribbon is the same for both medals and is 1⅜ inches wide and consists of the following stripes: 3/16-inch White 67101; ½-inch Black 67138; ½-inch Scarlet 67111; and 3/16-inch White.

§ 578.45 World War II Victory Medal.

(a) Criteria. The World War II Victory Medal was established by the act of Congress July 6, 1945 (59 Stat. 461). It is awarded for service between December 7, 1941 and December 31, 1946, both dates inclusive.

(b) Description. The medal is Bronze, 1⅜ inches in width. On the obverse is a figure of Liberation standing full length with head turned to dexter looking to the dawn of a new day, right foot resting on a war god's helmet with the hilt of a broken sword in the right hand and the broken blade in the left hand, the inscription ''WORLD WAR II'' placed immediately below the center. On the reverse are the inscriptions ''FREEDOM FROM FEAR AND WANT'' and ''FREEDOM OF SPEECH AND RELIGION'' separated by a palm branch, all within a circle composed of the words ''UNITED STATES OF AMERICA 1914 1945''. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅜ inch double rainbow in juxtaposition (blues, greens, yellows, reds (center), yellows greens and blues); 1/32 inch White 67101; center 9/16 inch Old Glory Red 67156; 1/32 inch White; and ⅜ inch double rainbow in juxtaposition. The rainbow on each side of the ribbon is a miniature of the pattern used in the WWI Victory Medal.

§ 578.46 European-African-Middle Eastern Campaign Medal.

(a) Criteria. The European-African-Middle Eastern Campaign Medal was established by Executive Order 9265, announced in WD Bulletin 56, 1942, as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the European-African-Middle Eastern Theater between December 7, 1941 and November 8, 1945 under any of the conditions as prescribed in § 578.47 (Asiatic-Pacific Campaign Medal).

(b) The boundaries of European-African-Middle Eastern Theater are as follows:

(1) Eastern boundary. The eastern boundary is coincident with the western boundary of the Asiatic-Pacific Theater (§ 578.48).

(2) Western boundary. The western boundary is coincident with the eastern boundary of the American Theater (§ 578.48 American Campaign Medal).

(c) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to, and present for duty with, a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps or higher unit or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.59)

(e) Description. The Bronze medal is 1¼ inches in width. On the obverse is a LST landing craft and troops landing under fire with an airplane in the background below the words ''EUROPEAN AFRICAN MIDDLE EASTERN CAMPAIGN''. On the reverse, an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Brown 67136; 1/16 inch Irish Green 67189; 1/16 inch White 67101; 1/16 inch Scarlet 67111; ¼ inch Irish Green; center ⅛ inch triparted Old Glory Blue 67178, White and Scarlet; ¼ inch Irish Green; 1/16 inch White; 1/16 inch Black 67138; 1/16 inch White; and 3/16 inch Brown.

§ 578.47 Asiatic-Pacific Campaign Medal.

(a) Criteria. The Asiatic-Pacific Campaign Medal was established by Executive Order 9265 (WD Bulletin 56, November 6, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service with the Asiatic-Pacific Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment in the Asiatic-Pacific Theater.

(2) In a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps or higher unit or independent force showing that he actually participated in combat.

(b) Boundaries of Asiatic-Pacific Theater—(1) Eastern boundary. Coincident with the western boundary of the American Theater (§ 578.48 American Campaign Medal).

(2) Western boundary. From the North Pole south along the 60th meridian east longitude to its intersection with the east boundary of Iran, thence south along the Iran boundary to the Gulf of Oman and the intersection of the 60th meridian east longitude, thence south along the 60th meridian east longitude to the South Pole.

(c) One bronze service star is authorized for each campaign under the conditions outlined in § 578.46 European-African-Middle Eastern Campaign Medal. (Service stars are described in § 578.59).

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.59).

(e) Description. The Bronze medal is 1¼ inches in width. On the obverse is a tropical landing scene with a battleship, aircraft carrier, submarine and an aircraft in the background with landing troops and palm trees in the foreground with the words ''ASIATIC PACIFIC CAMPAIGN'' above the scene. On the reverse, an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Yellow 67108; 1/16 inch White 67101; 1/16 inch Scarlet 67111; 1/16 inch White; ¼ inch Yellow; center ⅛ tripartd Old Glory Blue 67178, White and Scarlet; ¼ inch Yellow; 1/16 inch White; 1/16 inch Scarlet; 1/16 inch White; and 3/16 inch Yellow.

§ 578.48 American Campaign Medal.

(a) Criteria. The American Campaign Medal was established by Executive Order 9265 (WD Bulletin. 56, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the American Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment outside the continental limits of the United States.

(2) Permanently assigned as a member of a crew of a vessel sailing ocean waters for a period of 30 consecutive days or 60 nonconsecutive days.

(3) Outside the continental limits of the United States in a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(4) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps, higher unit, or independent force that the soldier actually participated in combat.

(5) Within the continental limits of the United States for an aggregate period of 1 year.

(b) The boundaries of American Theater are as follows:

(1) Eastern boundary. The eastern boundary is located from the North Pole, south along the 75th meridian west longitude to the 77th parallel north latitude, thence southeast through Davis Strait to the intersection of the 40th parallel north latitude and the 35th meridian west longitude, thence south along the meridian to the 10th parallel north latitude, thence southeast to the intersection of the Equator and the 20th meridian west longitude, thence south along the 20th meridian west longitude to the South Pole.

(2) Western boundary. The western boundary is located from the North Pole, south along the 141st meridian west longitude to the east boundary of Alaska, thence south and southeast along the Alaska boundary to the Pacific Ocean, thence south along the 130th meridian to its intersection with the 30th parallel north latitude, thence southeast to the intersection of the Equator and the 100th meridian west longitude, thence south to the South Pole.

(c) One bronze service star is authorized for wear on the American Campaign Medal to denote participation in the antisubmarine campaign. The individual must have been assigned or attached to, and present for duty with, a unit credited with the campaign. Information on the antisubmarine campaign.

(d) Description. The Bronze medal is 1¼ inches in width. On the obverse is a Navy cruiser under full steam with a B–24 airplane flying overhead with a sinking enemy submarine in the foreground on three wave symbols, in the background a few buildings representing the arsenal of democracy, above the scene the words ''AMERICAN CAMPAIGN''. On the reverse an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Oriental Blue 67172; 1/16 inch White 67101; 1/16 inch Black 67138; 1/16 inch Scarlet 67111; 1/16 inch White; 3/16 inch Oriental Blue; center ⅛ tripartd Old Glory Blue 67178, White and Scarlet; 3/16 inch Oriental Blue; 1/16 inch White; 1/16 inch Scarlet; 1/16 inch Black; 1/16 inch White; and 3/16 inch Oriental Blue.

§ 578.49 Women's Army Corps Service Medal.

(a) Criteria. The Women's Army Corps Service Medal was established by Executive Order 9365, announced in WD Bulletin 17, 1943. It is awarded for service in both the Women's Army Auxiliary Corps between July 10, 1942 and August 31, 1943 and the Women's Army Corps between September 1, 1943 and September 2, 1945.

(b) Description. A Bronze medal, 1¼ inches in diameter, with the head of Pallas Athene in profile facing right, superimposed on a sheathed sword cross with oak leaves and a palm branch within a circle composed of the words ''WOMEN'S'' in the upper half, and in the lower half ''ARMY CORPS''. On the reverse, within an arrangement of 13 stars, is a scroll bearing the words ''FOR SERVICE IN THE WOMEN'S ARMY AUXILIARY CORPS'' in front of the letters ''U S'' in lower relief. At the top and perched on the scroll is an eagle with wings elevated and displayed and at the bottom, the date ''1942–1943''. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Old Gold 67105; 1⅛ inch Mosstone Green 67127; and ⅛ inch Old Gold.

§ 578.50 American Defense Service Medal.

(a) The American Defense Service Medal (ADSM) was established by Executive Order 8808, announced in WD Bulletin 17, 1941. It is awarded for service between September 8, 1939 and December 7, 1941 under orders to active duty for a period of 12 months or longer.

(b) A clasp, with the inscription ''Foreign Service'', is worn on the ADSM to denote service outside the continental limits of the United States, including service in Alaska, as a member of a crew of a vessel sailing ocean waters, flights over ocean waters, or as an assigned member of an organization stationed outside the continental limits of the United States. Possession of a clasp is denoted by the wearing of a bronze service star on the service ribbon. (*See* § 578.59 for

descriptions of the clasp and service stars.)

(c) Description. The Bronze medal is 1¼ inches in width. On the obverse is a female Grecian figure symbolic of defense, holding in her sinister hand an ancient war shield in reverse and her dexter hand brandishing a sword above her head, and standing upon a conventionalized oak branch with four leaves. Around the top is the lettering ''AMERICAN DEFENSE''. On the reverse is the wording ''FOR SERVICE DURING THE LIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON SEPTEMBER 8,1939 OR DURING THE UNLIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON MAY 27,1941'' above a seven-leafed spray of laurel. The foreign service clasp is a Bronze bar ⅛ inch in width and 1½ inches in length with the words ''FOREIGN SERVICE'', with a star at each end of the inscription. The foreign service clasp is placed on the suspension ribbon of the medal. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Golden Yellow 67104; ⅛ inch triparted Old Glory Blue 67178; White 67101; and Scarlet 67111; center ¾inch Golden Yellow; ⅛ inch triparted Scarlet; White; and Old Glory Blue 67178; and 3/16 inch Golden yellow.

§ 578.51 Army of Occupation of Germany Medal.

(a) Criteria. The Army of Occupation of Germany Medal was established by the act of November 21, 1941, (55 Stat. 781). It is awarded for service in Germany or Austria-Hungary between November 12, 1918 and July 11, 1923.

(b) Description. The medal is Bronze and 1¼ inches in diameter. On the obverse is a profile of General John J. Pershing, encircled by four stars indicating his insignia of grade as Commanding General of the Field Forces. In the lower left is the inscription ''GENERAL JOHN J. PERSHING'' and on the right is a laurel wreath superimposed by a sword with the dates ''1918'' and ''1923'' enclosed by the wreath. The reverse shows the American eagle perched with outspread wings standing on the Castle Ehrenbreitstein, encircled by the words ''U.S. ARMY OF OCCUPATION OF GERMANY'' and three stars at the bottom of the medal. The ribbon is 1⅜ inches in width consisting of the following stripes: 1/16 inch Ultramarine Blue 67118; 1/16 inch Scarlet 67111; 3/16 inch White 67101; ¾ inch Black 67138 (center); 3/16 inch White; 1/16 inch Scarlet; 1/16 inch Ultramarine Blue.

§ 578.52 World War I Victory Medal.

(a) The World War I Victory Medal was established by WDGO 48, 1919. The medal is awarded for service between April 6, 1917 and November 11, 1918 or with either of the following expeditions:

(1) American Expeditionary Forces in European Russia between November 12, 1918 and August 5, 1919.

(2) American Expeditionary Forces Siberia between November 23, 1918 and April 1, 1920.

(b) Battle clasps, service clasps, and service stars are authorized appurtenances to be worn on the World War I Victory Medal. (*See* § 578.59 for specific details.)

(c) Description. The medal is Bronze and 1⅜ inches in diameter. On the obverse is a winged Victory, standing full length and full face. On the reverse is the inscription ''THE GREAT WAR FOR CIVILIZATION'' and the United States shield with the letters ''U.S.'' surmounted by a fasces, and on either side the names of the allied and associated nations. The lapel button is a five-pointed star ⅝-inch in diameter on a wreath with the letters ''U.S.'' in the center. The medal is suspended by a ring from a silk ribbon 1⅜ inches in width, representing two rainbows placed in juxtaposition and having the red in the middle.

§ 578.53 Service medals and ribbons no longer available for issue.

The medals listed below are no longer issued by HQDA. They may be purchased if desired from civilian dealers in military insignia and some Army exchanges.

(a) Civil War Campaign Medal. This medal was established by WDGO 12, 1907. It is awarded for service between April 15, 1861 and April 9, 1865, or in Texas between April 15, 1861 and August 20, 1866.

(b) Indian Campaign Medal. This medal was established by WDGO 12, 1907. It is awarded for service in a campaign against any tribes or in any areas listed below, during the indicated period.

(c) Spanish Campaign Medal. This medal was established by WDGO 5, 1905. It is awarded for service ashore in, or on the high seas en route to, any of the following countries:

(1) Cuba between May 11 and July 17, 1898.

(2) Puerto Rico between July 24 and August 13, 1898.

(3) Philippine Islands between June 30 and August 16, 1898.

(d) Spanish War Service Medal. This medal was established by the act of July 9, 1918 (40 Stat. 873). It is awarded for service between April 20, 1898 and April 11, 1899, to persons not eligible for the Spanish Campaign Medal.

(e) Army of Cuban Occupation Medal. This medal was established by WDGO 40, 1915. It is awarded for service in Cuba between July 18, 1898 and May 20, 1902.

(f) Army of Puerto Rican Occupation Medal. This medal was established by War Department Compilation of Orders, changes 15, February 4, 1919. It is awarded for service in Puerto Rico between August 14 and December 10, 1898.

(g) Philippine Campaign Medal. This medal was established by WDGO 5, 1905. It is awarded for service in the Philippine Islands under any of the following conditions:

(1) Ashore between February 4, 1899 and July 4, 1902.

(2) Ashore in the Department of Mindanao between February 4, 1899 and December 31, 1904.

(3) Against the Pulajanes on Leyte between July 20, 1906 and June 30, 1907, or on Samar between August 2, 1904 and June 30, 1907.

(4) With any of the following expeditions:

(i) Against Pala on Jolo between April and May 1905.

(ii) Against Datu Ali on Mindanao in October 1905.

(iii) Against hostile Moros on Mount Bud-Dajo, Jolo, March 1906.

(iv) Against hostile Moros on Mount Bagsac, Jolo, between January and July, 1913.

(v) Against hostile Moros on Mindanao or Jolo between 1910 and 1913.

(5) In any action against hostile natives in which U.S. troops were killed or wounded between February 4, 1899 and December 31, 1913.

(h) Philippine Congressional Medal. This medal was established by the act of June 29, 1906 (34 Stat. 621). It is awarded for service meeting all the following conditions:

(1) Under a call of the President entered the Army between April 21 and October 26, 1898.

(2) Served beyond the date on which entitled to discharge.

(3) Ashore in the Philippine Islands between February 4, 1899 and July 4, 1902.

(i) China Campaign Medal. This medal was established by WDGO 5, 1905. It is awarded for service ashore in China with the Peking Relief Expedition between June 20, 1900 and May 27, 1901.

(j) Army of Cuban Pacification Medal. This medal was established by WDGO 96, 1909. It is awarded for service in Cuba between October 6, 1906 and April 1, 1909.

(k) Mexican Service Medal. This medal was established by WDGO 155, 1917. It is awarded for service in any of the following expeditions or engagements:

(1) Vera Cruz Expedition in Mexico between April 24 and November 26, 1914.

(2) Punitive Expedition in Mexico between March 14, 1916 and February 7, 1917.

(3) Buena Vista, Mexico, December 1, 1917.

(4) San Bernardino Canon, Mexico, December 26, 1917.

(5) Le Grulla, Texas, January 8 and 9, 1918.

(6) Pilares, Mexico, March 28, 1918.

(7) Nogales, Arizona, November 1 to 5, 1915 or August 27, 1918.

(8) El Paso, Texas, and Juarez, Mexico, June 15 and 16, 1919.

(9) Any action against hostile Mexicans in which U.S. troops were killed or wounded between April 12, 1911 and February 7, 1917.

(l) Mexican Border Service Medal. This medal was established by the act of July 9, 1918 (40 Stat. 873). It was awarded for service between May 9, 1916 and March 24, 1917, or with the Mexican Border Patrol between January 1, 1916 and April 6, 1917, to persons not eligible for the Mexican Service Medal.

§ 578.54 United States Unit Awards.

(a) Intent. Awards are made to organizations when the heroism displayed or meritorious service performed is a result of group effort.

(b) Announcement. All unit awards approved at HQDA will be announced in HQ, DAGO.

(c) Presentation. Unit awards will be presented at an appropriate formal ceremony at the earliest practicable date after the award is announced. FM 22–5 prescribes the ceremony for presentation of unit awards at a formal review.

§ 578.55 Presidential Unit Citation.

(a) Criteria. The Presidential Unit Citation (PUC) (re-designated from the Distinguished Unit Citation on November 3, 1966) is awarded to unit of the Armed Forces of the United States and cobelligerent nations for extraordinary heroism in action against an armed enemy occurring on or after December 7,1941. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under extremely difficult and hazardous conditions as to set it apart from and above other units participating in the same campaign. The degree of heroism required is the same as that which would warrant award of a Distinguished Service Cross to an individual. Extended periods of combat duty or participation in a large number of operational missions, either ground or air is not sufficient. This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Distinguished Service Cross performance for extended periods except under the most unusual circumstances. Only on rare occasions will a unit larger than a battalion qualify for award of this decoration.

(b) Awarding authorities. Approval authority for award of the PUC is the President of the United States who delegated authority to the Service Secretaries.

(c) Award elements. The award elements for the PUC (Army) are as follows:

(1) PUC Streamer (Army);

(2) PUC Emblem (Army);

(3) PUC Certificate and Citation;

(4) DAGO.

(d) Description. The PUC Emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves, which encloses an ultramarine blue 67118 ribbon.

§ 578.56 Valorous Unit Award

(a) Criteria. The Valorous Unit Award (VUA) may be awarded to units of the Armed Forces of the United States for extraordinary heroism in action against an armed enemy of the United States while engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party for actions occurring on or after August 3, 1963.

(b) Requirements. The VUA requires a lesser degree of gallantry, determination, and esprit de corps than that required for the Presidential Unit Citation. Nevertheless, the unit must have performed with marked distinction under difficult and hazardous conditions in accomplishing its mission so as to set it apart from and above other units participating in the same conflict. The degree of heroism required is the same as that which would warrant award of the Silver Star to an individual. Extended periods of combat duty or participation in a large number of operational missions, either ground or air is not sufficient.

(c) Unit eligibility. This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Silver Star performance for extended periods except under the most unusual circumstances. Only on rare occasions will a unit larger than a battalion qualify for this award.

(d) Awarding authorities. Approval authority for the VUA is the Chief of Staff, Army, on behalf of the Secretary of the Army. Recommendations for award of the VUA will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the CSA for final action.

(e) Award elements. The award elements for the VUA are as follows:

(1) VUA Streamer;

(2) VUA Emblem;

(3) VUA Certificate and Citation;

(4) DAGO.

(f) Description. The VUA emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves which encloses a ribbon of the pattern of the Silver Star Medal ribbon centered on a red ribbon. The stripe dimensions of the ribbon are: 3/8 inch old glory red 67156; 1/16 inch ultramarine blue 67118; 1/164 inch white 67101; 3/32 inch ultramarine blue 67118; 3/32 inch white 67101; center 3/32 inch old glory red 67156; 3/32 inch white 67101; 3/32 inch ultramarine blue 67118; 1/64 inch white 67101; 1/16 inch ultramarine blue; and 3/8 inch old glory red 67156. The streamers are the same pattern as the silver star medal ribbon.

578.57 Meritorious Unit Commendation.

(a) Criteria. (1) The Meritorious Unit Commendation (MUC) (Army) (previously called the Meritorious Service Unit Plaque) is awarded to units for exceptionally meritorious conduct in the performance of outstanding services for at least 6 continuous months during the period of military operations against an armed enemy occurring on or after January 1, 1944. Service in a combat zone is not required, but must be directly related to the combat effort. Units based in the continental United States are excluded from this award, as are other units outside the area of operation. The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set it apart and above other units with similar missions. The degree of achievement required is the same as that which would warrant award of the Legion of Merit to an individual. Only in rare cases will a unit larger than a battalion qualify for award of this

decoration. For services performed during World War II, awards will be made only to service units and only for services performed between January 1, 1944 and September 15, 1946.

(2) Effective March 1, 1961, the MUC was authorized for units and/or detachments of the Armed Forces of the United States for exceptionally meritorious conduct in performance of outstanding services for at least 6 continuous months in support of military operations. Service(s), as used in this paragraph, is interpreted to relate to combat service support type activities and not to the type of activities performed by senior headquarters, combat, or combat support units.

(b) Awarding authorities. Approval authority for the MUC is the Chief of Staff, Army, on behalf of the Secretary of the Army. Recommendations for award of the MUC will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the CSA for final action.

(c) Award elements. The award elements for the MUC are as follows:

(1) MUC Streamer;

(2) MUC Emblem;

(3) MUC Certificate and Citation; and

(4) DAGO.

(d) Description. The MUC emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch ide gold frame with laurel leaves which encloses a scarlet 67111 ribbon. The previously authorized emblem was a gold color embroidered laurel wreath, 1 5/8 inches in diameter on a 2 inch square of olive drab cloth.

§ 578.58 Army Superior Unit Award.

(a) Criteria. The Army Superior Unit Award (ASUA) was created in 1985 to recognize outstanding meritorious performance of a unit during peacetime of a difficult and challenging mission under extraordinary circumstances. Circumstances may be deemed to be extraordinary when they do not represent the typical day-to-day circumstances under which the unit normally performs, or may reasonably be expected to perform, its peacetime mission. The following additional criteria also applies:

(1) The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set the unit apart from and above other units with similar missions. For the purpose of this award, peacetime is defined as any period during which wartime or combat awards are not authorized in the geographical area in which the mission was executed. The ASUA may be awarded to units that distinguish themselves while conducting humanitarian missions for a minimum of three months, however, the ASUA will not be awarded if the same act or period of service has already been recognized by another unit award.

(2) The award applies to both TO&E units and TDA organizations of battalion size or equivalent. TDA organizations may be considered for this award, even if comprised mostly of civilians. As an exception to policy, organizations larger than battalion equivalent size may also be submitted, but the submitting headquarters must take care to highlight the logic associated with the request to justify an exception to policy.

(b) Approval authority. The approval authority for the ASUA is the Chief of Staff, Army on behalf of the Secretary of the Army. Recommendations for award of the ASUA will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the CSA for final action.

(c) Award elements. The award elements for the ASUA are as follows: ASUA Streamer; ASUA Emblem; ASUA Certificate and Citation; DAGO; Army Superior Unit Award Lapel Pin. The lapel pin is authorized for issue and wear by Department of the Army civilians in the employ of the decorated unit. Those individuals employed with the unit during the cited period may wear the lapel pin permanently. Those currently employed with a decorated unit, but who were not employed during the cited period may wear the lapel pin on a temporary basis as long as they remain employed by the unit. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel. Permanent and temporary wear is governed by the provisions of AR 670–1.

(d) Description. The ASUA emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves which encloses a ribbon of the following pattern: 17/32 inch scarlet 67111; 1/32 inch yellow 67103; 1/4 inch green 67129; 1/32 inch yellow 67103; and 17/32 inch scarlet 67111. The streamers are the same pattern as the emblem ribbon.

§ 578.59 Appurtenances to military decorations.

Appurtenances are devices affixed to service or suspension ribbons or worn instead of medals or ribbons. They are worn to denote additional awards, participation in a specific event, or other distinguished characteristics of the award. The following is a list of authorized appurtenances:

(a) Oak Leaf Clusters. A bronze or silver twig of four oak leaves with three acorns on the stem, 1 3/32 inch long for the suspension ribbon, and 5/16 inch long for the service ribbon bar and the unit award emblem is issued to denote award of second and succeeding awards of decorations (other than the Air Medal), the Army Reserve Components Achievement Medal, and unit awards. A silver Oak Leaf Cluster is worn instead of five bronze Oak Leaf Clusters. If the number of authorized Oak Leaf Clusters exceeds four and will not fit on a single ribbon, a second ribbon is authorized for wear. When wearing the second ribbon, place it after the first ribbon; the second ribbon counts as one award. Wear no more than four Oak Leaf Clusters on each ribbon. If the receipt of future awards reduces the number of Oak Leaf Clusters sufficiently (that is, a silver oak leaf cluster for five awards), remove the second ribbon and place the appropriate number of devices on a single ribbon. Oak Leaf Clusters are not issued for the Legion of Merit awarded in degrees to foreign nationals. Five-sixteenths inch Oak Leaf Clusters joined together in series of 2, 3, and 4 clusters are authorized for optional purchase and wear on service ribbons, and unit award emblems.

(b) Numerals. Arabic numerals 3/16 inch in height are issued instead of a medal or ribbon for second and succeeding awards of the Air Medal, Multinational Force and Observers Medal, Overseas Service Ribbon and the Army Reserve Components Overseas Training Ribbon. The ribbon denotes the first award and numerals starting with the numeral 2 denote the number of additional awards. The numeral worn on the NCO Professional Development Ribbon will denote the highest completed level of NCO development. The numerals are to be centered on the suspension ribbon of the medal or the ribbon bar.

(c) ''V'' device. The ''V'' (Valor) device is a bronze block letter, V, 1/4 inch high with serifs at the top of the members. It is worn to denote participation in acts of heroism involving conflict with an armed enemy. It was originally worn only on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Effective February 29, 1964, the ''V'' device was also authorized for wear on the Air Medal and Army Commendation Medal for heroic acts or valorous deeds not warranting awards of the Distinguished Flying Cross or the Bronze Star Medal with ''V'' device.

Effective June 25, 1963, the ''V'' device was authorized additionally for wear on the Joint Service Commendation Medal when the award is for acts of valor (heroism) during participation in combat operations. In the case of multiple ''V'' devices for the same award, only one ''V'' device is worn on the service ribbons.

(d) ''M'' device. The ''M'' (Mobilization) Device is a bronze letter, M, ¼ inch high with serifs at the bottom of the members. It is authorized for wear on the Armed Forces Reserve Medal by members of the Reserve Components who are called or who volunteer and serve on active duty in support of specific U.S. Military operations or contingencies designated by the Secretary of Defense, as defined in 10 U.S.C. 101(a) (13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are also eligible for award of the

''M'' Device.

(e) Clasps. They are authorized for wear on the Army Good Conduct Medal, World War I Victory Medal, American Defense Service Medal, Army of Occupation Medal, and Antarctica Service Medal. All clasps, except the Army Good Conduct Medal clasp, are worn only on the suspension ribbon of the medal. The clasp are described as follows:

(1) The Army Good Conduct Medal clasp is a bar ⅛ inch by 1⅜ inches, of bronze, silver or gold, with loops indicative of each period of service. Paragraph 4–9 describes the clasps authorized for second and subsequent awards of the Army Good Conduct Medal.

(2) The World War I Victory Medal battle clasps is a bronze bar ⅛ inch by 1½ inches with the name of the campaign or the words ''Defensive Sector,'' and with a star at each end of the inscription. The campaigns are as follows:

(i) Cambrai;
(ii) Somme, Defensive;
(iii) Lys;
(iv) Aisne;
(v) Montdidier-Noyon;
(vi) Champagne-Marne;
(vii) Aisne-Marne;
(viii) Somme, Offensive;
(ix) Oise-Aisne;
(x) Ypres-Lys;
(xi) St. Mihiel;
(xii) Meuse-Argonne;
(xiii) Vittorio-Veneto;
(xiv) Defensive Sector.

(3) The World War I Victory Medal service clasp is a bronze bar ⅛-inch by 1½ inches with the name of the country which the service was performed inscribed thereon. The service clasps authorized are as follows:

(i) England;
(ii) France;
(iii) Italy;
(iv) Russia;
(v) Siberia.

(4) The American Defense Service Medal clasp is a bronze bar ⅛-inch by 1½ inches with the words ''Foreign Service'' and with a star at each end of the inscription.

(5) The Army of Occupation Medal clasp is a bronze bar ⅛-inch by 1½ inches with the word ''Germany'' or ''Japan'' inscribed thereon, to denote occupation duty rendered in Europe and/or the Far East.

(6) The Antarctica Service Medal is a clasp bearing the words ''Wintered Over'' for wear on the suspension ribbon of the medal awarded in bronze for the first winter, in gold for the second winter, and in silver for the third winter.

(f) Service stars. Are worn on campaign and service ribbons to denote an additional award. The service star is a bronze or silver five-pointed star 3/16-inch in diameter. A silver star is worn instead of five bronze service stars. The bronze service star is also affixed to the parachutist badge to denote participation in a combat parachutist jump, retroactive to December 7, 1941. See § 578.71 on Parachutist badges for criteria for award of the combat parachutist badge. See AR 670–1 for proper wear of the service stars. Service stars are authorized for wear on the following campaign and service medals and or ribbons:

(1) World War I Victory Medal;
(2) American Defense Service Medal;
(3) American Campaign Medal;
(4) Asiatic-Pacific Campaign Medal;
(5) European-African-Middle Eastern Campaign Medal;
(6) Korean Service Medal;
(7) Armed Forces Expeditionary Medal;
(8) Vietnam Service Medal;
(9) National Defense Service Medal;
(10) Humanitarian Service Medal;
(11) Prisoner of War Medal;
(12) Southwest Asia Service Medal;
(13) Military Outstanding Volunteer Service Medal.

(g) Arrowhead. The arrowhead is a bronze replica of an Indian arrowhead ¼-inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied assault credit, no assault credit will accrue to the individual soldiers of that unit. It is worn on the service and suspension ribbons of the Asiatic-Pacific Campaign, European-African-Middle Eastern Campaign, Korean Service Medal, Vietnam Service Medal, Armed Forces Expeditionary Medal, and Global War on Terrorism Expeditionary. Only one arrowhead will be worn on any ribbon.

(h) Ten-year device. The Ten-year device is authorized for wear on the Armed Forces Reserve Medal to denote each succeeding 10-year period as follows:

(1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(i) *Berlin Airlift Device.* A gold colored metal miniature of a C–54 type aircraft of ⅜-inch wingspan, other dimensions proportionate. It is worn on the service and suspension ribbons of the Army of Occupation Medal. (See § 578.44 Army of Occupation Medal)

(j) Army Astronaut Device. A gold colored device, 7/16-inches in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

§ 578.60 Service ribbons.

A ribbon identical in color with the suspension ribbon of the service medal it represents, attached to a bar 1⅜ inches in width and ⅜-inch in length, equipped with a suitable attaching device. A service ribbon is issued with each service medal.

§ 578.61 Lapel buttons.

(a) Lapel buttons are miniature replicas of military decorations; service medals and ribbons; and identification badges. Lapel buttons are worn only on civilian clothing.

The buttons will be worn on the left lapel of civilian clothing for male personnel and in a similar location for female personnel.

(b) Lapel buttons for military decorations. Lapel buttons for military decorations are issued in the following two forms:

(1) A rosette, ½-inch in diameter, for the Medal of Honor.

(2) A colored enamel replica (⅛-inch by 21/32-inch) for the service ribbon for other decorations.

(c) Lapel buttons for badges. The only badges that have an approved lapel button are certain identification badges as follows:

(1) Presidential Service Badge;

(2)Vice Presidential Service Badge;

(3) Office of the Secretary of Defense Identification Badge;

(4) Joint Chiefs of Staff Identification Badge; and

(5) Army Staff Identification Badge.

(d) World War I Victory Button. A five-pointed star ⅝-inch in diameter on a wreath with the letters ''US'' in the center. For persons wounded in action, the lapel button is silver; for all others, the lapel button is bronze. Eligibility requirements are the same for the World War I Victory Medal.

(e) Honorable Service Lapel Button (World War II Victory Medal). A button of gold-color metal consists of an eagle perched within a ring composed of a chief and 13 vertical stripes. The button is 7/16-inch high and ⅝-inch wide. Eligibility requirements are honorable Federal military service between September 8, 1939 and December 31, 1946.

(f) Lapel button for service prior to September 8, 1939. (Not issued or sold by the Department of the Army.) A button 7/16-inch high and ⅝-inch wide, of gold-color metal consists of an eagle perched within a ring which displays seven white and six red vertical stripes and a blue chief bearing the words ''National Defense.'' It may be worn only by a person who served honorably before September 8, 1939 as an enlisted man, warrant officer, nurse, contract surgeon, veterinarian, or commissioned officer, in the Regular Army or a Citizen's Military Training Camp for 2 months, or in the National Guard, Enlisted Reserve Corps, or Senior ROTC for 1 year, or in junior ROTC for 2 years.

(g) Army Lapel Button. The Army Lapel Button is a gratuitous issue item made up of a minute man in gold color on a red enamel disk surrounded by 16-pointed gold rays with an outside diameter of 9/16-inch. Eligibility requirements are as follows:

(1) Soldiers transitioning with an honorable characterization of service (those being transferred to another component for completion of a military service obligation, and those receiving an Honorable Discharge Certificate).

(2) Non-adverse separation provision.

(3) Minimum 9 months continuous service—a break is 24 hours or more.

(4) Active Federal service on or after April 1, 1984; or, service in a Ready Reserve unit organized to serve as a unit (National Guard unit or Army Reserve troop program unit) on or after July 1,1986.

(5) Retroactive issuance is not authorized.

(6) No soldier separating from the Service is to be awarded more than one Army Lapel Button.

(h) U.S. Army Retired Lapel Button. Retired Army personnel who are in possession of DD Form 2 (U.S. Uniformed Services Identification Card) (Retired)) are eligible to wear the Army Retired Lapel Button. Commanders will present the U.S. Army Retired Lapel Button to Army personnel at an appropriate ceremony before they retire.

(i) Active Reserve Lapel Button. The Active Reserve Lapel Button is authorized for active membership in the Ready Reserve of the Army. It is made up of a minute man in gold color on a bronze color base and is 11/16-inch in length. The button is an optional purchase item, not issued or sold by the Department of the Army. It is not worn on the uniform.

(j) Lapel Button for Korean Augmentation to the U.S. Army (KATUSA). The KATUSA Lapel Button (KLB) was approved by the Secretary of the Army on March 22, 1988 as a gratuitous issue item. The KLB is a round disk with an outside diameter of 9/16-inch that is comprised of a Korean Taeguk that consists of the characteristics from both the U.S. and Republic of Korea National Flags resting on a white background. The words ''Honorable Service * KATUSA'' are situated on the border of the outer edge of the KLB.

(1) The following requirements must be met to be eligible for award of the KLB:

(i) Individual must have been a Republic of Korea Army soldier who has been assigned as a KATUSA soldier to a U.S. Army unit or activity for minimum of 9 months of continuous honorable active service on or after March 22, 1988.

(ii) Must be separating from active duty with the Republic of Korea Army.

(iii) Disqualifying characterization of service for the award of the KLB is identical with that used for the Army Lapel Button.

(2) Issuance requirements are as follows:

(i) The KLB will be awarded to all eligible KATUSA soldiers.

(ii) The U.S. Army unit commander will coordinate with the appropriate Republic of Korea staff officer/NCO to obtain Republic of Korea Army concurrence prior to presentation of the KLB.

(iii) Presentation will normally be made by the U.S. Army unit commander to which last assigned prior to separation from active service or by his designated U.S. Army commissioned officer representative during a troop formation or other appropriate ceremony.

(3) Orders will not be published to confirm award of the KLB.

(k) Gold Star Lapel Button. The Gold Star Lapel Button was established by Act of Congress (Pub. L. 80–306) August 1, 1947, codified at 10 U.S.C. 1126 in order to provide an appropriate identification for widows, widowers, parents, and next of kin of members of the Armed Forces of the United States who lost their lives during World War I, April 6, 1917 to March 3, 1921; World War II, September 8, 1939 to July 25, 1947; any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958 (United Nations action in Korea, June 27, 1950 to July 27, 1954); or who lost their lives after June 30, 1958, while engaged in an action against an enemy of the United States; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing Armed Force; or who lost or lose their lives after March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or while serving in a military operation while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(1) The Gold Star Lapel Button consists of a gold star on a purple circular background, bordered in gold and surrounded by gold laurel leaves. On the reverse is the inscription ''United States of America, Act of

Congress, August 1966'' with space for engraving the initials of the recipient. Gold Star Lapel Buttons inscribed August 1947 may be issued until present inventories are exhausted.

(2) One Gold Star Lapel Button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while in the active military service during the periods indicated above. The term ''widow or widower'' includes those who have since remarried, and the term ''parents'' includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in *loco parentis.* Request for replacement of the Gold Star Lapel Button (lost, destroyed or unserviceable) will be submitted on DD Form 3 (Application for Gold Star Lapel Button) to NPRC (see 578.16 (a)(3).)

(3) Each casualty area commander and major overseas commander will stock Gold Star Lapel Buttons and ensure that survivor assistance officers are provided them for issue to eligible next of kin. Normally, delivery should not be made before to the first visit to the next of kin following interment.

(l) *Lapel Button for Next of Kin of Deceased Personnel.* The Lapel Button, Next of Kin of Deceased Personnel is provided to widows(ers), parents, and primary next of kin of armed services members who lose their lives while serving on active duty or while assigned in an Army Reserve or Army National Guard unit in a drill status.

(1) The button consists of a gold star within a circle (commemorating honorable service) surrounded by sprigs of oak (referring to the Army, Navy, Air Force, and Marine Corps).

(2) One lapel button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while on active duty. The term widow or widower includes those who have since remarried, and the term parents includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in place of a parent.

(3) Casualty area commands will stock the button and ensure that survivor assistance officers issue them to eligible next of kin.

(4) The Lapel Button, Next of Kin of Deceased Personnel is authorized for issue retroactive to March 29, 1973. The next of kin of soldiers who died since that date may request issue of the button by writing to the NPRC (see 578.16 (a)(3)). Furnish the name, grade, SSN, and date of death of the deceased soldier. The names and relationships of the next of kin must also be provided.

(m) *Army Superior Unit Award Lapel Pin.* The Army Superior Unit Award Lapel Pin is authorized for issue and wear by DA civilians in the employ of a unit awarded the Army Superior Unit Award. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel.

§ 578.62 Miniature decorations.

(a) Decorations. Miniature replicas of all medals except the Medal of Honor and the Legion of Merit in the Degrees of Chief Commander and Commander are authorized for wear on certain uniforms instead of the issued medals. Miniatures of decorations are issued only to foreign nationals and with the award of the Distinguished Service Medal to U.S. personnel.

(b) Miniature badges. Replicas of combat and special skill badges in miniature size are authorized for wear on certain uniforms instead of the full-size badges.

§ 578.63 Supply, service, and requisition of medals and badges.

(a) Medals and appurtenances listed are issued by DA:

(1) Decorations;
(2) Service medals;
(3) Service ribbons;
(4) Palms;
(5) Rosettes;
(6) Clasps;
(7) Arrowheads;
(8) Service stars;
(9) French Fourragere;
(10) Netherlands Orange Lanyard;
(11) Army Good Conduct Medals;
(12) Oak Leaf Cluster;
(13) Numerals;
(14) Letter ''V'' devices;
(15) Certificate for decorations;
(16) Lapel buttons for decorations;
(17) Miscellaneous lapel buttons listed in Lapel buttons for badges and Lapel buttons for service;
(18) Ten-year devices;
(19) Berlin Airlift devices;
(20) Containers for decorations;
(21) Miniature decorations to foreign military personnel;
(22) Letter ''V'' Device;
(23) Letter ''M'' Device;

(b) Badges and appurtenances listed below are issued by Department of the Army:

(1) Combat and special skill badges;
(2) Basic Marksmanship Designation Badges;
(3) Distinguished marksmanship designation badges;
(4) Excellence in competition badges;
(5) Basic marksmanship qualification badges and bars;
(6) Army Staff Identification Badge;
(7) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);
(8) Army ROTC Nurse Cadet Program Identification Badge;
(9) Drill Sergeant Identification Badge;
(10) U.S. Army Recruiter Identification Badge;
(11) Career Counselor Badge;
(12) Army National Guard Recruiting and Retention Identification Badge;
(13) U.S. Army Reserve Recruiter Identification Badge.

§ 578.64 Original issue or replacement.

(a) General. All U.S. Army medals are presented without cost to an awardee. Replacement of medals or service ribbons for individuals not on active duty may be made at cost price. Requests will be honored from the original recipient of the award, or if deceased, from his or her primary next of kin in the following order: surviving spouse, eldest surviving child, father or mother, eldest surviving brother or sister, or eldest surviving grandchild.

(b) Issue or replacement of service medals and service ribbons antedating the World War I Victory Medal is no longer accomplished. These awards are not available from the supply system, but may be purchased from private dealers in military insignia.

(c) No money should be mailed until instructions are received by NPRC. Requests for medals should be directed to the folowing addresses as shown below.

(1)(i) Request for: Personnel in active Federal military service or in the Army National Guard or U.S. Army Reserve.

(ii) Submit to: Unit Commander.

(2)(i) Request for: Medals on behalf of individuals having no current U.S. Army status or deceased.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

(3)(i) Request for: Personnel receiving retired pay, except general officers.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

(4)(i) Request for: Retired general officers.

(ii) Submit to: Commander, USA HRC, ATTN: AHRC–PDO–PA, 200 Stovall Street, Alexandria, VA 22332–0471.

(d) Issue of medals, other than Army. Medals and appurtenances awarded while in active Federal service in one of the other U.S. military Services will be

issued on individual request to appropriate Service as shown below.

(1)(i) Request for: Navy awards.

(ii) Submit to: Office of the Chief of Naval Operations, Awards, Code: N09B33, 2000 Navy Pentagon, Washington, DC 20350–2000.

(2)(i) Request for: Air Force awards.

(ii) Submit to: Commander, U.S. Air Force Personnel Center/DPPPRA, 550 C Street West, Suite 12, Randolph Air Force Base, TX 78150–4712.

(3)(i) Request for: Marine Corps awards.

(ii) Submit to: Commandant, U.S. Marine Corps, Manpower and Reserve Affairs, Code: MMMA, 3280 Russell Road, Quantico, VA 22134–5103.

(4)(i) Request for: Coast Guard awards.

(ii) Submit to: Commandant, United States Coast Guard, 2100 Second Street, SW., ATTN: G–PS–3, Washington, DC 20593–0001.

§ 578.65 Manufacture, sale, and illegal possession.

Sections 507.1 to 507.8 of this chapter prescribe:

(a) Restrictions on manufacture and sale of service medals and appurtenance by civilians.

(b) Penalties for illegal possession and wearing of service medals and appurtenances.

§ 578.66 Badges and tabs; general.

(a) Purpose. The purpose of awarding badges is to provide for public recognition by tangible evidence of the attainment of a high degree of skill, proficiency, and excellence in tests and competition, as well as in the performance of duties. Awards of badges promote esprit de corps, and provide an incentive to greater effort, thus becoming instrumental in building and maintaining morale. Types of badges authorized to be awarded as hereinafter prescribed, are combat and special skill badges, marksmanship qualification badges, identification badges and tabs.

(b) Recommendations and approval authority. (1) Recommendations for awards of badges will be submitted by memorandum or DA Form 4187 through command channels to the commander authorized to make the award.

(2) Badges may be approved and awarded in the field only by the commanders authorized to award the respective badge.

(3) Award of badges to Active Army personnel which cannot be resolved by local commanders will be forwarded through command channels to HQ, USA HRC, (see address 578.3(c)).

(c) Posthumous awards. When an individual who has qualified for a badge dies before the award is made, the badge may be presented to the next of kin.

(d) Retroactive awards. Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge may be made to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented. Active duty soldiers will forward their applications through command channels to HQ, AHRC, (see address § 578.3(c)). Reserve Component soldiers should address their application to Commander, USA HRC-St. Louis, One Reserve Way, St. Louis, MO 63132–5200. Retirees and veterans should address their application to the NPRC (see § 578.16(a)(3) for address).

(e) Announcement of awards. Permanent awards of badges, except basic marksmanship qualification badges, identification badges, and the Physical Fitness Badge, will be announced in Permanent Orders by commanders authorized to make the award or Permanent Orders of HQDA.

(f) Presentation of awards. Whenever practical, badges will be presented to military personnel in a formal ceremony. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(g) Supply of badges. (1) Badges listed below are issued by the DA.

(i) Combat and special skill badges;

(ii) Basic Marksmanship Designation Badges;

(iii) Distinguished marksmanship designation badges;

(iv) Excellence in competition badges;

(v) Basic marksmanship qualification badges and bars;

(vi) Army Staff Identification Badge;

(vii) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);

(viii) Army ROTC Nurse Cadet Program Identification Badge;

(ix) Drill Sergeant Identification Badge;

(x) U.S. Army Recruiter Identification Badge;

(xi) Career Counselor Badge;

(xii) Army National Guard Recruiting and Retention Identification Badge;

(xiii) U.S. Army Reserve Recruiter Identification Badge.

(2) Items not issued or sold by the DA:

(i) Identification badges, except as provided in paragraph (g)(1) of this section;

(ii) Lapel buttons for badges;

(iii) Certificates for badges;

(iv) Foreign badges;

(v) Miniature Combat Infantryman, Expert Infantryman, Combat Medical, Expert Field Medical, and Aviation badges;

(vi) Dress miniature badges. (Miniatures may be purchased from dealers in military insignia.)

(h) Requisition. Combat and special skill badges, basic marksmanship qualification badges, and authorized bars, may be requisitioned by commanders through normal channels. Requisitions will contain a statement that issue is to be made to authorized personnel. Commanders authorized to make the award may requisition bulk delivery of badges to meet needs for 60 days. Care should be taken that excessive stocks are not requisitioned. Initial issue or replacement for a badge lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded, will be made upon application, without charge to military personnel on active duty and at stock fund standard price to all others.

(i) Character of service. A badge will not be awarded to any person who, subsequent to qualification therefore, has been dismissed, dishonorably discharged, or convicted of desertion by court-martial.

(j) Special guidance. (1) Effective September 30, 1986, local established special skill badges are no longer authorized for wear. Authority for major commanders to approve local badges is rescinded.

(2) The wear of badges issued by other Services is governed by AR 670–1. Those cases that cannot be resolved should be forwarded to Office of the Deputy Chief of Staff, G–1, ATTN: DAPE–HR–S, 300 Army Pentagon, Washington, DC 20310–0300.

(3) Authority must be obtained from HQ, USA HRC (AHRC–PDO–PA) before wearing on the Army uniform badges awarded by other U.S. Services and the Director of Civilian Marksmanship.

(k) To whom awarded. (1) The Combat Infantryman Badge may be awarded only to members of the U.S. Army.

(2) The Combat Medical Badge may be awarded only to members of the U.S. Army, Navy, or Air Force.

(3) Awards of U.S. Army badges to foreign military personnel will be made only with the prior consent of his or her Government and upon completion of the full requirements established for each badge. Foreign military personnel may also qualify for Army badges while attending U.S. Army service schools or while participating in combined or joint operations.

(4) All other special skill badges may be earned by U.S. military personnel who qualify while performing honorable

active duty or Reserve service in an active status or while formally assigned or attached to the U.S. Army.

(5) In certain cases, civilian personnel may be awarded special skill badges provided specific criteria are met. Requests or recommendations for award of special skill badges to civilians should be directed to designated approval authorities or Commander, USA HRC (see 578.3 (c) for address).

(6) Table 9 below lists the U.S. Army combat and special skill badges authorized and who is authorized to be awarded each badge.

TABLE 9.—U.S. ARMY BADGES AND TABS

Order of precedence may be awarded to	Members of other services	Department of the army civilians	Foreign military personnel
Combat Infantryman Badge	NO	NO	NO.
Combat Medical Badge	YES	NO	NO.
Expert Infantryman Badge	NO	NO	NO.
Expert Field Medical Badge	YES	YES	YES.
Parachutist Badges	YES	YES	YES.
Parachute Rigger Badge	YES	YES	YES.
Military Free-Fall Parachutist Badge	NO	NO	NO.
Army Aviator Badge	YES	YES	YES.
Astronaut Badges	YES	YES	YES.
Flight Surgeon Badge	YES	YES	YES.
Divers Badges	YES	YES	YES.
Explosive Ordnance Disposal Badges	YES	YES	YES.
Pathfinder Badge	YES	YES	YES.
Air Assault Badge	YES	YES	YES.
Aviation Badge	YES	YES	YES.
Driver & Mechanic Badge	YES	YES	YES.
Ranger Tab	YES	YES	YES.
Special Forces Tab	YES	YES	YES.

Notes:
1. Badges authorized to foreign military personnel will be made only after obtaining prior consent from his or her Government and after completion of the full requirements established for each badge.
2. DA civilians must complete full requirements for the respective badge before it is awarded.

§ 578.67 Combat Infantryman Badge.

(a) Specific eligibility requirements. (1) A soldier must be an Army infantry or special forces officer (SSI 11 or 18) in the grade of colonel or below, or an Army enlisted soldier or warrant officer with an infantry or special forces MOS, who subsequent to December 6, 1941 has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat. Eligibility for Special Forces personnel (less the Special Forces medical sergeant) accrues from December 20, 1989 and is not retroactive.

(2) A recipient must be personally present and under hostile fire while serving in an assigned infantry or Special Forces primary duty, in a unit actively engaged in ground combat with the enemy. The unit in question can be of any size smaller than brigade. For example, personnel possessing an infantry MOS in a rifle squad of a cavalry platoon in a cavalry troop would be eligible for award of the Combat Infantryman Badge (CIB). Battle or campaign participation credit alone is not sufficient; the unit must have been in active ground combat with the enemy during the period.

(3) Personnel with other than an infantry or Special Forces MOS are not eligible, regardless of the circumstances. The infantry or special forces SSI or MOS does not necessarily have to be the soldier's primary specialty, as long as the soldier has been properly trained in infantry or special forces tactics, possesses the appropriate skill code, and is serving in that specialty when engaged in active ground combat as described above. Commanders are not authorized to make any exceptions to this policy.

(4) Awards will not be made to general officers or to members of headquarters companies of units larger in size than brigade.

(b) Subsequent awards. (1) To date, a separate award of the CIB has been authorized for qualified soldiers in any of the following four qualifying periods:

(i) World War II (December 7, 1941 to September 3, 1945).

(ii) The Korean Conflict (June 27, 1950 to July 27, 1953).

(iii) The Vietnam Conflict. Service in the Republic of Vietnam conflict (after March 1, 1961) combined with qualifying service in Laos (April 19, 1961 to October 6, 1962); the Dominican Republic (April 28, 1965 to September 1, 1966); Korea on the DMZ (after January 4, 1969); El Salvador (January 1, 1981 to February 1, 1992); Grenada (October 23 to November 21, 1983); Joint Security Area, Panmunjom, Korea (November 23, 1984); Panama (December 20, 1989 to January 31, 1990); Southwest Asia (January 17 to April 11, 1991); and Somalia (June 5, 1992 to March 31, 1994) is recognized by one award only regardless of whether a soldier has served one or multiple tours in any or all of these areas.

(iv) Global War on Terrorism. Operation ENDURING FREEDOM (November 20, 2001 to date to be determined) and Operation IRAQI FREEDOM (March 19, 2003 to a date to be determined).

(2) If a soldier has been awarded the CIB for service in any of the Vietnam era areas, that soldier is not eligible to earn the Combat Medical Badge. The Vietnam Conflict Era, for separate award of the CIB, officially terminated on March 10, 1995. Superimposing stars as described below will denote subsequent awards of the CIB.

(3) Second and third awards of the CIB are indicated by superimposing 1 and 2 stars respectively, centered at the top of the badge between the points of the oak wreath.

(c) Special provisions—Republic of Vietnam, Laos, Dominican Republic, and Korea after January 4, 1969. (1) Any officer whose basic branch is other than infantry who, under appropriate orders,

has commanded a line infantry (other than a headquarters unit) unit of brigade, regimental, or smaller size for at least 30 consecutive days is deemed to have been detailed in infantry and is eligible for award of the CIB notwithstanding absence of a written directive detailing that soldier in the infantry, provided all other requirements for the award have been met. Orders directing the officer to assume command will be confirmed in writing at the earliest practicable date.

(2) In addition, any officer, warrant officer, or enlisted man whose branch is other than infantry, who under appropriate orders was assigned to advise a unit listed in paragraphs (c)(4) and (5) of this section or was assigned as a member of a White Star Mobile Training Team or a member of MAAG-Laos as indicated in paragraphs (c)(6) (i) and (ii) of this section below will be eligible for award of the CIB provided all other requirements have been met.

(3) After December 1, 1967 for service in the Republic of Vietnam, noncommissioned officers serving as Command Sergeants Major of infantry battalions and brigades for periods of at least 30 consecutive days in a combat zone are eligible for award of the CIB provided all other requirements have been met.

(4) Subsequent to March 1, 1961, a soldier must have been:

(i) Assigned as advisor to an infantry unit, ranger unit, infantry-type unit of the civil guard of regimental or smaller size, and/or infantry-type unit of the self-defense corps unit of regimental or smaller size of the Vietnamese government during any period such unit was engaged in actual ground combat.

(ii) Assigned as advisor of an irregular force comparable to the above infantry units under similar conditions.

(iii) Personally present and under fire while serving in an assigned primary duty as a member of a tactical advisory team while the unit participated in ground combat.

(5) Subsequent to May 24, 1965, to qualify for the CIB, personnel serving in U.S. units must meet the requirements of paragraph (a) of this section. Individuals who performed liaison duties with the Royal Thai Army or the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(6) Laos. From April 19, 1961 to October 6, 1962, a soldier must have been:

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular type forces of regimental or smaller size.

(ii) A member of MAAG-Laos assigned as an advisor to a region or zone of FAR, or while serving with irregular type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraph (c)(6)(i) or (ii) of this section.

(7) Dominican Republic. From April 28, 1965 to September 21, 1966, the soldier must have met the criteria prescribed in paragraphs (b) and (c) of this section.

(8) Korea. From January 4, 1969 to March 31, 1994, a soldier must have—

(i) Served in the hostile fire area at least 60 days and been authorized hostile fire pay.

(ii) Been assigned to an infantry unit of company or smaller size and must be an infantry officer in the grade of captain or lower. Warrant officers and enlisted men must possess an infantry MOS. In the case of an officer whose basic branch is other than infantry who, under appropriate orders, has commanded an infantry company or smaller size infantry unit for at least 30 days, the award may be made provided all the following requirements are met.

(iii) Been engaged with the enemy in the hostile fire area or in active ground combat involving an exchange of small arms fire at least 5 times.

(iv) Been recommended personally by each commander in the chain of command and approved at division level. If killed or wounded as a direct result of overt enemy action, he must be recommended personally by each commander in the chain of command and approved at division level. In the case of infantrymen killed by enemy action, the requirement for at least 5 engagements and the requirement for the incident to have taken place in the hostile fire area, including the 60-day requirement, will be waived. In the case of individuals wounded, even though outside the hostile fire area, the 5 engagements requirement and the 60-day requirement may be waived when it can be clearly established that the wound was a direct result of overt hostile action.

(d) Grenada (Operation URGENT FURY). From October 22, 1983 to November 21, 1983, the soldier must have met the criteria prescribed in paragraph (a) of this section.

(e) Panama (Operation JUST CAUSE). From December 20, 1989 to January 31, 1990, the soldier must have met the criteria prescribed in paragraphs (b) and (c) of this section. Special Forces personnel (less the Special Forces medical sergeant) are eligible for the CIB effective December 20, 1989.

(f) Southwest Asia War (Operation DESERT STORM). From January 17, 1991 to April 11, 1991, the soldier must have met the criteria prescribed in paragraphs (b) and (c) of this section.

(g) Somalia (Operation RESTORE HOPE). From June 5, 1992 to March 31, 1994, the soldier must have met the criteria prescribed in paragraphs (b) and (c) of this section.

(h) Global War on Terrorism (Operation ENDURING FREEDOM. November 20, 2001 to a date to be determined and Operation IRAQI FREEDOM March 19, 2003 to a date to be determined).

(i) Who may award—(1) Current awards. Current awards of the CIB may be awarded by the any commander delegated authority by the Secretary of the Army during wartime, and the Commanding General, USA HRC.

(2) Retroactive awards. Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge are authorized for time periods specified above to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented. Active duty soldiers and Reserve Component soldiers will forward their applications through command channels to Commander, USA HRC (see § 578.3(c) for address). Retirees and veterans should address their application to NPRC (§ 578.16 (a)(3) for address).

(j) Description. A silver and enamel badge 1 inch in height and 3 inches in width, consisting of an infantry musket on a light blue bar with a silver border, on and over an elliptical oak wreath. Stars are added at the top of the wreath to indicate subsequent awards; one star for the second award, two stars for the third award and three stars for the fourth award.

§ 578.68 Combat Medical Badge.

(a) Specific eligibility requirements. (1) The Combat Medical Badge (CMB) may be awarded to members of the Army Medical Department (colonels and below), the Naval Medical Department (captains and below), the Air Force Medical Service (colonels and below), assigned or attached by appropriate orders to an infantry unit of brigade, regimental, or smaller size, or to a medical unit of company or smaller size, organic to an infantry unit of brigade or smaller size, during any period the infantry unit is engaged in actual ground combat after December 6, 1941. Special Forces personnel in MOS 18D (Special Operations Medical Sergeant) assigned or attached to a

medical unit of company or smaller size, during any period the infantry unit was engaged in active ground combat are also eligible for the Combat Medical Badge. Battle participation credit alone is not sufficient; the infantry unit must have been in contact with the enemy.

(2) Subsequent to December 19, 1989—Special forces personnel possessing military occupational specialty 18D (Special Operations Medical Sergeant) who satisfactorily performed medical duties while assigned or attached to a special forces unit during any period the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under this criteria are not authorized prior to 1989.

(3) Subsequent to January 16, 1991—Personnel outlined in paragraphs (a)(1) and (2) of this section, assigned or attached to armor and ground cavalry units of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under this criteria are not authorized prior to 1991.

(4) Awards will not be made to general or flag officers.

(b) Subsequent awards. (1) To date, a separate award of the CMB has been authorized for qualified soldiers who service in the follow four qualifying periods:

(i) World War II.

(ii) The Korean War.

(iii) The Vietnam Conflict. Service in the Republic of Vietnam conflict combined with qualifying service in Laos (April 19, 1961 to October 6, 1962), the Dominican Republic (April 28, 1965 to September 1, 1966), Korea on the DMZ (after January 4, 1969), Grenada (October 23 to November 21, 1983), El Salvador (January 1, 1981 to February 1, 1992), Panama (December 20, 1989 to January 31, 1990), and the Persian Gulf War (January 17 to April 11, 1991), and Somalia (June 5, 1992 to March 31, 1994) is recognized by one award only regardless of whether a soldier has served one or multiple tours in any or all of these areas.

(iv) Global War on Terrorism. Operation ENDURING FREEDOM (November 20, 2001 to a date to be determined) and Operation IRAQI FREEDOM (March 19, 2003 to a date to be determined).

(2) If a soldier has been awarded the CMB for service in any of the Vietnam era areas, that soldier is not eligible to earn the Combat Infantryman Badge. The Vietnam Conflict Era, for separate award of the CMB, officially terminated on March 10, 1995.

(3) Superimposing 1 and 2 stars indicate second and third awards of the CMB respectively, centered at the top and bottom of the badge.

(c) Special provisions—Republic of Vietnam, Laos, Dominican Republic and Korea after January 4, 1969.

(1) Subsequent to March 1, 1961, a soldier must have been assigned to a Vietnamese unit engaged in actual ground combat or as a member of a U.S. Army infantry unit of brigade or smaller size, including Special Forces Detachments, serving with a Republic of Vietnam unit engaged in actual ground combat. The Republic of Vietnam unit must have been of regimental size or smaller and either an infantry, ranger, infantry-type unit of the civil guard, infantry-type unit of the self-defense corps, or of the irregular forces. The soldier must have been personally present and under hostile fire while assigned as specified.

(2) Subsequent to May 24, 1965, soldiers serving in U.S. units must meet the requirements in paragraph (c)(1) of this section. Soldiers who performed liaison duties with the Royal Thai Army or the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(3) Laos. From April 19, 1961 to October 6, 1962, the soldier must have been—

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular-type forces of regimental or smaller size.

(ii) A member of the Military Assistance Advisory Group (MAAG) , Laos assigned as an advisor to a region or zone of FAR, or while serving with irregular type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraphs (c)(1) or (2) of this section.

(4) Dominican Republic. From April 28, 1965 to September 21, 1966, the soldier must have met the criteria prescribed in paragraph (a) of this section.

(5) Korea. From January 4, 1969 to March 31, 1994, the soldier must—

(i) Have served in the hostile fire area at least 60 days and be authorized hostile fire pay.

(ii) Have satisfactorily performed medical duties while assigned or attached to a medical unit of an infantry unit of brigade, regimental, or smaller size, or as a member of a medical platoon of an infantry or airborne brigade headquarters company; must have been physically present during any period in which the infantry unit was engaged in active ground combat involving an exchange of small arms fire at least five times.

(iii) Be recommended personally by each commander in the chain of command and approved at division level. If killed or wounded as a direct result of overt enemy action he must be recommended personally by each commander in the chain of command and approved at division level. In the case of medical personnel killed by enemy action, the requirement for at least five engagements and the requirement for the incident to have taken place in the hostile fire area, including the 60-day requirement will be waived. In the case of individuals wounded, even though outside the hostile fire area, the five engagements requirement and the 60-day requirement may be waived when it can be clearly established that the wound was a direct result of overt hostile action.

(d) Grenada (Operation URGENT FURY). From October 22 1983 to November 21, 1983, the soldier must meet the criteria prescribed above.

(e) Panama (Operation JUST CAUSE). From December 20, 1989 to January 31, 1990, the soldier must meet the criteria prescribed above.

(f) Southwest Asia (Operation DESERT STORM). From January 17, 1991 to April 11, 1991, the soldier must meet the criteria prescribed above.

(g) Somalia (Operation RESTORE HOPE). From June 5, 1992 to March 31, 1994.

(h) Global War on Terrorism (Operation ENDURING FREEDOM). November 20, 2001 to a date to be determined and Operation IRAQI FREEDOM March 19, 2003 to a date to be determined.

(i) Who may award. Same as for the Combat Infantryman Badge.

(j) Retroactive awards. Same as for the Combat Infantryman Badge.

(k) Description. An oxidized silver badge 1 inch in height and 1 1/2 inches in width, consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross, all on and over an elliptical oak wreath. Stars are added to indicate subsequent awards; one star at top for the second award, one star at top and one at bottom for the third award, one star at top and one at each side for the fourth award.

§ 578.69 Expert Infantryman Badge.

(a) Basic eligibility criteria. (1) Specialty skill identifier and Military Occupational Specialty (MOS)

requirement. Candidates must be in an Active Army status and must possess a primary MOS in CMF 11 or 18B, 18C, 18E, 18F, or 18Z; be warrant officers identified as 180A; or be infantry or special operations branch officers serving in infantry positions.

(2) Duty requirement. All personnel having a Career Management Field (CMF) 11 or Specialty Code 11 code, regardless of their present assignment, are eligible to participate in the Expert Infantryman Badge (EIB) program. They must meet the prerequisites and take the test with an infantry unit of at least battalion size.

(b) Test requirement. Personnel must meet all prerequisites and proficiency tests prescribed by U.S. Army Infantry Center.

(c) Authority to test and award the badge. The following commanders are authorized to give EIB tests and award the badge to qualified soldiers in their commands:

(1) Division commanders;

(2) Commanders of separate infantry brigades and regiments;

(3) Commanders of divisional brigades when authority is delegated to them by their division commanders;

(4) Separate infantry battalion commanders when authority is delegated to them by the commander exercising general court-martial authority over the battalion;

(5) Commanders of U.S. Army Training Centers;

(6) Commandant, U.S. Army Infantry School;

(7) Commanders of Special Forces Groups;

(8) Commanders of separate Special Forces battalions when authority is delegated to them by the commander exercising general court-martial authority over their units;

(9) Commanders of Reserve Component combat and training divisions, and brigade size units are authorized to administer EIB tests and award the badge to qualified personnel in the command.

(d) Description. A silver and enamel badge 7/16 inch in height and 3 inches in width, consisting of an Infantry musket on a light blue bar with a silver border.

§ 578.70 Expert Field Medical Badge.

(a) Basic eligibility criteria. (1) Officers must be assigned or detailed to an Army Medical Department (AMEDD) corps. This includes Army officers in training at the Uniformed Services University of Health Sciences. It also includes Army officers enrolled in the Health Professions Scholarship Program.

(2) Warrant officers must have an AMEDD primary MOS controlled by The Surgeon General. Warrant officer pilots are also eligible, if they have a ''D'' SQI (Aeromedical Evacuation Pilot) and are assigned to an air ambulance unit.

(3) Enlisted personnel must have a primary Military Occupational Specialty (MOS) in the Medical Career Management Field or an MOS of 18D.

(4) Other U.S. Armed Services and foreign military must either be medical personnel or serving in comparable medical positions. The approval for wear of the badge by other U.S. Armed Services and foreign military is governed according to their respective Services guidance.

(b) Duty requirement. Eligible personnel must be on active duty or assigned to a troop program unit in the Reserve component unit or an AMEDD mobilization augmentation agency.

(c) Authority to test and award. The following commanders in the grade of Lieutenant Colonel or above are authorized to conduct the test and award the badge. Commanders must have the resources and facilities to conduct the test as prescribed by the U.S. Army Medical Department Center and School.

(1) Active Army Table of Organization and Equipment (TOE) and Table of Distribution and Allowances (TDA) medical units.

(2) Division support commands.

(3) Separate regiments and brigades.

(4) Commanders of U.S. Army Reserve and National Guard units. Reserve and National Guard units must conduct the test during their annual active duty training.

(d) Description. An oxidized silver badge 15/16 inch in height and 1 7/16 inches in width consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross.

§ 578.71 Parachutist badges.

(a) Three degrees of badges are authorized for award: Basic Parachutist Badge, Senior Parachutist Badge, and Master Parachutist Badge.

(b) Eligibility criteria for each badge as set forth in Parachutist Badge-Basic, Senior Parachutist Badge, and Master Parachutist Badge.

(c) Special eligibility for awards will be determined from the DA Form 1307 (Individual Jump Record) in their military record. Each entry on this form will include pay period covered and initials of the personnel officer; the entry will be made only from a DA Form 1306 (Statement of Jump and Loading Manifest) completed by an officer or jumpmaster.

(d) Jumps with civilian parachute clubs will not be counted in the number of total jumps required for each badge.

(e) Award of the basic Parachutist Badge or advanced parachutist badges awarded by other U.S. Services may only be awarded if the soldier meets the Army criteria for the badge.

(f) Approval authority. Award approval authorities for all three badges are as follows:

(1) Commanding Generals of major Army commands (MACOM) and continental United States (CONUS);

(2) Commanders of U.S. Army Corps with organic long-range reconnaissance companies, commanders of airborne corps, airborne divisions;

(3) Commander, 4th Psychological Operations Group (Airborne);

(4) Infantry divisions containing organic airborne elements;

(5) Commandants of the Infantry School and the Quartermaster School;

(6) Commanders of separate airborne regiments, separate airborne battalions, Special Forces Group (Airborne), and the U.S. Army John F. Kennedy Special Warfare Center and School;

(7) The President, U.S. Army Airborne, Communications and Electronics Board;

(8) Commander, U.S. Army Special Forces Command (Airborne);

(9) Commander, U.S. Army Special Operations Support Command (Airborne).

(g) Subsequent awards. A bronze service star is authorized to be worn on the Parachutist Badges to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of these badges. A soldier's combat parachute jump credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the aircraft to receive combat parachute jump credit and the Parachutist badge with bronze service star.

(h) Description. An oxidized silver badge 1 13/64 inches in height and 1½ inches in width, consisting of an open parachute on and over a pair of stylized wings displayed and curving inward. A star and wreath are added above the parachute canopy to indicate the degree of qualification. A star above the canopy indicates a Senior Parachutist; the star surrounded by a laurel wreath indicates a Master Parachutist. Small stars are superimposed on the appropriate badge to indicate combat jumps as follows:

(1) One jump: A bronze star centered on the shroud lines 3/16 inch below the canopy;

(2) Two jumps: A bronze star on the base of each wing;

(3) Three jumps: A bronze star on the base of each wing and one star centered on the shroud lines 3/16 inch below the canopy;

(4) Four jumps: Two bronze stars on the base of each wing;

(5) Five jumps: A gold star centered on the shroud lines 5/16 inch below the canopy.

§ 578.72 Parachutist Badge—Basic.

General. To be eligible for award of the basic Parachutist Badge, an individual must have satisfactorily completed the prescribed proficiency tests while assigned or attached to an airborne unit or the Airborne Department of the Infantry School, or have participated in at least one combat parachute jump as follows:

(a) A member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander;

(b) While engaged in military operations involving conflict with an opposing foreign force;

(c) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 578.73 Senior Parachutist Badge.

To be eligible for the Senior Parachutist Badge, an individual must have been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 30 jumps to include the following:

(1) Fifteen jumps with combat equipment to consist of normal TOE equipment including individual weapon carried in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water, rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Two night jumps made during the hours of darkness (regardless of time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Two mass tactical jumps which culminate in an airborne assault problem with either a unit equivalent to a battalion or larger; a separate company battery; or an organic staff of regimental size or larger. The soldier must fill a position commensurate with his or her rank or grade during the problem.

(4) For award of the Senior Parachutist Badge, the prerequisite requirements above must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course or served as jumpmaster on one or more combat jumps or as a jumpmaster on 15 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organizations authorized parachutists for a total of at least 24 months.

§ 578.74 Master Parachutist Badge.

To be eligible for the Master Parachutist Badge, an individual must have been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 65 jumps to include:

(1) Twenty-five jumps with combat equipment to consist of normal TOE equipment, including individual weapon carried by the individual in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Four night jumps made during the hours of darkness (regardless of the time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Five mass tactical jumps which culminate in an airborne assault problem with a unit equivalent to a battalion or larger; a separate company/battery; or an organic staff of regimental size or larger. The individual must fill a position commensurate with their rank or grade during the problem.

(4) For award of the Master Parachutist Badge, the prerequisite requirements in paragraphs (a)(1), (2) and (3) of this section must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course, or served as jumpmaster on one or more combat jumps or as jumpmaster on 33 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organization of authorized parachutists for a total of at least 36 months.

§ 578.75 Parachute Rigger Badge.

(a) Eligibility requirements. Any individual who successfully completes the Parachute Rigger course conducted by the U.S. Army Quartermaster School and holds an awarded MOS of 43E (enlisted) or 401A (warrant officers) may be awarded the Parachute Rigger Badge. Officers qualify upon successful completion of one of the following courses: Aerial Delivery and Materiel Officer Course; Parachute Maintenance and Aerial Supply Officer Course; Parachute Maintenance and Airdrop Course (officer or enlisted) or Parachute Rigger Course (enlisted). Sergeants Major and Master Sergeants who hold by career progression a MOS of 00Z or 76Z and formerly held an awarded MOS of 43E are qualified for award of the Parachute Rigger Badge.

(b) Retroactive award. The Parachute Rigger Badge may be awarded retroactively to any individual who graduated from the Parachute Rigger school after May 1951 and holds or at anytime held an awarded MOS listed in paragraph (a) of this section. Officers must have successfully completed one of the courses listed in paragraph (a) of this section to qualify for retroactive award of the badge. The badge may also be awarded retroactively to any individual who performed as a rigger prior to May 1951 and did not attend or graduate from the U.S. Army Quartermaster Center and School.

(c) Who may award. (1) Current awards. Current awards of the Parachute Rigger Badge will be made by the Commandant, U.S. Army Quartermaster School, Fort Lee, VA 23801–5152, and the Commander, U.S. AHRC (§ 578.3(c) for address).

(2) Retroactive awards. (i) After 1951. Requests for award of the badge from individuals having no current Army status (veterans and retirees) who qualified after 1951 will be forwarded to the NPRC (see § 5578.16(a)(3) for address).

(ii) Before 1951. Requests for award of the badge from individuals (Active duty, veterans and retirees) who qualified before 1951 will be submitted to the Commandant, U.S. Army Quartermaster Center and School, ATTN: ATSM–Q–MG (Historian), Fort Lee, VA 23801–1601. Requests must include written justification and will be considered on a case-by-case basis.

(d) Description. A silver winged hemispherical canopy with conically arrayed cords, 1¾ inches wide, with a band centered on the badge inscribed ''RIGGER.''

§ 578.76 Military Free Fall Parachutist Badge.

(a) The Military Free Fall Parachutist Badges identify Special Operations Forces (SOF) personnel who have qualified in one of the military's most demanding and hazardous skills, military free fall parachuting.

(b) Badge authorized. Two degrees of the Military Free Fall Parachutist Badges are authorized for award: Basic and Jumpmaster.

(c) Eligibility requirements—(1) *Military Free Fall Parachutist Badge, Basic.* To be eligible for the basic badge, an individual must meet one of the following criteria:

(i) Have satisfactorily completed a prescribed program of instruction in military free fall approved by the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWC&S); or

(ii) Have executed a military free fall combat jump.

(2) *Military Free Fall Parachutist Badge, Jumpmaster.* To be eligible for the Jumpmaster Badge, an individual must have satisfactorily completed a prescribed military free fall jumpmaster program of instruction approved by USAJFKSWC&S.

(d) Approval authority. (1) The Commander in Chief, U.S. Special Operations Command is the approval authority for award of these badges.

(2) The Commanding General, USAJFKSWC&S is the approval authority for award of the badges to qualifying personnel upon their graduation from USAJFKSWC&S Military Free Fall Parachutist basic and Military Free Fall Parachutist Jumpmaster courses.

(3) Retroactive award. Special Operations Forces personnel who qualified in military free fall prior to October 1, 1994 must obtain approval prior to wearing the Military Free Fall Parachutist Badges. Requests for award of the badge will be submitted in writing to Commander, U.S. Army John F. Kennedy Special Warfare Center and School, ATTN: AFJK–GPD–SA, Fort Bragg, NC 28307–5000. Applications will include the following:

(i) Name, rank, SSN, and MOS;

(ii) Copy of official jump record, DA Form 1307 (Individual Jump Record), and any other supporting documents (that is, graduation or qualification certificates).

(4) Veterans and Retirees. Veterans and retirees may request update of their records to show permanent award of the badge by writing to the NPRC (§ 578.16(a)(3) for address). Requests should include copy of official jump record, DA Form 1307 (Individual Jump Record), and any other support documents (that is, graduation or qualification certificates).

(e) A bronze service star is authorized to be worn on all degrees of the Military Free Fall Parachutist Badge to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of this badge. A soldier's combat parachute jump credit is tied directly to the combat assault landing credit decision for the unit to which the soldier is assigned or attached at the time of the assault landing. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the aircraft to receive combat parachute jump credit and the Military Free Fall Parachutist badge with bronze service star.

§ 578.77 Army Aviator Badges.

(a) Badges authorized. There are three degrees of the aviator badges authorized for award. They are as follows: Basic Army Aviator Badge, Senior Army Aviator Badge, and Master Army Aviator Badge.

(b) Eligibility requirements—(1) *Eligibility for U.S. personnel.* An individual must have satisfactorily completed prescribed training and proficiency tests as outlined in AR 600–105, and must have been designated as an aviator in orders issued by headquarters indicated above.

(2) *Eligibility for foreign military personnel.* While only U.S. officers may be awarded an aeronautical rating, the Army Aviator Badge may be awarded to foreign military graduates of initial entry flight-training courses conducted at the U.S. Army Aviation Center. The Senior and Master Army Aviator Badges may be awarded to foreign military personnel rated as pilots who meet or exceed eligibility criteria required of U.S. Army officers for the respective badges, and subject to the regulations of their countries. As a minimum, foreign officers recommended for award of advanced aviator badges must—

(i) Be currently qualified for flying duty in their own military service.

(ii) Be medically qualified.

(iii) If not a graduate of an initial entry U.S. Army aviation course, have attended a formal training or aircraft transition course conducted at Fort Rucker or at an U.S. Army Aviation Training School.

(iv) Have 1000 flying hours in aircraft and 7 years from basic rating date for the Senior Aviator Badge; have 2000 hours in aircraft and 15 years from basic rating date for the Master Aviator Badge. Total Operational Flying Duty Credit (TOFDC) which may be applied by U.S. officers to qualify for advanced badges will not be used to justify awards to foreign officers.

(c) Approval authority. Badge approval authority is as follows: (1) The Commander, U.S. Army Aviation Center and Fort Rucker, to U.S. student aviators upon successful completion of courses leading to an aeronautical rating of Army Aviator, and to foreign military personnel under the provisions of paragraph (d) of this section.

(2) CG, USA HRC (HRC–OPA–V) to inter-service transfers who previously held an aeronautical rating in another service.

(3) Commanders having general court-martial convening authority may award the Senior or Master Army Aviator Badge to officers on extended active duty.

(4) Major Army overseas commanders, CONUSA (the numbered armies in the continental United States) commanders, and CDR, USA HRC may award the Senior and Master Aviator Badge to U.S. Army Reserve personnel not on extended active duty in the Active Army.

(5) Chief, National Guard Bureau may award the Senior or Master Aviator Badge to Army National Guard (ARNG) personnel not on extended active duty in the Active Army.

(d) Army Astronaut Device. A gold colored device, 7/16-inch in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

(e) Description. An oxidized silver badge ¾ inch in height and 2½ inches in width, consisting of the shield of the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate qualification as a Senior Army Aviator. The star is surrounded with a laurel wreath to indicate qualification as a Master Army Aviator.

§ 578.78 Flight Surgeon Badges.

(a) Badges authorized. Three levels of Flight Surgeon Badges are authorized for award, Basic Flight Surgeon Badge; Senior Flight Surgeon Badge; and Master Flight Surgeon Badge.

(b) Eligibility requirements. Any Army Medical Corps officer who satisfactorily completes the training and other requirements prescribed by AR 600–105.

(c) Badge approval authority. (1) The basic Flight Surgeon Badge may be awarded by the Commanding General, U.S. Army Aviation Center and Fort Rucker. The CG will award the badge to those U.S. medical officers who have been awarded an aeronautical designation per AR 600–105 and to foreign military personnel who complete the training and the requirements prescribed by AR 600–105.

(2) Senior and Master Flight Surgeon Badges may be awarded by the following:

(i) The Surgeon General. Forward requests to HQDA (DASG–HCZ, WASH DC 20310–2300.

(ii) The Chief, National Guard Bureau to National Guard personnel not on active duty. Forward requests to the National Guard Bureau, Military Personnel Office, 111 South George Mason Drive, Arlington, VA 22204–1382.

(d) Description. An oxidized silver badge 23/32 inch in height and 2½ inches in width, consisting of a shield, its field scored with horizontal lines and bearing the Staff of Aesculapius on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Flight Surgeon and the star is surrounded with a laurel wreath to indicate the degree of Master Flight Surgeon.

§ 578.79 Diver Badge.

(a) Badges authorized. There are five types of Diver Badges authorized for award, Master Diver Badge; First-Class Diver Badge; Salvage Diver Badge; Second-Class Diver Badge; and Scuba Diver Badge.

(b) Navy Badges. The following Navy Diving Badges may also be worn on the Army uniform after written approval is obtained from HQ, AHRC (§ 578.3(c)): Diving Officer and Diving Medical Officer. The eligibility criteria and approval authority for these two badges is provided in Army Regulation AR 611–75, Selection, Qualification, Rating and Disrating of Marine Divers.

(c) Eligibility requirements. See AR 611–75.

(d) Badge approval authority. See AR 611–75.

(e) Descriptions. (1) Scuba—A 1 inch high silver badge consisting of a scuba diver's hood with face mask, mouthpiece, and breathing tubes. The width is 31/32 inch.

(2) Salvage—A silver diving helmet, 1 inch in height, with the letter ''S'' 3/8 inch in height, superimposed on the chest plate. The width is 23/32 inch.

(3) Second Class—A silver diving helmet 1 inch in height. The width is 23/32 inch.

(4) First Class—A silver diving helmet 15/16 inch in height, between two dolphins, 1 inch high. The width is 1 3/32 inches.

§ 578.80 Explosive Ordnance Disposal Badge.

(a) Badges authorized. There are three types of explosive ordnance disposal (EOD) badges authorized for award. They are the Basic, Senior, and Master.

(b) Badge approval authority. Commanding generals of divisions and higher commands; commanders of separate groups or equivalent headquarters exercising operational control of EOD personnel or units, Commandant, U.S. Army Ordnance Missile & Munitions Center & School, and a commander of an EOD Control Group, or units may approve awards of all levels of badges.

(c) Basic eligibility criteria. Eligibility requirements for each badge are provided below.

(d) Description. A silver badge, 1¾ inches in height, consisting of shield charged with a conventional, drop bomb, point down, from which radiates four lightning flashes, all in front of and contained within a wreath of laurel leaves. The Senior Explosive Ordnance Disposal Badge is the same as the basic badge except the drop bomb bears a 7/32 inch silver star. The Master Explosive Ordnance Disposal Badge is the same as the Senior Badge except a star, surrounded by a laurel wreath, is added above the shield.

§ 578.81 Explosive Ordnance Disposal Badge—Basic.

(a) Eligibility requirements. Any commissioned officer or enlisted soldier may be awarded the badge if he or she meets, or has met, all the following requirements:

(1) Successful completion of conventional render safe qualification as prescribed for the Explosive Ordnance Disposal (EOD) course of instruction (minimum requirement).

(2) Assigned in a TOE or TDA EOD position for which basic EOD course is a prerequisite.

(3) Service in a position in paragraph (a)(2) of this section must be satisfactory for a period of 18 months for the award to be permanent.

(4) Officers must have a special skill identifier of 91E, and enlisted personnel must hold the military occupational specialty 55D.

(b) Who may award. See § 578.80.

§ 578.82 Senior Explosive Ordnance Disposal Badge.

(a) Eligibility requirements. Any commissioned officer or enlisted soldier may be awarded the badge if he or she has:

(1) Been awarded the basic Explosive Ordnance Disposal Badge and effective May 1, 1989, has served 36 months cumulative service assigned to a TOE or table of distribution (TD) EOD position following award of basic badge.

(2) Effective May 1, 1989, has served 36 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge. Prior to May 1, 1989, must have served 18 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge.

(3) Been recommended for the award by immediate commander.

(4) Current explosive ordnance disposal qualifications at the time of recommendation for the award.

(b) Who may award. See § 578.80.

§ 578.83 Master Explosive Ordnance Disposal Badge.

(a) Eligibility requirements. Any commissioned officer, or enlisted soldier may be awarded the badge if he or she meets, or has met, all the following requirements:

(1) Must have been awarded the Senior Explosive Ordnance Disposal Badge.

(2) Sixty months cumulative service assigned to a TOE or TD officer or noncommissioned officer EOD position since award of Senior Explosive Ordnance Disposal Badge.

(3) Must be recommended for the award by immediate commander.

(4) Explosive ordnance disposal qualifications must be current at the time of recommendation for the award.

(b) Who may award. See § 578.80.

§ 578.84 Pathfinder Badge.

(a) Eligibility criteria. (1) Successful completion of the Pathfinder Course conducted by the U.S. Army Infantry School.

(2) Any person previously awarded the Pathfinder award for completion of Pathfinder training is authorized award of the Pathfinder Badge.

(b) Badge approval authority. The Pathfinder Badge may be approved by the Commandant, U.S. Army Infantry School.

(c) Description. A gold color metal and enamel badge 1 3/16 inches in height and 1½ inches in width, consisting of a gold sinister wing displayed on and over a gold torch with red and gray flames.

§ 578.85 Air Assault Badge.

(a) Basic eligibility criteria. The basic eligibility criteria consist of satisfactory completion of—

(1) An air assault training course according to the TRADOC standardized Air Assault Core Program of Instruction.

(2) The standard Air Assault Course while assigned or attached to 101st Airborne Division (Air Assault) since April 1, 1974.

(b) Badge approval authority. Badge approval authority is as follows:

(1) Commanders of divisions and separate brigades.

(2) The Commander, 101st Airborne Division (Air Assault).

(c) Description. An oxidized silver badge ¾ inch in height and 1 17/32 inches in width, consisting of a helicopter, frontal view, superimposed upon a pair of stylized wings displayed and curving. The wings suggest flight and together with the helicopter symbolize individual skills and qualifications in assault landings utilizing the helicopter.

§ 578.86 Aviation Badge.

(a) Badges authorized. There are three degrees of Aviation Badge (formerly the Aircraft Crew Member Badge) authorized for award, Basic, Senior and Master.

(b) Badge approval authority. Commanders exercising jurisdiction over the individuals' personnel records will make permanent award of these badges. Permanent award of these badges based upon wounds or combat missions will be referred to Commander, USA HRC (see § 578.3 (c) for address). Request for award of the Senior and Master Aviation Badges that cannot be resolved at the MPD/PSC will be forwarded to the Commander, U.S. Army Aviation Center, ATTN: ATZQ–AP, Fort Rucker, AL 36362–5000.

(c) Special policy. (1) The retroactive date for these badges is January 1, 1947.

(2) The Master Aviation Badge and the Senior Aviation Badge are authorized for permanent wear. The Basic Aviation Badge may be authorized for temporary or permanent wear. An officer awarded an Aviation Badge while serving in an enlisted status is authorized to wear the badge as a permanent part of the uniform.

(d) Eligibility requirements for each badge are provided in §§ 578.87, 578.88, and 578.89.

(e) Description. An oxidized silver badge ¾ inch in height and 2 2/12 inches in width, consisting of a shield with its field scored with horizontal lines and bearing the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Aviation Badge and the star is surrounded with a laurel wreath to indicate the degree of Master Aviation Badge.

§ 578.87 Aviation Badge—Basic.

(a) Permanent Award. (1) For permanent award of this badge, an individual must be on flying status, (physically qualified-class III), IAW AR 600–106 or be waived by HQDA, have performed in-flight duties for not less than 12 hours (not necessarily consecutive), or is school trained.

(2) An officer on flying status as an aerial observer may be awarded the Basic Aviation Badge. U.S. Army personnel assigned to a Joint Service Airborne Command Post and serving as members of an operational team on flying status manning the Airborne Command Post are eligible for the award of the Basic Aviation Badge. Concurrent with such assignment, these personnel are authorized temporary wear of the Basic Aviation Badge until relieved from such duty or until such time as he or she fulfills the mandatory requirements for permanent award.

(3) An individual who has been incapacitated for further flight duty by reason of being wounded as a result of enemy action, or injured as the result of an aircraft accident for which he or she was not personally responsible, or has participated in at least 15 combat missions under probable exposure to enemy fire while serving in a principal duty outlined in paragraph (a)(1) of this section, is permanently authorized to wear the Basic Aviation Badge.

(4) The Basic Aviation Badge may be permanently warded to soldiers upon successful completion of formal dvanced individual training (AIT) in Career Management Field (CMF) 67 and CMF 93 MOS', and to soldiers who previously completed AIT in CMF 28 MOS'. This includes soldiers who graduated from AIT for MOS' in the 68 series. Soldiers holding MOS' 35L, 35M, 35Q, and 35W who graduated from a CMF 67 AIT prior to September 30, 1996 and MOSs 93C and 93P who graduated from a CMF 67 AIT after December 31, 1985 are authorized based on documented prior AIT.

(5) Individuals who meet the criteria for award of the Army Astronaut Device and are not authorized an Aviator, Flight Surgeon or Aviation Badge will be awarded the Aviation Badge in addition to the Army Astronaut Device.

(6) The Aviation Badge may be permanently awarded to soldiers upon successful completion of formal AIT in CMF 93 MOS'. Soldiers previously holding MOS 93B who graduated from a CMF 93 AIT prior to January 1, 1998 and soldiers previously holding MOS 93D who graduated from a CMF 93 AIT prior to September 30, 1996 are authorized the badge based on documented AIT after December 31, 1985.

(b) Temporary Award. For temporary award of this badge, the commander of any Army unit that has Army aircraft assigned may authorize in published orders qualified personnel of his or her command to wear the Aviation Badge. The individual must be performing in-flight duties.

§ 578.88 Senior Aviation Badge.

(a) Eligibility criteria. For award of this badge, an individual must either successfully perform 7 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600–106 or serve in CMF 67 and 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A, and MOS 00Z individuals from CMF 67 or 93 field may qualify for the Senior Aviation Badge with 10 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments to include TDY, will also be credited.

(2) Soldiers who retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor will be counted towards this requirement not to exceed 36 months. Warrant Officers MOS 150A or 151A may qualify for this badge after successfully performing 7 years on flight status or 10 years experience in CMF 67 or 93, MOS 151A or 150A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement. The retroactive date for this badge under these criteria is January 1, 1983.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E–4 or higher.

(5) Be recommended by the unit commander of the unit to which presently assigned.

(b) Retroactive award. The retroactive date for award of this badge is February 1, 1989 for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in MOS 00Z. Soldiers holding CMF 93 or MOS 93D, prior to September 30, 1996 and MOS 93B prior to January 1, 1998, may qualify for award of the Senior Aviation Badge based on documented experience.

§ 578.89 Master Aviation Badge.

(a) For award of this badge, an individual must either successfully perform 15 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600–106 or serve in CMF 67 or 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A and individuals in MOS 00Z from a CMF 67 or 93 field, may qualify for the Master Aviation Badge with 17 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments, to include TDY, will also be credited.

(2) Soldiers that retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor, will be counted towards this requirement not to exceed 36 months. Warrant Officer MOS' 150A and 151A may qualify for this badge after successfully performing 15 years on flight status or 17 years experience in CMF 67 or 93 or MOS 150A and 151A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E–6 or higher.

(5) Be recommended by the unit commander and endorsed by the next higher commander of the unit to which presently assigned.

(b) Retroactive date. The retroactive date for the badge under these revised criteria is January 1, 1976. The retroactive date for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in MOS 00Z is February 1, 1982. Soldiers holding CMF 93, MOS 93D, prior to September 30, 1996 and MOS 93B, prior to January 1, 1998, may qualify for award of the Master Aviation Badge based on documented experience.

§ 578.90 Driver and Mechanic Badge.

(a) Basic criteria. The Driver and Mechanic Badge is awarded to drivers, mechanics, and special equipment operators to denote the attainment of a high degree of skill in the operation and maintenance of motor vehicles.

(b) Badge approval authority. Commanders of brigades, regiments, separate battalions, and any commander in the rank of lieutenant colonel or higher.

(c) Eligibility requirements for drivers. A soldier must—

(1) Qualify for and possess a current OF 346 (U.S. Government Motor Vehicles Operator's Identification Card), issued as prescribed by AR 600–55 and,

(2) Occupy a duty position with title of driver or assistant driver of Army vehicles for a minimum of 12 consecutive months, or during at least 8,000 miles and had no Army motor vehicle accident or traffic violation recorded on his or her DA Form 348–1–R (Equipment Operator's Qualification Record (Except Aircraft)), or

(3) Perform satisfactorily for a minimum period of 1 year as an active qualified driver instructor or motor vehicle driver examiner.

(d) Eligibility requirements for mechanics. A soldier must—

(1) Pass aptitude tests and complete the standard mechanics' course with a ''skilled'' rating or have demonstrated possession of sufficient previous experience as an automotive or engineer equipment mechanic to justify such a rating.

(2) Be assigned to primary duty as an automotive or engineer mechanic, unit level or higher, or is an active automotive or engineer mechanic instructor.

(3) If required to drive an Army motor vehicle in connection with automotive mechanic or automotive mechanic instructor duties, qualify for motor vehicle operators permit as prescribed above, and perform duty which includes driving motor vehicles for a minimum of 6 consecutive months, and has no Army motor vehicle accident or traffic violation recorded on his or her DA Form 348 (Equipment Operator's Qualification Record (Except Aircraft)).

(e) Eligibility requirements for operators of special mechanical equipment. A soldier or civilian whose primary duty involves operation of Army materials handling or other mechanical equipment must have completed 12 consecutive months or 500 hours of operation, whichever comes later, without accident or written reprimand as the result of his or her operation, and his or her operating performance must have been adequate in all respects.

(f) Description. A white metal (silver, nickel and rhodium), 1 inch in height and width, a cross patee with the representation of disk wheel with tire placed on the center. Component bars are authorized only for the following types of vehicles and/or qualifications:

(1) Driver—W (for wheeled vehicles);

(2) Driver—T (for tracked vehicles);

(3) Driver—M (for motorcycles);

(4) Driver—A (for amphibious vehicles);

(5) Mechanic (for automotive or allied vehicles);

(6) Operator—S (for special mechanical equipment).

§ 578.91 Glider Badge (rescinded).

(a) Effective May 3, 1961, the Glider Badge is no longer awarded. An individual who was awarded the badge upon satisfying then current eligibility requirements may continue to wear the badge. Further, it may be awarded retroactively upon application to the Commander, USA HRC (see § 578.3 (c) for address), when it can be established by means of sufficient documentation that the proficiency tests then prescribed were satisfactorily completed while assigned or attached to an airborne unit or to the Airborne Department of the Infantry School, or by participation in at least one combat glider landing into enemy-held territory as a member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander.

(b) Description. An oxidized silver badge 11/16 inch in height and 1½ inches in width consisting of a glider, frontal view, superimposed upon a pair of stylized wings displayed and curving inward.

§ 578.92 Nuclear Reactor Operator Badge (rescinded).

(a) Effective October 1, 1990, the Nuclear Reactor Operator Badges are no longer awarded. The Army has not conducted nuclear reactor operations or nuclear reactor operator training in several years. Accordingly, the Nuclear Reactor Operator Badges will no longer be awarded. Current Army recipients who were permanently awarded any degree of the badge may continue to wear it on the Army uniform. AR 672–5–1, dated October 1, 1990, terminated authorization to award the badge.

(b) Description—(1) Basic. On a 7/8 inch square centered on two horizontal bars each 1/8 inch in width separated by a 3/32 inch square and protruding 1/8 inch from each side of the square, a disc

3/4 inch in diameter bearing the symbol of the planet Uranus all silver colored metal 7/8 inch in height overall.

(2) Second Class Operator. The basic badge reduced in size placed on and partially encircled at the base by an open laurel wreath, the ends of the upper bar resting on the tips of the wreath, all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(3) First Class Operator. The basic badge reduced in size is placed on and entirely encircled by a closed laurel wreath all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(4) Shift Supervisor. The design of the Shift Supervisor Badge is the same as the First Class Operator Badge, except it is gold colored metal.

§ 578.93 Marksmanship Qualification Badge.

(a) Eligibility criteria. A basic marksmanship qualification badge is awarded to indicate the degree in which an individual, military or civilian, has qualified in a prescribed record course and an appropriate bar is furnished to denote each weapon with which he or she qualified. Each bar will be attached to the basic badge that indicates the qualification last attained with the respective weapon. Basic qualification badges are of three classes. Expert, sharpshooter, and marksman. The only weapons for which component bars are authorized are listed in the Table below. Basic marksmanship qualification badges are awarded to U.S. military and civilian personnel, and to foreign military personnel who qualify as prescribed.

(b) Approval authority—(1) To military personnel. Any commander in the rank or position of lieutenant colonel or higher may make awards to members of the Armed Forces of the United States; Camp/Post Commanders, Professors of Military Science, Directors of Army Instruction/Senior Army Instructors (DAI/SAI) or Reserve Officers' Training Corps (ROTC)/(Junior Reserve Officers' Training Corps (JROTC) units may make awards to members of the ROTC/JROTC.

(2) To civilian personnel. Installation commanders may make the authorization for civilian guards to wear marksmanship badges. Civilian guards will procure badges at their own expense.

(c) Description—(1) Expert. A white metal (silver, nickel and rhodium), 1.17 inches in height, a cross patee with the representation of a target placed on the center thereof and enclosed by a wreath;

(2) Sharpshooter: A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee with the representation of a target placed on the center thereof;

(3) Marksman. A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee.

(d) Component bars. Weapons for which component bars are authorized are provided in Table 10 below.

TABLE 10.—WEAPONS FOR WHICH COMPONENT BARS ARE AUTHORIZED

Weapon:	Inscription:
Rifle	Rifle.
Pistol	Pistol.
Antiaircraft artillery	AA Artillery.
Automatic rifle	Auto Rifle.
Machinegun	Machinegun.
Field Artillery	Field Arty.
Tank Weapons	Tank Weapons.
Flamethrower	Flamethrower.
Submachine Gun	Submachine Gun.
Rocket Launcher	Rocket Launcher.
Grenade	Grenade.
Carbine	Carbine.
Recoilless rifle	Recoilless rifle.
Mortar	Mortar.
Bayonet	Bayonet.
Rifle, small bore	Small bore rifle.
Pistol, small bore	Small bore pistol.
Missile	Missile.
Aeroweapons	Aeroweapons.

§ 578.94 Ranger Tab.

(a) Basic eligibility criteria. The basic eligibility criteria for award of the Ranger Tab is as follows:

(1) Successful completion of a Ranger course conducted by the U.S. Army Infantry School.

(2) Any person who was awarded the Combat Infantryman Badge while serving during World War II as a member of a Ranger Battalion (1st–6th inclusive) or in the 5307th Composite Unit (Provisional) (Merrill's Marauders).

(3) Any person who successfully completed a Ranger course conducted by the Ranger Training Command at Fort Benning, GA.

(b) Award approval authority. The Commandant of the U.S. Army Infantry School; CG, USA HRC, and the Cdr, USA HRC-St. Louis, may award the Ranger Tab.

(c) Description. The ranger qualification tab is 2 3/8 inches wide with a black embroidered background and yellow embroidered border and letters. A subdued version with olive drab background and border and black letters is authorized for work uniforms.

§ 578.95 Special Forces Tab.

(a) Basic eligibility criteria. Any person meeting one of the criteria below may be awarded the Special Forces (SF) Tab:

(1) Successful completion of USAJFKSWCS approved Active Component (AC) institutional training leading to SF qualification;

(2) Successful completion of a USAJFKSWCS approved Reserve Component (RC) SF qualification program;

(3) Successful completion of an authorized unit administered SF qualification program.

(b) Award approval authority. The Commander, U.S. Army John F. Kennedy Special Warfare Center (USAJFKSWCS), Fort Bragg, NC 28307–5000.

(c) AC institutional training. The SF Tab may be awarded to all personnel who successfully complete the Special Forces Qualification Course or Special Forces Detachment Officer Qualification Course (previously known as the Special Forces Officer Course). These courses are/were conducted by the USAJFKSWC (previously known as the U.S. Army Institute for Military Assistance).

(d) RC SF qualification programs. The SF Tab may be awarded to all personnel who successfully complete an RC SF qualification program according to TRADOC Regulation 135–5, dated June 1, 1988 or its predecessors. The USAJFKSWCS will determine individual entitlement for award of the SF Tab based on historical review of Army, Continental Army Command (CONRAC), and TRADOC regulations prescribing SF qualification requirements in effect at the time the individual began an RC SF qualification program.

(e) Unit administered SF qualification programs. The SF Tab may be awarded to all personnel who successfully completed unit administered SF qualification programs as authorized by regulation. The USAJFKSWCS will determine individual entitlement to award of the SF Tab based upon historical review of regulations prescribing SF qualification requirements in effect at the time the individual began a unit administered SF qualification program.

(f) Wartime service. The SF Tab may be awarded to all personnel who performed the following wartime service.

(1) Prior to 1955. Service for at least 120 consecutive days in one of the following organizations: 1st Special Service Force, August 1942 to December 1944, OSS Detachment 101, April 1942 to September 1945, OSS Jedburgh Detachments, May 1944 to May 1945, OSS Operational Groups, May 1944 to

May 1945, OSS Maritime Unit, April 1942 to September 1945, 6th Army Special Reconnaissance Unit (Alamo Scouts), February 1944 to September 1945, and 8240th Army Unit, June 1950 to July 1953.

(2) 1955 through 1975. Any company grade officer or enlisted member awarded the CIB while serving for at least 120 consecutive days in one of the following type organizations: SF Operational Detachment-A (A-Team), Mobile Strike Force, SF Reconnaissance Team, and SF Special Project Unit.

(g) Description. The SF Tab is 3¼, inches wide with a teal blue embroidered background and border and yellow embroidered letters. A subdued version with olive drab background and borders and black letters is authorized for work uniforms. A metal SF Badge is authorized for wear on the mess/dress uniforms and green shirt.

§ 578.96 Physical Fitness Badge.

(a) The Physical Fitness Badge was established by the Secretary of the Army on June 25, 1986. Effective February 1, 1999, soldiers who obtain a minimum score of 270 or above, with a minimum of 90 points per event on the Army Physical Fitness Test (APFT) and meet the body fat standards will be awarded the Physical Fitness Badge for Physical Fitness Excellence. Soldiers are required to meet the above criteria each record test to continue to wear the badge. Units can obtain APFT Standards and the new APFT Card (DA Form 705, dated June 1998) off the World Wide Web at *http://www.benning.army.mil/usapfs/.* Permanent Orders are not required for award of the Physical Fitness Badge.

(b) Description. On a dark blue disc 1⅝ inches (4.13 cm) in diameter edged dark blue; a yellow stylized human figure with arms outstretched in front of a representation of the coat of arms of the United States displaying six stars (three on each side of the figure and thirteen alternating white and red stripes, all encircled by a Brittany blue designation band inscribed ''PHYSICAL FITNESS'' at top and ''EXCELLENCE'' below separated on either side by a star, all navy blue; edged with a ⅛ inch (.32 cm) navy blue border. Overall diameter is 2⅝ inches (6.67 cm).

§ 578.97 U.S. Civilian Marksmanship Program.

The Civilian Marksmanship Program (CMP) was created by the U.S. Congress. The original purpose was to provide civilians an opportunity to learn and practice marksmanship skills so they would be skilled marksmen if later called on to service the U.S. military. Over the years the emphasis of the program shifted to focus on youth development through marksmanship. From 1916 to 1996 the CMP was administered by the U.S. Army. The National Defense Authorization Act for Fiscal Year 1996 (Title 10) created the Corporation for the (CPRPFS) Promotion of Rifle Practice and Firearms Safety, Inc. to take over administration and promotion of the CMP. The CPRPFS is a tax exempt not-for-profit 501(c)(3) organization that derives its mission from public law. The address for the CMP headquarters is P.O. Box 576, Port Clinton, Ohio, 43452.

§ 578.98 President's Hundred Tab.

(a) The President's Hundred Tab is awarded to soldiers who qualify among the top scoring 100 competitors in the President's Match.

(b) Background. (1) The National Rifle Association's (NRA) President's Match was instituted at the NRA matches of 1878, as the American Military Rifle Championship Match. It was patterned after an event for British Volunteers called the Queen's Match, which the NRA of Great Britain had initiated in 1860. In 1884, the name was changed to the President's Match for the Military Rifle Championship of the United States. It was fired at Creedmor, New York until 1891. In 1895, it was reintroduced at Sea Girt, New Jersey.

(2) The tradition of making a letter from the President of the United States the first prize began in 1904 when President Theodore Roosevelt, at the conclusion of the President's Match, personally wrote a letter of congratulations to the winner, Private Howard Gensch of the 1st Regiment of Infantry of the New Jersey National Guard.

(3) It cannot be ascertained as to when the President's Match was discontinued; however, it is known that it was not fired during World Wars I and II. It appears to have disappeared during the 1930s and during the depression when lack of funds severely curtailed the holding of matches of importance.

(4) The President's Match was reinstated in 1957 at the National Matches as ''The President's Hundred.'' The top-scoring 100 competitors in the President's Match were singled out for special recognition in a retreat ceremony in which they passed in review before the winner and former winners of this historic match.

(5) On May 27,1958, the NRA requested the Deputy Chief of Staff, G–1 approval of a tab for presentation to each member of the ''President's Hundred.'' The NRA's plan was to award the cloth tab together with a metal tab during the 1958 National Matches. The cloth tab was of high level interest and approved for wear on the Army uniform on March 3, 1958. The first awards were made at Camp Perry, Ohio, in early September 1958. The metal tab was never officially authorized for wear on the uniform by military personnel. However, the NRA issued the metal tab to military personnel for wear on the shooting jacket.

(c) Description. A full-color embroidered tab of yellow 4, inches (10.80 cm) in length and ⅝ inch (1.59 cm) in height, with the words ''President's Hundred'' centered in ¼ inch (.64 cm) high green letters.

§ 578.99 Identification Badges.

(a) Intent. Identification Badges are authorized to be worn as public evidence of deserved honor and distinction to denote service performed in specified assignments in the White House, in the Office of the Secretary of Defense; in the Organization of the Joint Chiefs of Staff, in the Office of the Secretary of the Army or as members of the General Staff; as members of the Guard, Tomb of the Unknown Soldier; as a Drill Sergeant; as a U.S. Army Recruiter, as an Army National Guard Recruiter, as a U.S. Army Reserve Recruiter; or as a Career Counselor.

(b) It should be noted that some of the identification badges are not Department of the Army badges. Criteria and eligibility is subject to change and individuals are advised to contact the badge proponent for additional information and guidance.

(c) Eligibility requirements for the Identification Badges are provided in §§ 55 578.100 through 578.111.

§ 578.100 Presidential Service Badge and Certificate.

(a) The Presidential Service Badge and the Presidential Service Certificate were established by Executive Order 11174, September 1, 1964 as amended by Executive Order 11407, April 23, 1968; Executive Order 11520, March 25, 1970; and Executive Order 12793, March 20, 1992. This award replaced the White House Service Badge and Certificate established by Executive Order 10879, June 1, 1960.

(b) The certificate is awarded, in the name of the President by the Secretary of the Army, to members of the Army who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office or to other direct support positions with the Executive Office of the President (EOP). The certificate will

not be issued to any member who is issued a Vice Presidential Certificate or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

(c) The badge is awarded to those members of the Armed Forces who have been granted the Certificate and is awarded in the same manner in which the certificate is given. Once the badge is awarded, it may be worn as a permanent part of the uniform.

(d) Only one certificate will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.101 Vice Presidential Service Badge and Certificate.

(a) The Vice Presidential Service Badge was established by Executive Order 11926, July 19, 1976.

(b) The badge is awarded upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army to U.S. Army personnel who have been assigned to duty in the Office of the Vice President for at least 1 year after December 19, 1974.

(c) The badge shall be accompanied by a certificate, which is awarded in the same manner in which the badge is given. Once the badge is awarded it may be worn as a permanent part of the uniform.

(d) Only one badge will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Vice Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.102 Office of the Secretary of Defense Identification Badge.

(a) The Office of the Secretary of Defense Identification Badge is authorized under 10 U.S.C., to provide a distinct identification of military staff members while assigned and, after reassignment, to indicate that the service member satisfactorily served on the Secretary of Defense's staff. The prescribing directive for this badge is DOD 1348.33—M, Manual of Military Decorations and Awards.

(b) Description. The badge, 2 inches in diameter, consists of an eagle with wings displayed horizontally grasping three crossed arrows all gold bearing on its breast a shield paleways of thirteen pieces argent and gules a chief azure, a gold annulet passing behind the wing tips bearing thirteen gold stars above the eagle and a wreath of laurel and olive in green enamel below the eagle, the whole superimposed on a silver sunburst of 33 rays.

§ 578.103 Joint Chiefs of Staff Identification Badge.

(a) A certificate of eligibility may be issued to military personnel who have been assigned to duty and have served not less than 1 year after January 14, 1961 in a position of responsibility under the direct cognizance of the Joint Chiefs of Staff. The individual must have served in a position which requires as a primary duty the creation, development, or coordination of policies, principles, or concepts pertaining to a primary function of the organization of the Joint Chiefs of Staff and must be approved for authorization to wear the badge by the Chairman, Joint Chiefs of Staff; the Director, Joint Staff; the head of a Directorate of the Joint Staff; or one of the subordinate agencies of the organization of the Joint Chiefs of Staff. The certificate of eligibility constitutes authority for wearing the badge as a permanent part of the uniform.

(b) Description. Within an oral silver metal wreath of laurel, 2¼ inches in height and 2 inches in width overall, the shield on the United States (the chief in blue enamel and the 13 stripes alternating white and red enamel) superimposed on four gold metal unsheathed swords, two in pale and two in saltire with points to chief, the points and pommels resting on the wreath, the blades and grips entwined with a gold metal continuous scroll surrounding the shield with the word JOINT at the top and the words CHIEFS OF STAFF at the bottom, all in blue enamel letters.

§ 578.104 Army Staff Identification Badge.

(a) The Army Staff Identification Badge (ASIB) and Army Staff Lapel Pin (ASLP) are neither awards nor decorations but are distinguished marks of service at HQDA. They are visible signs of professional growth associated with the important duties and responsibilities of the Army Secretariat and the Army Staff (ARSTAF). Issuance of the ASIB and the ASLP is not automatic, but is based on demonstrated outstanding performance of duty and approval by a principal HQDA official. Eligibility for the ASIB does not constitute eligibility for the ASLP; likewise, eligibility for the ASLP does not constitute eligibility for the ASIB.

(b) Description. The Coat of Arms of the United States in gold with the stripes of the shield to be enameled white and red and chief of the shield and the sky of the glory to be enameled blue, superimposed on a five-pointed black enameled star; in each reentrant angle of the star are three green enameled laurel leaves. The star is 3 inches in diameter for the Chief of Staff and former Chiefs of Staff and a 2 inches in diameter badge is authorized for all other personnel awarded the badge.

§ 5781.05 Guard, Tomb of the Unknown Soldier Identification Badge.

(a) The Guard, Tomb of the Unknown Soldier Identification Badge will be authorized by the Commanding Officer, 1st Battalion (Reinforced), 3d U.S. Infantry (The Old Guard), for wear by each member of the Guard, Tomb of the Unknown Soldier, during their assignment to that duty.

(b) Effective December 17, 1963 the Commanding Officer, 1st Battalion (Reinforced), 3d U.S. Infantry (The Old Guard), may authorize the wearing of the badge as a permanent part of the uniform for personnel who have served honorably for a minimum of 9 months, which need not be continuous, as a member of the Guard, Tomb of the Unknown Soldier, and who are recommended by the Commanding Officer, Company H, 1st Battalion (Reinforced), 3d Infantry (The Old Guard).

(c) Authorization of the badge as a uniform item will be made by memorandum citing this paragraph as authority. This memorandum will constitute authority for individuals to wear the badge as a part of their military uniform. Original issue of the badge will be made by the Commander, 1st Battalion, 3d U.S. Infantry (The Old Guard). Replacements will be purchased from commercial sources.

(d) This award is retroactive to February 1, 1958 for personnel in the Active Army. Apply to Commander, 1st Battalion (Reinforced), 3d U.S. Infantry (The Old Guard), Fort Myer, VA 22211–5020. Former soldiers may apply to Commander, AHRC (see § 578.3 (c) for address).

(e) Revocation. The badge may be revoked if the recipient is removed from the position of Guard, Tomb of the Unknown Soldier for cause, regardless of the amount of time the individual has served in the position in a satisfactory manner, or if the badge holder, once he or she leaves the position, brings dishonor or discredit upon the Guards of the Tomb of the Unknown Soldier. Authority to revoke the badge remains with Commanding Officer, 1st Battalion (Reinforced), 3d U.S. Infantry (The Old Guard). Revocation will be announced in permanent orders.

(f) Description. A silver color metal badge 2 inches in width and 1 15/32 inches in height, consisting of an inverted open laurel wreath surmounted by a representation of the front elevation of the Tomb of the Unknown Soldier, the upper section containing the three figures of Peace, Victory, and Valor, the base bearing in two lines the words ''HONOR GUARD'', all in low relief.

§ 578.106 Army ROTC Nurse Cadet Program Identification Badge.

This badge is authorized for issue to and wear by contracted ROTC cadets enrolled in a program leading to a baccalaureate degree in nursing. It was formerly referred to as the Army Student Nurse Program Identification Badge.

§ 578.107 Drill Sergeant Identification Badge.

(a) Eligibility. Successful completion of the Drill Sergeant course and assignment as a drill sergeant to a training command.

(b) Authorization. The Commandant of the Drill Sergeant School will authorize the permanent wear of the badge to eligible personnel by memorandum. Officers are authorized to wear this badge if it was permanently awarded to them while in an enlisted status.

(c) Description—(1) Metal. A gold plated metal and enamel insignia, 2 inches (5.08 cm) in width and $1^{51}/_{64}$ inches (4.56 cm) in height, consisting of a flaming torch above a breast plate and jupon in front of a rattlesnake on a green background, grasping in its mouth at upper right and with its tail at upper left, the ends of an encircling scroll inscribed ''THIS WE'LL DEFEND'' in black letters, between 13 black star, 7 on the left and 6 on the right.

(2) Embroidered. An embroidered insignia, as described above in subdued colors, except the size is 2¾ inches (6.99 cm) in width and 2½ inches (6.35 cm) in height. The insignia is on a olive drab square background measuring 3½ inches (8.89 cm) in width and height.

§ 578.108 U.S. Army Recruiter Identification Badge.

(a) The U.S. Army Basic Recruiter Badge is authorized for wear by military personnel assigned or attached to the U.S. Army Recruiting Command (USAREC) as designated by the CG, USAREC. One, two, or three gold achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the basic badge.

(b) The U.S. Army Gold Recruiter Badge is authorized for wear by eligible personnel meeting the criteria established by the CG, USAREC. One, two, or three sapphire achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the gold badge.

(c) Description. A silver or gold color metal device 2⅛ inches (5.4cm) in height overall consisting of a circular band inscribed, between two narrow green enamel borders, with the words ''U.S. ARMY'' on the left and ''RECRUITER'' on the right, in silver letters, reading clockwise and at bottom center three five-pointed stars; perched upon the inside edge of the band at bottom center an eagle looking to its right its wings raised vertically and extended over the top of the band and supported between its wings diagonally from lower left to upper right a flaming torch with both ends extended outside the band.

§ 578.109 Career Counselor Badge.

(a) The Career Counselor Badge may be authorized for wear by enlisted personnel assigned to authorized duty positions which requires Primary Military Occupational Specialty (PMOS) 79S (Career Counselor). The award is retroactive to 1, January 1972.

(b) Description. An oxidized silver badge $1^{7}/_{8}$ inches in height overall consisting of an eagle with raised and outstretched wings standing upon, at the point of the intersection, the shaft of a spear to the left and the barrel of a musket with fixed bayonet to the right, weapons terminated just below the point of crossing, and all enclosed by a horizontal oval-shaped frame, its lower half consisting of a scroll inscribed with the words ''CAREER COUNSELOR'' in raised letters, the upper half composed of two olive branches issuing from the ends of the scroll at either side and passing behind the eagle's wing tips, meeting at top center; all areas between the eagle, spear and musket and the frame are pierced.

§ 578.110 Army National Guard Recruiting and Retention Identification Badges.

The National Guard Bureau (NGB–ARP) is the proponent agency for the Army National Guard Recruiting and Retention Identification Badges. There are three degrees of badges that may be awarded; basic, senior, and master ARNG Recruiter Badges. See National Guard Regulation 672–2.

§ 578.111 U.S. Army Reserve Recruiter Identification Badge.

The U.S. Army Reserve Recruiter Badge no longer exists as a separate identification badge. All Regular Army and Reserve Component recruiters only wear the U.S. Army Recruiter Identification Badges authorized in § 578.104.

§ 578.112 Foreign and International Decorations and Awards to U.S. Army Personnel—General.

(a) Guidelines. The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter apply to—

(1) Active Army, Army National Guard, and U.S. Army Reserve soldiers to include retirees regardless of duty status.

(2) All civilian employees of DA including experts and consultants under contract to DA.

(3) All spouses, unless legally separated and family members of the personnel listed in paragraphs (a)(1) and (2) of this section.

(b) The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter do not apply when:

(1) A foreign decoration is awarded posthumously. Such decorations and accompanying documents will be forwarded to Commander, USA HRC, (see § 578.3(c) for address), for delivery to next of kin.

(2) The recipient of a decoration dies before approval of acceptance can be obtained.

(3) A foreign decoration was awarded for service while the recipient was a bona fide member of the Armed Forces of a friendly foreign nation, provided the decoration was made prior to employment of the recipient by the U.S. Government.

(4) A decoration for service in the Republic of Vietnam was accepted on or after March 1, 1961, but not later than March 28, 1973.

(c) Restriction. No person will request, solicit, or otherwise encourage the tender of a foreign decoration. Whenever possible, personnel are obligated to initially refuse acceptance of foreign decorations.

(d) Constitutional restriction. No person holding any office of profit or trust under the United States will, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatsoever from any king, prince, or foreign state. (Constitution, Article. I, section. 9). This includes decorations and awards tendered by any official of a foreign government.

(e) Congressional authorization. 5 U.S.C. 7342 authorizes members of the Army to accept, retain, and wear foreign

decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Secretary of the Army.

(f) Participation in ceremonies. Subject to the restriction in, an individual may participate in a ceremony and receive the tender of a foreign decoration. The receipt of the decoration will not constitute acceptance of the award by the recipient.

(g) Disciplinary action. The wearing of unauthorized awards, decorations, or other devices is a violation of the Uniform Code of Military Justice and may subject a soldier to appropriate disciplinary action.

§ 578.113 Individual Foreign Decorations.

Decorations received which have been tendered in recognition of active field service in connection with combat operations or which have been awarded for outstanding or unusually meritorious performance may be accepted and worn upon receiving the approval of HQ, USA HRC. In the absence of such approval, the decoration will become the property of the United States and will be deposited with HQ, USA HRC, for use or disposal.

§ 578.114 Foreign unit Decorations.

(a) During the period of military operations against an armed enemy and for 1 year thereafter; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, Army Component commanders, or major Army commanders are authorized to accept foreign unit decorations tendered to brigades, battalions, or smaller units under their command. HQ, USA HRC (AHRC–PDO–PA) will take final action on all tenders of foreign unit decorations to headquarters and headquarters companies of divisions and higher or comparable units. This authority will not be further delegated. Acceptance of foreign unit decorations will be reported to the CG, USA HRC for confirmation in DAGO. Confirmed foreign unit decorations are listed in DA Pamphlet 672–1 and DA Pamphlet 672–3.

(b) Foreign unit decorations may be accepted only if all the following conditions are met:

(1) The decoration is tendered by a friendly foreign nation for heroism or exceptionally meritorious service in direct support of military operations;

(2) The decoration is one that is conferred by the national government of the foreign country upon units of its own Armed Forces; and

(3) The unit is cited by name in orders of the national government of the foreign country.

(c) Foreign unit decorations will be neither recommended by nor sought by the Department of the Army. Solicitation of foreign unit decorations by individuals or units within the Army is prohibited. Acceptance of foreign unit decorations will be approved by CG, USA HRC, only when the award is proffered by the foreign government based on services performed and without solicitation.

(d) Display of foreign unit decorations. Awards of foreign unit decorations are evidenced by streamers, fourrageres, or lanyards attached to the pike or lance as a component part of organizational colors, distinguishing flags or guidons.

(e) The streamer will be of colors corresponding to the ribbon of the unit decoration with the name of the action or the area of operations embroidered thereon. A separate streamer will be furnished for each award. The medal will be attached only on ceremonial occasions.

(f) Additional foreign unit decorations which have been tendered and accepted but for which no streamer is authorized for unit colors and guidons are as follows:

(1) Citation in the Order of the Day of the Belgian Army;

(2) State of Vietnam Ribbon of Friendship;

(3) Netherlands Orange Lanyard;

(g) Emblems. (1) Normally when a unit is cited, only the organizational color, distinguishing flag, or guidon is decorated. Unless specifically authorized by orders of the foreign government and approved by CG, USA HRC, no emblem is issued but may be purchased for wear on the uniform. See AR 670–1 for information on wear of foreign unit awards.

(2) The only emblems so far authorized for wear on the uniform to indicate a foreign decoration received by a unit are the French and Belgian Fourrageres, the Netherlands Orange Lanyard, the Philippine Republic Presidential Unit Citation Badge, the Republic of Korea Presidential Unit Citation Badge, the Vietnam Presidential Unit Citation Badge, the Republic of Vietnam Gallantry Cross Unit Citation Badge, and the Republic of Vietnam Civil Actions Medal Unit Citation Badges. Only the French Fourragere is authorized for temporary wear.

(3) The following emblems are not sold by the Department of the Army, but may be purchased if desired from civilian dealers in military insignia and some Army Exchanges: Philippine Republic, Republic of Korea, and the Vietnam Presidential Unit Citations, the Republic of Vietnam Gallantry Cross, and the Republic of Vietnam Civil Actions Medal.

§ 578.115 Foreign Badges.

(a) Eligibility requirements. Qualification and special skill badges may be accepted if awarded in recognition of meeting the criteria, as established by the foreign government concerned, for the specific award. Only those badges that are awarded in recognition of military activities and by the military department of the host country are authorized for acceptance and permanent wear. Badges that do not meet these criteria may be authorized for acceptance but not for wear, and will not be entered in the official military records of the recipient. Of particular importance are the criteria established by the military department of the host country; for example, if a particular badge is authorized for award only to enlisted personnel of host country then badge may be accepted and worn by U.S. Army enlisted personnel.

(b) Awarding authority. Commanders (overseas and CONUS) serving in the rank of brigadier general or higher and colonel level commanders who exercise general court-martial authority are delegated authority to approve the acceptance, retention, and permanent wear of foreign badges. This authority may be further delegated to commanders charged with custody of military personnel record files. The burden of proof rests on the individual soldier to produce valid justification, that is, orders, citations, or other original copies of the foreign elements that awarded them the badge. A list of approved badges are provided in Appendix D, AR 600–8–22 and the Army Awards Branch Web site: *https://www.perscomonline.army.mil/tagd/awards/Appendix_D.doc.* Request for accept and wear of any foreign badges not listed in Appendix D or the website will be forwarded to HQ, USA HRC (see 578.3 (c) for address).

(c) Other badges. Badges presented to Army personnel which do not fall under the category of qualification or special skill badges discussed in paragraph (a) of this section (honorary badges, identification devices, insignia) will be reported in accordance with AR 1–100, paragraph 6. Badges in these categories are considered gifts. They will not be

authorized for wear nor entered in official military personnel records.

(d) Wear. AR 670–1 governs the manner of wear of foreign qualification and special skill badges.

§ 578.116 United Nations Service Medal.

(a) The United National Service Medal (UNSM) was established by United Nations General Assembly Resolution 483(V), December 12, 1950. Presidential acceptance for the United States Armed Forces was announced by the DOD on November 27, 1951.

(b) Qualifications. To qualify for award of the UNSM, individuals must meet one of the following:

(1) Members of the Armed Forces of the United States dispatched to Korea or adjacent areas for service on behalf of the United Nations in the action in Korea.

(2) Other personnel dispatched to Korea or adjacent areas as members of paramilitary and quasi-military units designated by the U.S. Government for service in support of United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations there.

(3) Personnel awarded the Korean Service Medal automatically establish eligibility for the United Nations Service Medal.

(4) Service with a national contingent designated by the U.S. Government for service in support of the United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations in Korea.

(c) Service requirements. Service will be for periods provided between June 27, 1950 and July 27, 1954, inclusive, under either of the following conditions:

(1) Within the territorial limits of Korea or the waters immediately adjacent thereto or in the air over Korea or over such waters.

(2) The service prescribed must have been performed while serving with any unit as provided in paragraphs (b)(1) and (2) of this section as specified below:

(i) While on an assignment to such unit for any period between the dates specified above.

(ii) While attached to such a unit for a period of 30 days consecutive or nonconsecutive, between the dates specified above.

(iii) While in active combat against the enemy under conditions other than those prescribed in paragraphs (b) and (c) of this section if a combat decoration has been awarded or an individual certificate testifying to such combat service has been furnished by the commander of an independent force or a division, ship, or air group, or comparable or higher unit.

(d) Exclusions. No personnel of the United Nations or of its specialized agencies or of any national government service other than as prescribed above and no International Red Cross personnel engaged for service under the United Nations Commander in Chief with any United Nations relief team in Korea will be eligible for award of the medal.

§ 578.117 Inter-American Defense Board Medal.

(a) The Inter-American Defense Board Medal was established by the Ninety-first Session of the Inter-American Defense Board on December 11, 1945 and authorized by Executive Order 11446, January 18, 1969.

(b) U.S. military personnel who have served on the Inter-American Defense Board for at least 1 year as chairman of the board, delegates, advisers, officers of the staff, officers of the secretariat, or officers of the Inter-American Defense College may wear the Inter-American Defense Board ribbon permanently.

(c) U.S. military personnel who have been awarded the Inter-American Defense Board Medal and ribbon may wear them when attending meetings, ceremonies, or other functions where Latin American members of the Board are present.

§ 578.118 Philippine Defense Ribbon.

The Philippine Defense Ribbon is awarded for service in the defense of the Philippines from December 8, 1941 to June 15, 1942, under either of the following conditions:

(a) Participation in any engagement against the enemy in Philippine territory, in Philippine waters, or in the air over the Philippines or over Philippine waters. An individual will be considered as having participated in an engagement if they meet one of the following:

(1) Was a member of the defense garrison of the Bataan Peninsula or of the fortified islands at the entrance to Manila Bay.

(2) Was a member of and present with a unit actually under enemy fire or air attack.

(3) Served on a ship that was under enemy fire or air attack.

(4) Was a crewmember or passenger in an airplane that was under enemy aerial or ground fire.

(b) Assigned or stationed in Philippine territory or in Philippine waters for not less than 30 days during the period.

(c) Individuals who meet conditions set forth in paragraphs (a) and (b) of this section are authorized to wear a bronze service star on the ribbon.

§ 578.119 Philippine Liberation Ribbon.

(a) The Philippine Liberation Ribbon is authorized by DA Circular 59, March 8, 1948.

(b) It is awarded for service in the liberation of the Philippines from October 17, 1944 to September 3, 1945, under any of the following conditions:

(1) Participated in the initial landing operations on Leyte or adjoining islands from October 17, 1944 to October 20, 1944. An individual will be considered as having participated in such operations if he landed on Leyte or adjoining islands, was on a ship in Philippine waters, or was a crewmember of an airplane, which flew over Philippine territory during the period.

(2) Participated in any engagement against the enemy during the campaign on Leyte and adjoining islands. An individual will be considered as having participated in combat if he meets any of the conditions set forth in Philippine Defense Ribbon § 578.118(a)(2) through (4).

(3) Participated in any engagement against the enemy on islands other than those included in paragraph (b)(2) of this section. An individual will be considered as having participated in combat if he or she meets any of the conditions set forth in Philippine Defense Ribbon 578.118(a)(2) through (4).

(4) Served in the Philippine Islands or on ships in Philippine waters for not less than 30 days during the period.

(c) Bronze service stars. An individual who meets more than one of the conditions set forth in paragraph (a) of this section is authorized to wear a bronze service star on the ribbon for each additional condition under which he or she qualifies other than that under which he or she is eligible for the initial award of the ribbon.

§ 578.120 Philippine Independence Ribbon.

The Philippine Independence Ribbon is authorized by DA Circular 59, 1948. Any recipient of both the Philippine Defense and Philippine Liberation ribbons is eligible for award of the Philippine Independence Ribbon. United States Army personnel authorized to wear the Philippine Independence Ribbon under the established criteria, may continue to wear the ribbon, provided the authority for such wear was recorded before November 24, 1954.

§ 578.121 United Nations Medal.

(a) Authorized by the Secretary General of the United Nations and Executive Order 11139, January 7, 1964. U.S. service members who are or have been in the service of the United Nations in operations designated by the Secretary of Defense may accept the United Nations Medal (UNM) when awarded by the Chief of the United Nations Mission.

(b) Eligibility. The eligibility criteria for award of the UNM requires that an individual serve under the operational or tactical control of the United Nations and serve a minimum of 90 consecutive days in the service of the United Nations. The following United Nations missions/operations have been approved for acceptance and wear:

(1) United Nations Observation Group in Lebanon (UNOGIL);

(2) United Nations Truce Supervision Organization in Palestine (UNTSO);

(3) United Nations Military Observer Group in India and Pakistan (UNMOGIP);

(4) United Nations Security Forces, Hollandia (UNSFH);

(5) United Nations Transitional Authority in Cambodia (UNTAC);

(6) United Nations Advance Mission in Cambodia (UNAMIC);

(7) United Nations Protection Force in Yugoslavia (UNPROFOR);

(8) United Nations Mission for the Referendum in Western Sahara (MINURSO);

(9) United Nations Iraq/Kuwait Observation Mission (UNIKOM);

(10) United Nations Operations in Somalia (to include U.S. Quick Reaction Force members) (UNOSOM);

(11) United Nations Mission in Haiti (UNMIH);

(12) United Nations Medal Special Service (UNMSS).

(c) Wear. Each United Nations mission for which an UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded an UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will denote subsequent awards of the UNM for service in a different United Nations mission. Only one United Nations ribbons is authorized for wear.

(d) Presentation. The Senior Representative of the Secretary-General who makes the award normally makes presentation of the UNM in the field. Approval authority to accept and wear the UNM to member of the Armed Forces of the United States is the Secretary of Defense. When presentation is not so accomplished, any person who believes he or she is eligible for award may submit to Commander, USA HRC, (see § 578.3(c) for address) and a request for such award with copy of any substantiating documents. Commander, AHRC will forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International Organization Affairs, to the United Nations for consideration.

(e) Description—(1) *Medal.* The medal is bronze, 1⅜ inches in diameter, with a top view of the globe enclosed at sides and bottom by a wreath and the letters ''UN'' at the top of the medal. On the reverse side is the inscription ''IN THE SERVICE OF PEACE''. The United Nations Service Medal Korea is the same design, except the obverse does not include the letters ''UN'' and the medal has a hanger bar with the inscription ''KOREA''. On the reverse side of the United Nations Service Medal Korea is the inscription ''FOR SERVICE IN DEFENCE OF THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS''.

(2) Ribbon. Each United Nations mission for which a UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded a UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will be worn to denote subsequent awards of the UNM for service in a difference United Nations mission. Only one United Nations ribbon is authorized for wear.

§ 578.122 North Atlantic Treaty Organization Medal.

(a) The North Atlantic Treaty Organization (NATO) Medal is awarded by the Secretary-General of the North Atlantic Treaty Organization to military and civilian members of the Armed Forces of the United States who participate in NATO operations related to the former Republic of Yugoslavia. The Secretary of Defense authorized acceptance of the NATO Medal on November 14, 1995.

(b) Acceptance. Acceptance of the NATO Medal has been approved for U.S. military personnel who serve under NATO command or operational control in direct support of NATO operations in the former Republic of Yugoslavia, or as designated by the Supreme Allied Command, Europe (SACEUR), from July 1, 1992 to a date to be determined.

(c) Presentation. The NATO Medal will normally be presented by the Allied Command Europe headquarters exercising operational command or control over U.S. military units or individuals prior to their departure from service with NATO.

(d) Medal set. The medal set includes a ribbon clasp denoting the specific operation for which the award was made. U.S. service members are authorized to retain the ribbon clasp presented but may not wear the clasp. Only the basic medal and service ribbon are authorized for wear on the uniform.

(e) Subsequent awards. Subsequent awards (if approved by the Secretary of Defense) for service in a different NATO operation, U.S. military personnel will affix a bronze service star to the NATO Medal suspension ribbon and service ribbon.

(f) Precedence. The NATO Medal shall have the same precedence as the United Nations Medal, but will rank immediately below the United Nations Medal when the wearer has been awarded both medals.

(g) Description. The medal is bronze, 1⅜ inches in diameter, bearing on the obverse the NATO emblem (a four pointed star emitting a ray from each point superimposed on an annulet) enclosed in base by a wreath of olive. The reverse side has a band inscribed ''NORTH ATLANTIC TREATY ORGANIZATION'' at top and ''ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD'' at the bottom. In the center is a sprig of olive between the inscription ''IN SERVICE OF PEACE AND FREEDOM'' above and ''AU SERVICE DE LA PAIX ET DE LA LIBERTE'' below. The ribbon is 1⅜ inches wide and consists of the following stripes: 5/32 inch Yale Blue 67176; ⅛ inch White 67101; 13/16 inch Yale Blue; ⅛ inch White; and 5/32 inch Yale Blue.

§ 578.123 Multinational Force and Observers Medal.

(a) The Multinational Force and Observers (MFO) Medal was established by the Director General, Multinational Force and Observers, March 24, 1982. Presidential acceptance for the United States Armed Forces and DOD civilian

personnel is announced by DOD on July 28, 1982.

(b) Eligibility. To qualify for the award personnel must have served with the MFO at least ninety (90) cumulative days after August 3, 1981. Effective March 15, 1985, personnel must serve 6 months (170 days minimum) with the MFO to qualify for the award. Periods of service on behalf of the MFO outside of the Sinai, and periods of leave while a member is serving with the MFO, may be counted toward eligibility for the MFO medal. Qualifying time may be lost for disciplinary reasons.

(c) Awards. The Director General, MFO makes awards, or in his or her name by officials to whom he or she delegates awarding authority.

(d) Presentation. Presentations are usually to be made by personnel designated by the Director General, MFO. When presentation is not accomplished, any person with MFO service who believes he or she is eligible for the award may submit a request for the award to Commander, USA HRC, (see § 578.3(c) for address). This request must include complete details related to MFO duty, including geographical location and inclusive dates of service, and copies of all substantiating documents. Commanding General, USA HRC, will then forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International Organization Affairs, to the Multinational Force and Observers for consideration.

(e) Subsequent awards. An appropriate numeral starting with numeral 2 will indicate second and subsequent awards for each completed 6-month tour. If an individual has not completed a cumulative 6-month tour, he or she is not eligible for award of the MFO medal unless one of the following conditions exists:

(1) The award is to be made posthumously.

(2) The member is medically evacuated due to service-incurred injuries or serious illness.

(3) The member is withdrawn at the request of the parent Government for national service reasons under honorable conditions.

§ 578.124 Republic of Vietnam Campaign Medal.

(a) Criteria. The Republic of Vietnam Campaign Medal is awarded by the Government of the Republic of Vietnam to members of the United States Armed Forces and authorized by DOD 1348.33–M.

(b) Requirements. To qualify for award personnel must meet one of the following requirements:

(1) Have served in the Republic of Vietnam for 6 months during period specified in paragraph (c) of this section.

(2) Have served outside the geographical limits of the Republic of Vietnam and contributed direct combat support to the Republic of Vietnam and Armed Forces for 6 months. Such individuals must meet the criteria established for the Armed Forces Expeditionary Medal (Vietnam) or the Vietnam Service Medal, during the period of service required to qualify for the Republic of Vietnam Campaign Medal.

(3) Have served as in paragraph (b)(1) or (2) of this section for less than 6 months and have been one of the following:

(i) Wounded by hostile forces.

(ii) Captured by hostile forces, but later escaped, was rescued or released.

(iii) Killed in action or otherwise in line of duty.

(4) Personnel assigned in the Republic of Vietnam on January 28, 1973 must meet one of the following:

(i) Served a minimum of 60 days in the Republic of Vietnam as of that date.

(ii) Completed a minimum of 60 days service in the Republic of Vietnam during the period from January 28, 1973 to March 28, 1973, inclusive.

(c) Eligibility for award under authority of this paragraph is limited to the period from March 1, 1961 to March 2, 1973, inclusive. Eligibility for acceptance of this award solely by virtue of service performed prior to March 1, 1961 or subsequent to March 1973 is governed by AR 600–8–22, paragraph 9–8.

(d) The Republic of Vietnam Campaign Medal with Device (1960) and the miniature medal are items of individual purchase.

§ 578.125 Kuwait Liberation Medal—Saudi Arabia.

(a) The Kuwait Liberation Medal is awarded by the Government of Saudi Arabia to members of the Armed Forces of the United States and authorized by DOD on January 3, 1992.

(b) It is awarded to members of the Armed Forces of the U.S. who participated in Operation DESERT STORM between January 17, 1991 and February 28, 1991 in one or more of the following areas: Persian Gulf; Red Sea; Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights supporting military operations in the areas designated above.

(4) Serve on temporary duty for 30 consecutive days during the period January 17, 1991 to February 28, 1991 under any of the criteria in paragraphs (b)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC–PDO–PA) for people participating in actual combat operations.

(c) The eligibility period and geographic boundaries were specified by the Government of Saudi Arabia and may not be waived.

(d) Posthumous award to the next of kin of any soldier who lost his or her life, while, or as a direct result of, participating in Operation DESERT STORM between January 17, 1991 and February 28, 1991, without regard to the length of such service, will be made by HQ, USA AHRC (AHRC–PDO–PA).

(e) The Kuwait Liberation Medal, ribbon, and miniature medal are items of individual purchase. The Army accomplished an initial issue to eligible personnel from a one-time stock provided by the Government of Saudi Arabia in 1992.

(f) Description. The medal is $1^{25}/_{32}$ inches in width and is described as follows: On a gold sunburst with stylized silver rays, a glob depicting the Arabian Peninsula encircled by a wreath of palm between a scroll in the base inscribed ''Liberation of Kuwait'' and at the top a palm tree issuing from two diagonally crossed sabers, all gold. The ribbon is $1^{3}/_{8}$ inches wide and consists of the following stripes: $^{5}/_{32}$ inch Old Glory Red 67156; $^{4}/_{64}$ inch black 67138; $^{9}/_{64}$ inch white stripe 67101; center $^{5}/_{8}$ inch irish green 67189; $^{9}/_{64}$ inch white stripe 67101; $^{5}/_{64}$ inch black 67138; and $^{5}/_{32}$ inch Old Glory Red.

§ 578.126 Kuwait Liberation Medal—Kuwait.

(a) The Kuwait Liberation Medal is awarded by the Government of Kuwait to members of the Armed Forces of the United States and authorized by the DOD on August 7, 1995.

(b) It is awarded to members of the Armed Forces of the U.S. who served in support of Operations DESERT SHIELD and DESERT STORM between August 2, 1990 and August 31, 1993 in one or more of the following areas: the Arabian Gulf; the Red Sea; the Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Omar, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible, personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground and/or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights directly supporting military operations in the areas designated above.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days during the period August 2, 1990 to August 31,1993 under any of the criteria in paragraphs (c)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC–PDO–PA) for soldiers participating in actual combat operations.

(d) The eligibility period and geographic boundaries were specified by the Government of Kuwait and may not be waived.

(e) Posthumous award to the next of kin of any soldier who lost his life, while, or as direct result of participating in Operations DESERT SHIELD/STORM between August 2, 1990 and August 31, 1993, without regard to the length of such service, will be made by HQ, USA HRC (AHRC–PDO–PA).

(f) The Government of Kuwait provided a one-time stock of the Kuwait Liberation Medal for initial issue to eligible personnel.

(g) Description. A bronze metal and enamel, 1 9/16 inches in diameter suspended from a bar by a wreath. A obverse bears the Coat of Arms of the State of Kuwait. The Coat of Arms consists of the shield of the flag design in color superimposed on a falcon with wings displayed. The falcon supports a disk containing a sailing ship with the full name of the State written at the top of the disk. At the top of the medal is the inscription ''1991 Liberation Medal'' in Arabic letters. The reverse side is the map of Kuwait on a rayed background. The ribbon is the pattern of the flag of the State of Kuwait and consists of three equal stripes 29/64 inch each of the following colors: old glory red (cable 67156), white (cable 67101), and irish green (cable 67189). A black trapezium is at top of the ribbon drape and service ribbon.

§ 578.127 Republic of Korea War Service Medal.

(a) The Republic of Korea War Service Medal (ROKWSM) was originally offered to the Armed Forces of the United States by the Ministry of Defense, Republic of Korea, on November 15, 1951. On 20 August 1999, the Assistant Secretary of Defense (Force Management & Policy) approved acceptance and wear of the medal for veterans of the Korean War.

(b) Criteria. It is awarded to members of the U.S. Armed Forces who served in Korea and adjacent waters between June 25, 1950 and July 27, 1953. The service prescribed must have been performed as follows:

(1) While on permanent assignment; or

(2) While on temporary duty within the territorial limits of Korea or on waters immediately adjacent thereto for 30 consecutive days or 60 nonconsecutive days; or

(3) While as crew members of aircraft, in aerial flight over Korea participating in actual combat operations or in support of combat operations.

(c) Supply of the medal. The Air Force is the Executive Agency for the ROKWSM. Therefore, requests for award of the medal should be forwarded to the following address: HQ, Air Force Personnel Center, DPPPRK, 550 C Street W, Suite 12, Randolph AFB, TX 78150–4612.

(d) Order of precedence. Order of precedence for non-U.S. service medals and ribbons is determined by date of approval. Accordingly, the ROKWSM will be worn after the Kuwait Liberation Medal—Government of Kuwait. For the majority of Korean War veterans, the medal will be worn after the United Nations Medal or the Republic of Vietnam Campaign Medal, if they served during the Vietnam Conflict era.

(e) Description. A gold six pointed star with rays, 37 mm in diameter, superimposed by a white enameled star, 42 mm in diameter, overall in center a green disc, 18 mm in diameter, with the outline of the Vietnamese country with a red flame of three rays between North and South Vietnam. On the reverse of the medal is a circle with a designated band containing the word ''CHIEN–DICH'' (Campaign) at the top and ''BOI–THINH'' (Medal) at the bottom. Across the center of the circle is the word ''VIETNAM''. The ribbon is 1 3/8 inches wide and consists of the following stripes: 1/16 inch gherkin green 67183; 3/16 inch white 67101; 5/16 inch gherkin green 67183; 1/4 inch white 67101; 5/16 inch gherkin green 67183; 3/16 inch white 67101; 1/16 inch gherkin green 67183, and 3/16 inch white 67101.

§ 578.128 Certificates for Decorations.

(a) Current issue. A certificate will be presented with each award of an authorized military decoration. In no case will a commander issue a certificate indicating award of a military decoration other than on the standard DA certificate for the awarded decoration. Awards certificates will be issued without reference to numbered oak leaf clusters.

(b) Completion. Each certificate for award of the Legion of Merit (LM), Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM) and Army Achievement Medal (AAM) will be completed by the awarding commander and will bear his or her personal signature in the lower right corner. The Permanent Orders number and date are typed on the line on the left side of the LM, MSM, ARCOM, and AAM certificates. The grade, name, and branch of service, together with the place and dates of the act, achievement, or service of the recipient, will be inserted on the certificate in the appropriate spaces.

(c) Replacement of Award Certificates—(1) Veterans and retirees. Veterans and retirees awarded U.S. military decorations to whom an appropriate certificate has not been issued may apply for such certificate by writing to the appropriate office indicated in § 578.64.

(2) Active duty soldiers. Active duty soldiers may request replacement certificate through command channels to the headquarters currently having authority to award the decoration for which certificate is required. Each request should include a copy of the orders announcing the award. The replacement certificate will be annotated with the original order number (for example, Per Permanent Orders XX–XX, January 1, 2000).

§ 578.129 Certificate of Achievement.

(a) Commanders may recognize periods of faithful service, acts, or achievements which do not meet the standards required for decorations by issuing to individual U.S. military personnel a DA Form 2442 (Certificate of Achievement) or a Certificate of Achievement of local design.

(b) Certificates of Achievement will be issued under such regulations as the local commander may prescribe.

(c) If a locally designed Certificate of Achievement is printed for use according to this regulation, it may bear reproductions of insignia. In the interest of economy, the use of color will be held to a minimum.

(d) The citation on such certificates will not be worded so that the act of service performed appears to warrant the award of a decoration.

(e) No distinguishing device is authorized for wear to indicate the receipt of a Certificate of Achievement.

§ 578.130 Certificate of appreciation to employers.

(a) To improve employer acceptance of the concept of military leave for participation in Reserve Component training and to encourage employers to adopt liberal military leave policies, certificates of appreciation may be presented to employers who have wholeheartedly and consistently cooperated in granting military leave to employees.

(b) The Commanding Generals, TRADOC, FORSCOM, State adjutants general, Army Reserve General Officer Commands, Corps, and the U.S. Army Military District of Washington are authorized to make this award.

(c) Certificates will be presented by the awarding commander or by an authorized representative, as appropriate.

§ 578.131 Certificates for badges.

Commanders authorized to award badges may issue, simultaneously, appropriate certificates of achievement to persons under their command who have qualified for the respective badges. The certificate also may bear a citation which will follow closely the prescribed eligibility requirements for the respective badge.

§ 578.132 Cold War Recognition Certificate.

Public Law 105–85, Section 1084, established a Cold War Recognition Certificate to recognize all members of the Armed Forces and qualified Federal government civilian personnel who faithfully and honorably served the United States during the Cold War Era from September 2, 1945 to December 26, 1991. The Cold War Recognition System home-page at [*coldwar.army.mil*] announces the program and provides instructions for individual requests.

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Federal Register

Wednesday,
July 28, 2004

Part III

Securities and Exchange Commission

17 CFR Parts 275 and 279

Registration Under the Advisers Act of Certain Hedge Fund Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2266; File No. S7–30–04]

RIN 3235–AJ25

Registration Under the Advisers Act of Certain Hedge Fund Advisers

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a new rule and rule amendments under the Investment Advisers Act of 1940. The proposed new rule and amendments would require advisers to certain private investment pools (''hedge funds'') to register with the Commission under the Advisers Act. The rule and rule amendments are designed to provide the protections afforded by the Advisers Act to investors in hedge funds, and to enhance the Commission's ability to protect our nation's securities markets.

DATES: Comments should be received on or before September 15, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–30–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–30–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, Jamey Basham, Branch Chief, or Jennifer L. Sawin, Assistant Director, at 202–942–0719 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed new rule 203(b)(3)–2 [17 CFR 275.203(b)(3)–2], proposed amendments to rules 203(b)(3)–1 [17 CFR 275.203(b)(3)–1], 204–2 [17 CFR 275.204–2], 205–3 [17 CFR 275.205–3], and 206(4)–2 [17 CFR 275.206(4)–2],[1] and Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'' or ''Act'').

Table of Contents

I. Background
  A. Growth of Hedge Funds
  B. Growth in Hedge Fund Fraud
  C. ''Retailization'' of Hedge Funds
II. Discussion
  A. Need for Regulatory Action
  B. Matters Considered by the Commission
  C. Proposed Rule 203(b)(3)–2
  D. Definition of ''Private Fund''
  E. Amendments to Rule 203(b)(3)–1
  F. Amendments to Rule 204–2
  G. Amendments to Rule 205–3
  H. Amendments to Rule 206(4)–2
  I. Amendments to Form ADV
  J. Compliance Period
III. General Request for Comment
IV. Cost-Benefit Analysis
V. Effects on Commission Examination Resources
VI. Paperwork Reduction Act
VII. Effects on Competition, Efficiency and Capital Formation
VIII. Regulatory Flexibility Act
IX. Statutory Authority
Text of Proposed Rule, Rule Amendments and Form Amendments

I. Background

The Commission regulates the nation's money managers under the Investment Advisers Act of 1940. These include investment advisers to mutual funds, pension funds, private funds, corporations, trusts, endowments, charities, as well as advisers to individuals and families. The approximately 8,000 investment advisers registered with us under the Advisers Act manage more than $23 trillion of client assets.[2]

Advisers registered with us engage in a wide variety of asset management styles. They represent perhaps every different view and approach to managing money, including indexing, quantitative analysis, and numerous styles of fundamental analysis. Some assemble simple portfolios of stocks and bonds. Others employ sophisticated hedging strategies that seek to reduce volatility or other risks. Still others use futures contracts or derivatives to leverage client holdings in hopes that, by assuming greater risk, they will capture greater profits. Some manage cash holdings that provide safety and liquidity for a portion of client portfolios while others help clients speculate in distressed securities, options, merger arbitrage or other risky investment strategies. Many do not manage money at all but, instead, provide financial planning services.

The clients of these advisers include small investors and the largest of national and international financial institutions. A number of advisers registered with us manage client portfolios through mutual funds or other collective investment vehicles organized as corporations, trusts, limited partnerships or limited liability companies.[3] Many advise only individual accounts,[4] while others report to us that they advise only institutional or high net worth individuals.[5]

There may be few areas of the financial services industry more diverse than the Commission's registered investment advisers.[6] Yet the Advisers Act accommodates them all. Instead of prescribing a set of detailed rules, the Act contains a few basic requirements,

[1] Unless otherwise noted, when we refer to rules 203(b)(3)–1, 204–2, 205–3, 206(4)–2, or any paragraph of the rules, we are referring to 17 CFR 275.203(b)(3)–1, 275.204–2, 275.205–3, and 275.206(4)–2 of the Code of Federal Regulations in which the rules are published.

[2] Based on information filed with us on Form ADV, the adviser registration form, as of May 1, 2004, investment advisers registered with the Commission managed approximately $21 trillion in discretionary accounts and managed an additional $2.3 trillion on a non-discretionary basis.

[3] Based on information filed with us on Form ADV as of May 1, 2004, 1,483 or 18 percent of advisers registered with us managed one or more investment companies and 1,912 or 23 percent of advisers registered with us managed other types of pooled investment vehicles.

[4] Based on information filed with us on Form ADV as of May 1, 2004, 672 or 8 percent of advisers registered with us managed individual accounts only.

[5] Based on information filed with us on Form ADV as of May 1, 2004.

[6] In addition to varying substantially in their approach to money management and their clientele, these investment advisers also vary widely in their organizational size. Our data indicate that the sizes of the 8,275 advisers registered with us range from 1 employee to exceeding 1,000 employees, with 4,132 having 1–5 employees and 96 having more than 1,000 employees.

such as registration with the Commission, maintenance of business records, and delivery of a disclosure statement (''brochure''). Most significant is a provision of the Act that prohibits advisers from defrauding their clients, a provision that the Supreme Court has construed as imposing on advisers a fiduciary obligation to their clients.[7] This fiduciary duty requires advisers to manage their clients' portfolios in the best interest of clients, but not in any prescribed manner. A number of obligations to clients flow from this fiduciary duty, including the duty to fully disclose any conflicts the adviser has with clients,[8] to seek best execution for client transactions,[9] and to have a reasonable basis for client recommendations.[10]

Not all advisers must register with the Commission. The Act exempts an adviser from registration if it (i) has had fewer than fifteen clients during the preceding 12 months, (ii) does not hold itself out generally to the public as an investment adviser, and (iii) is not an adviser to any registered investment company.[11] Advisers taking advantage of this ''private adviser exemption'' must nonetheless comply with the Act's antifraud provisions,[12] but do not file registration forms with us identifying who they are, do not have to maintain business records in accordance with our rules, do not have to adopt or implement compliance programs or codes of ethics, and are not subject to Commission oversight. We lack authority to conduct regular examinations of advisers exempt from the Act's registration requirements.[13]

There is no legislative history that explains why the private adviser exemption was enacted. We do know, however, that it was not intended to exempt advisers to wealthy or sophisticated clients. They were the primary clients of many advisers in 1940 when the provision was included in the Act.[14] While provisions of the Securities Act (and its rules) provide exemptions from registration under that Act for securities transactions with persons, including institutions, that have such knowledge and experience that they are considered capable of fending for themselves and thus do not need the protections of the applicable registration provisions,[15] the Advisers Act does not. When a client—even one who is highly sophisticated in financial matters—seeks the services of an investment adviser, he acknowledges he needs the assistance of an expert. The client may be unfamiliar with investing or the type of strategy employed by the adviser, or may simply not have the time to manage his financial affairs. The Advisers Act is intended to protect all types of investors who have entrusted their assets to a professional investment adviser. Today, thirty-nine percent of advisers registered with us report that they advise only institutional and wealthy clients.[16]

The private adviser exemption appears to reflect Congress' view that there is no federal interest in regulating advisers with only a small number of clients, many of whom are likely to be friends and family members.[17] Today, however, a growing number of investment advisers take advantage of the private adviser exemption to operate large investment advisory firms without Commission oversight. Instead of managing client money directly, these advisers pool client assets by creating limited partnerships, business trusts or corporations in which clients invest. Because our rules generally have permitted advisers to count each partnership, trust or corporation as a single client, many of these advisers have been able to avoid our oversight even though they manage large amounts of client assets and, indirectly, have a large number of clients.[18]

One significant group of these advisers provides investment advice through a type of pooled investment vehicle commonly known as a ''hedge fund.'' There is no statutory or regulatory definition of hedge fund, although many have several characteristics in common. Hedge funds are organized by professional investment managers who frequently have a significant stake in the funds they manage and receive a management fee that includes a substantial share of the performance of the fund.[19] Advisers organize and operate hedge funds in a manner that avoids regulation as mutual funds under the Investment Company

[7] *See SEC* v. *Capital Gains Research Bureau, Inc., et al.,* 375 U.S. 180 (1963) (*''Capital Gains''*). *See also Transamerica Mortgage Advisors, Inc., (TAMA)* v. *Lewis,* 444 U.S. 11 (1979); *Santa Fe Industries, Inc.* v. *Green,* 430 U.S. 462, 471, n 11 (1977).

[8] *See Capital Gains, supra* note 7, at 191–194.

[9] *See In the Matter of Kidder, Peabody & Co., Incorporated, Edward B. Goodnow,* Investment Advisers Act Release No. 232 (Oct. 16, 1968); *In the Matter of Mark Bailey & Co., and Mark Bailey,* Investment Advisers Act Release No. 1105 (Feb. 24, 1988); *In the Matter of Jamison, Eaton & Wood, Inc.,* Investment Advisers Act Release No. 2129 (May 15, 2003).

[10] *See supra* note 9.

[11] Section 203(b)(3) [15 U.S.C. 80b–3(b)(3)]. The Act also provides several other registration exemptions, which have much more limited application. Registration exemptions are provided to advisers that have only intrastate business and do not give advice on exchange-listed securities (section 203(b)(1) [15 U.S.C. 80b–3(b)(1)]); to advisers whose only clients are insurance companies (section 203(b)(2) [15 U.S.C. 80b–3(b)(2)]); to charitable organizations and their officials (section 203(b)(4) [15 U.S.C. 80b–3(b)(4)]); to church plans (section 203(b)(5) [15 U.S.C. 80b–3(b)(5)]); and to commodity trading advisors registered with the Commodity Futures Trading Commission (''CFTC'') whose business does not consist primarily of acting as investment advisers (section 203(b)(6) [15 U.S.C. 80b–3(b)(6)]).

[12] They are also subject to antifraud provisions of other federal securities laws, including rule 10b–5 under the Securities Exchange Act of 1934 [17 CFR 240.10b–5].

[13] Section 204 of the Advisers Act [15 U.S.C. 80b–4] authorizes the Commission to conduct examinations of all records of investment advisers. Advisers exempted from registration pursuant to section 203(b) of the Act [15 U.S.C. 80b–3(b)] are specifically excluded from being subject to these examinations.

[14] The Commission's 1939 Investment Trust study to Congress, which preceded enactment of the Advisers Act, found that the average size of individual clients' accounts managed by advisers surveyed in 1936 was $281,000, which equals $3.8 million in today's value. Individual clients represented about 83 percent of these advisers' client base. *See* SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 1st Sess., pt. 2 at 8–9 (1940).

[15] *See e.g.,* sections 4(2) and 4(6) of the Securities Act of 1933 [15 U.S.C. 77d(2) and 77d(6)] and Regulation D [17 CFR 230.501 et seq.] and rule 144A [17 CFR 230.144A]; *SEC* v. *Ralston Purina Co.,* 346 U.S. 119 (1953).

[16] Based on information filed with us on Form ADV as of June 30, 2004.

[17] The legislative history of section 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(1)], a parallel section to section 203(b)(3) that was enacted at the same time, reflects Congress' view that privately placed investment companies, owned by a limited number of investors likely to be drawn from persons with personal, familial, or similar ties, do not rise to the level of federal interest. *See Investment Trusts and Investment Companies: Hearings on S.3580 before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong. 3d. Sess. 179 (1940).

[18] Rule 203(b)(3)–1(a)(2)(i) generally permits a corporation, general partnership, limited partnership, limited liability company, trust, or other legal organization to be counted as a single client. Rule 203(b)(3)–1(b)(3) states that ''[a]' limited partnership is a client of any general partner or other person acting as investment adviser to the partnership.''

[19] *See* William Fung and David A. Hsieh, *A Primer on Hedge Funds,* Journal of Empirical Finance 6 (1999), at 310; David W. Frederick, Institute of Certified Financial Planners, *Hedge Funds: Only the Wealthy Need Apply,* Jan. 30, 1998, at *http://www.yourretirement.com/fidlquest__22.htm* (visited on May 20, 2004); Roy Kouwenberg, Erasmus University Rotterdam & William T. Ziemba, Sauder School of Business, Vancouver and Swiss Banking Institute, University of Zurich, *Incentives and Risk Taking in Hedge Funds,* July 17, 2003, at *http://www.few.eur.nl/few/people/kouwenberg/incentives3.pdf* (visited on May 20, 2004). Not all hedge funds, however, are managed by legitimate investment professionals. *See SEC* v. *Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund,* Litigation Release No. 18254 (July 28, 2003) (22 year-old college student purportedly acted as Signature's portfolio manager and made numerous false claims to investors and prospective investors).

Act of 1940, and they do not make public offerings of their securities.[20]

Hedge funds were originally designed to invest in equity securities and use leverage and short selling to ''hedge'' the portfolio's exposure to movements of the equity markets.[21] Today, however, advisers to hedge funds utilize a wide variety of investment strategies and techniques designed to maximize the returns for investors in the hedge funds they sponsor.[22] Many are very active traders of securities.[23]

The Commission has long been concerned about hedge funds and their managers, and the impact their investment activities can have on investors and the securities markets. As early as 1969, the Commission investigated hedge funds, responding to their rapid growth and concerns about their use of trading techniques such as leverage and short selling.[24] In 1971 we conducted an economic study of institutional investors in which we described the activities of hedge funds, noted the serious conflicts of interest that hedge fund advisers have, and noted their growth.[25] In 1992, in response to a Congressional inquiry, the Commission developed and provided to Congress detailed information about the regulatory treatment of hedge funds under the federal securities laws.[26] Seven years later we participated in the President's Working Group on Financial Markets in the wake of the near-collapse of Long Term Capital Management, Inc., (''LTCM'').[27] LTCM was a large, highly leveraged hedge fund the unraveling of which threatened the stability of international capital markets.[28] Recently, our staff assisted officials of the Treasury Department to prepare proposed rules that would require hedge funds to implement anti-money laundering programs.[29]

In 2002, we requested that our staff again examine the activities of hedge funds and hedge fund advisers. First, we were aware that the number and size of hedge funds were rapidly growing and that this growth could have broad consequences for the securities markets for which we are responsible. Second, we were bringing a growing number of enforcement cases in which hedge fund advisers defrauded hedge fund investors, who typically were able to recover few of their assets. Third, we were concerned that the activities of hedge funds today might affect a broader group of persons than the relatively few wealthy individuals and families who had historically invested in hedge funds.[30] We directed the staff to develop information for us on a number of related topics, and advise us whether we should exercise greater regulatory authority over the hedge fund industry.

In connection with the staff investigation, we held a Hedge Fund Roundtable on May 14 and 15, 2003, and invited a broad spectrum of hedge fund industry participants to participate. Information developed at the Roundtable, and a large number of additional submissions we subsequently received from interested persons, contributed greatly to the staff's investigation and our understanding of hedge funds and hedge fund advisers.[31]

In September 2003, the staff published a report entitled *Implications of the Growth of Hedge Funds.*[32] The 2003 Staff Hedge Fund Report describes in detail the operation of hedge funds and raises a number of important public policy concerns. The report focused on investor protection concerns raised by the growth of hedge funds. In contrast, the principal focus of the President's Working Group's 1999 report was the stability of financial markets and the exposure of banks and other financial institutions to the counterparty risks of dealing with highly leveraged entities such as the LTCM hedge fund. Because the two reports had different purposes, the recommendations of the two reports are also quite different. The 2003 Staff Hedge Fund Report confirmed and further developed several of our concerns regarding hedge funds and hedge fund advisers.

A. Growth of Hedge Funds

Since 1993, the estimated assets in U.S. hedge funds have increased fifteenfold to at least $795 billion,[33] and the number of hedge funds has increased more than fivefold to 7,000.[34] Although hedge funds remain a relatively small portion of the U.S. financial markets,[35] the rate of growth of hedge funds has been substantially greater than that of other sectors,[36] and

[20] *See* sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(1) and 3(c)(7)].

[21] *See* Carol J. Loomis, *Hard Times Come To The Hedge Funds,* Fortune (Jan. 1970) at 10.

[22] Bernstein Wealth Management Research, *Hedge Fund Myths and Realities* (Oct. 2002) at 3 (''[H]edge funds vary in many ways, including the broad array of strategies they employ, the manager's skill at implementing those strategies and the risks they take * * *.'').

[23] Ted Caldwell, *Introduction: The Model for Superior Performance,* in HEDGE FUNDS, INVESTMENT AND PORTFOLIO STRATEGIES FOR THE INSTITUTIONAL INVESTORS, (Jess Lederman & Robert A. Klein eds., 1995); Julie Rohrer, *The Red-Hot World of Julian Robertson,* Institutional Investor, May 1986, at 86.

[24] *See The 35th Annual Report,* Securities and Exchange Commission (1969), at 18.

[25] SEC, *Institutional Investor Study Report,* H.R. Doc. No. 92–64, 92 Cong., 2d Sess., p. xv.

[26] *See Letter from Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives* (June 12, 1992), available at SEC's public reference room under file no. S7–30–04. *See also Protecting Investors: A Half Century of Investment Company Regulation,* Division of Investment Management of the U.S. Securities and Exchange Commission (May 1992).

[27] *See Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management—Report of the President's Working Group on Financial Markets,* by representatives from the Commission, the Treasury Department, the Federal Reserve and the Commodity Futures Trading Commission (Apr. 1999) (''PWG LTCM Report'').

[28] *Id.*

[29] *See Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies,* Department of the Treasury Release [67 FR 60617 (Sept. 26, 2002)].

[30] *See* Douglas W. Hawes, *Hedge Funds—Investment Clubs for the Rich,* The Business Lawyer (Jan. 1968).

[31] Transcripts of the Roundtable participants' presentations and comments submitted in connection with the Roundtable are available at *http://www.sec.gov/spotlight/hedgefunds.htm.*

[32] *Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission,* (''2003 Staff Hedge Fund Report''), available at *http://www.sec.gov/spotlight/hedgefunds.htm.*

[33] The estimated total assets of hedge funds in the U.S. were $50 billion in January 1993. *See* Charles J. Gradante, *Comments of Hennessee Group LLC for the U.S. Securities and Exchange Commission Roundtable on Hedge Funds, May 14–15, 2003* at 5 (available at *http://www.sec.gov/spotlight/hedgefunds/hedge-parts.htm*).). The Hennessee Group recently reported that total hedge fund assets in the U.S. have reached $795 billion. *See* Testimony of Charles J. Gradante, Managing Principal, the Hennessee Group LLC, Before the Senate Committee on Banking, Housing, and Urban Affairs, available at *http://banking.senate.gov/_files/gradante.pdf* (visited on July 20, 2004). Hedge Fund Research, a research/consulting firm, recently put the figure at $800 billion. *See* Forbes News Release, *Hedge Funds Are Robbing Investors, According to Forbes,* May 5, 2004, available at *www.forbesinc.com/newsroom/ releases/editorial/Forbes052404.doc* (visited on May 20, 2004). Moreover, data indicated that the rate of new money invested in hedge funds may be accelerating. *See Fund Briefs,* Pensions and Investments (Mar. 22, 2004) (TASS estimates that the total amount of hedge fund inflows for 2003 was 4 times the amount of inflows for 2002). Industry experts predict world's total hedge fund assets may grow to $2–4 trillion by the end of the decade. *See Is Two Trillion Dollars Too Little?* AIMA Journal (June 2004).

[34] The estimated total number of hedge funds in the U.S. grew from 1,100 in January 1993 to 5,700 in January 2003. *See* Charles J. Gradante, *Comments for the Roundtable on Hedge Funds, supra* note 33. The Hennessee Group recently reported that total number of hedge funds has grown to 7,000. *See* Testimony of Charles J. Gradante, *supra* note 33.

[35] For example, the total market value of corporate equities in the U.S. stock market at the end of 2003 was $15,497.9 billion. *See* Federal Reserve Statistical Release Z.1, *Flow of Funds Accounts of the United States—Flows and Outstandings,* First Quarter 2004.

[36] During the same period (1993–2003), the number of mutual fund portfolios barely doubled and their assets increased by 2.5 times; assets of insurance companies and commercial banks

hedge fund assets have been projected to grow to over a trillion dollars by the end of 2004.[37] In addition, hedge funds play a growing role in our securities markets as large and frequent traders of securities. One recent article portrayed a single hedge fund manager as responsible for an average of five percent of the daily trading volume of the New York Stock Exchange.[38] Another reported hedge funds dominate the market for convertible bonds.[39]

B. Growth in Hedge Fund Fraud

The growth in hedge funds has been accompanied by a substantial and troubling growth in the number of our hedge fund fraud enforcement cases. In the last five years, the Commission has brought 46 cases in which we have asserted that hedge fund advisers have defrauded hedge fund investors or used the fund to defraud others in amounts our staff estimates to exceed $1 billion. These frauds involved advisers that:

- For years grossly overstated the performance of their hedge funds to investors who were actually incurring tens or hundreds of millions of dollars in losses on their investments in the funds;[40]
- Caused hedge funds to pay unnecessary and undisclosed commissions;[41] and
- Used parallel unregistered advisory firms and hedge funds as vehicles to misappropriate client assets.[42]

Since the staff report, a new species of hedge fund fraud has been uncovered. Advisers to hedge funds have been key participants in the recent scandals involving mutual fund late trading and inappropriate market timing.[43] Many of our enforcement cases involved hedge funds that sought to exploit mutual fund investors for their own gain. Some entered into arrangements with mutual fund advisers under which the advisers waived restrictions on market timing in return for receipt of ''sticky assets'' from the hedge fund, *i.e.*, placement of other assets in other funds managed by the mutual fund adviser. Others sought ways to avoid detection by mutual fund personnel by conspiring with intermediaries to conceal the identity of the hedge funds. While our investigation is ongoing, the frequency

doubled; and deposits of commercial banks barely doubled. Sources: *ICI Factbook 2003* and *''Trends in Mutual Fund Investing, January 2004''* at *www.ici.org;* Federal Reserve Statistical Release Z.1, *Flow of Funds Accounts of the United States—Flows and Outstandings,* First Quarter 2004; Federal Reserve Statistical Release H.8, *Assets and Liabilities of Commercial Banks in the United States,* Dec. 1993 through Dec. 2003.

[37] The total asset inflows into hedge funds for 2003 reached $72.2 billion according to TASS Research. *See Tremont's TASS Research Reports Record $72.2 Billion in Net Inflow for 2003, Record Fourth Quarter Inflow of $26.8 Billion,* Feb. 19, 2004, available at *http://www.tremontinvestment.com/tass_estimate_021904.htm* (visited on May 20, 2004). Hedge Fund Research, an alternative investments research and consulting firm, predicts that investors will put $100 billion into hedge funds in 2004. *See* Neil Weinberg and Bernard Condon, *The Sleaziest Show on Earth,* Forbes (May 24, 2004), at 110. Financial Research Corp., a financial research firm, predicts the hedge fund industry will reach $1 trillion by year-end. *See* Hanna Shaw Grove and Russ Alan Prince, *Let Us In,* Registered Rep. (Mar. 2004).

[38] Marcia Vickers, *The Most Powerful Trader On Wall Street You've Never Heard Of,* BusinessWeek (July 21, 2003), at 66.

[39] *See* Henny Sender, *Hedge Funds Skid on Convertible Bonds,* The Wall St. J., June 30, 2004, at C4 (hedge funds account for about 95% of all trading in convertible bonds).

[40] *SEC* v. *Edward Thomas Jung, et al.,* Litigation Release No. 17417 (Mar. 15, 2002) (Commission found unregistered adviser caused investor losses of approximately $20 million); *SEC* v. *David M. Mobley, Sr., et al.,* Litigation Release No. 18150 (May 20, 2003) (Commission found unregistered adviser caused investor losses of approximately $60 million); *SEC* v. *Michael W. Berger, Manhattan Capital Management Inc.,* Litigation Release No. 17230 (Nov. 13, 2001) (Commission obtained judgment in case against unregistered adviser who caused investor losses of approximately $400 million). We have also filed civil actions alleging the same types of fraud. *SEC* v. *Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC,* Litigation Release No. 18247 (July 23, 2003) (charging unregistered hedge fund adviser with manipulating thinly-traded portfolio securities to fraudulently inflate fund values by hundreds of millions of dollars); *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla,* Litigation Release No. 16770 (Oct. 17, 2000) (charging unregistered hedge fund adviser with misappropriating millions of dollars in client assets). *See also SEC* v. *Beacon Hill Asset Management LLC, et al.,* Litigation Release No. 18745A (June 16, 2004) (charging unregistered hedge fund adviser with understating losses by hundreds of millions of dollars for at least three months, and causing the hedge fund to purchase securities from the adviser's managed account clients at inflated prices to prop up the performance of the managed accounts; principals of the adviser were also charged with causing the hedge fund to trade with the principals' personal account at erroneous prices that benefited the principals).

[41] *In the Matter of Portfolio Advisory Services, LLC and Cedd L. Moses,* Investment Advisers Act Release No. 2038 (June 20, 2002) (registered adviser caused its hedge funds to pay nearly $2 million in unnecessary and undisclosed commission costs, above markups already paid, to broker that had no role in executing trades, as reward for referring investors to the hedge funds).

[42] *SEC* v. *Hoover and Hoover Capital Management, Inc.,* Litigation Release No. 17487 (Apr. 24, 2002), Litigation Release No. 17981 (Feb. 11, 2003) (principal of registered adviser who, after becoming aware of Commission investigation of its misappropriation of client assets, established a hedge fund and parallel unregistered advisory firm to continue the fraud).

[43] We recently sanctioned persons charged with late trading of mutual fund shares on behalf of groups of hedge funds, and against mutual fund advisers or principals for permitting hedge funds' market timing. *In the Matter of Banc One Investment Advisers Corporation and Mark A. Beeson,* Investment Advisers Act Release No. 2254 (June 29, 2004) (Commission found that investment adviser permitted hedge fund manager to time the adviser's mutual funds, contrary to the funds' prospectuses; helped arrange financing for the timing trades; failed to disclose the timing arrangements; and provided the hedge fund manager with nonpublic portfolio information); *In the Matter of Pilgrim Baxter & Associates, Ltd.,* Investment Advisers Act Release No. 2251 (June 21, 2004) (Commission found that mutual fund adviser permitted a hedge fund, in which one of its executives had a substantial financial interest, to engage in repeated short-term trading of several mutual funds and that one of its executives provided nonpublic portfolio information to a broker-dealer, which passed it on to its customers); *In the Matter of Strong Capital Management, Inc.,* Investment Advisers Act Release No. 2239 (May 20, 2004) (Commission found that adviser disclosed material nonpublic information about mutual fund portfolio holdings to hedge fund, and permitted own chairman and hedge fund to engage in undisclosed market timing of mutual funds managed by adviser); *SEC* v. *Security Trust Co., N.A.,* Litigation Release No. 18653 (Apr. 1, 2004) (consent to judgment by trust company charged with accepting late trades from several hedge funds over at least a three-year period); *In the Matter of Stephen B. Markovitz,* Administrative Proceedings Release No. 33–8298 (Oct. 2, 2003) (Commission found that Markovitz engaged in late trading on behalf of hedge funds spanning four years). *See also In the Matter of Alliance Capital Management, L.P.,* Investment Advisers Act Release No. 2205 (Dec. 18, 2003) (Commission found that investment adviser permitted known market timers, including at least one hedge fund, to market time its mutual funds, in exchange for the timers' investments in Alliance's investment vehicles); *In the Matter of James Patrick Connelly, Jr.,* Investment Advisers Act Release No. 2183 (Oct. 16, 2003) (Commission found that vice chairman of mutual fund adviser permitted market timing by hedge funds).

We are continuing to pursue several similar cases. To date, we have instituted seven enforcement actions (in addition to the seven settled actions discussed above). See *SEC* v. *PIMCO Advisors Fund Management, LLC,* Litigation Release No. 18697 (May 6, 2004) (alleging that mutual fund adviser entered into a market timing arrangement permitting over 100 mutual fund market timing transactions by a hedge fund); *SEC* v. *Columbia Management Advisors, Inc.,* Litigation Release No. 18590 (Feb. 24, 2004) (alleging mutual fund adviser entered into arrangements allowing hedge funds to engage in market timing transactions in nine funds, including one aimed at young investors); *SEC* v. *Mutuals.com, Inc.,* Litigation Release No. 18489 (Dec. 4, 2003) (alleging that dually registered broker-dealer and investment adviser, three of its executives, and two affiliated broker-dealers assisted hedge fund brokerage customers in carrying out and concealing thousands of market timing trades and illegal late trades in shares of hundreds of mutual funds); *SEC* v. *Invesco Funds Group,* Litigation Release No. 18482 (Dec. 2, 2003) (alleging that mutual fund adviser, with approval of its president and chief executive officer, entered into market timing arrangements with hedge funds); *SEC* v. *Druffner,* Litigation Release No. 18444 (Nov. 4, 2003) (alleging that five brokers, with the assistance of their branch office manager, evaded attempts to restrict their trading and assisted several hedge funds in conducting thousands of market timing trades in numerous mutual funds); *In re Sihpol,* Securities Exchange Act Release No. 48493 (Sept. 16, 2003) (charging former broker with playing a key role in enabling hedge fund customers to engage in late trading in mutual fund shares over a three-year period). *See also In the Matter of Paul A. Flynn,* Securities Exchange Act Release No. 49177 (Feb. 3, 2004) (alleging Flynn assisted numerous hedge funds in obtaining bank financing to fund late trading and deceptive market timing of mutual fund shares).

with which hedge funds appear in these cases and continue to turn up in the investigations is alarming. Our staff counts as many as forty different hedge funds involved in these cases, including hedge funds managed by Canary Investment Management, LLC.[44]

In a lawsuit against Canary, the New York Attorney General has alleged that Canary obtained its late trading and market timing ''capacity'' from mutual fund managers and intermediaries.[45] In return, Canary often would leave millions of dollars in the fund managers' selected funds on a long-term basis as ''sticky assets.''[46] Canary borrowed from the parent companies of the fund managers or intermediaries to finance its late trading and market timing schemes. As a result, Canary reaped tens of millions of dollars in profits from these schemes,[47] the fund managers collected lucrative management fees from the ''sticky assets,'' the intermediaries received huge commissions,[48] and parent companies of the fund managers or intermediaries acting as lenders earned interest at a significant premium, while long-term investors in the mutual funds targeted by Canary lost tens of millions of dollars.[49]

C. ''Retailization'' of Hedge Funds

The third development of significant concern is the growing exposure of smaller investors, pensioners, and other market participants, directly or indirectly, to hedge funds. Hedge fund investors are no longer limited to the very wealthy. We note three developments that we have observed that contribute to our concern.

First, some hedge funds today are expanding their marketing activities to attract investors who may not previously have participated in these types of risky investments.[50] Many hedge funds maintain very high minimum requirements, and many of the hedge fund participants at our Roundtable expressed no interest in attracting ''retail investors.'' Our staff observed, however, that many hedge funds'' minimum investment requirements have decreased over time.[51] In developed markets outside the United States, hedge funds have sought to market themselves to smaller investors, and we can expect similar market pressures to develop in the United States as more hedge funds enter our markets.[52]

Second, the development of ''funds of hedge funds'' has made hedge funds more broadly available to investors.[53] Today there are 40 registered funds of hedge funds that offer or plan to offer their shares publicly.[54] Most funds of hedge funds are today offered only to institutional investors, but there are no limitations on the public offering of these funds.

Finally, and perhaps most significantly, in the last few years, a growing number of public and private pension funds,[55] as well as universities, endowments, foundations, and other charitable organizations, have begun to invest in hedge funds or have increased their allocations to hedge funds.[56] Press

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[44] Because the advisers to these hedge funds were unregistered, our examination staff had no opportunity to review their trading activities in the mutual funds.

[45] *See* State of New York Complaint Against Canary Capital Partners, LLC, Canary Investment Management, LLC, Canary Capital Partners, LTD and Edward J. Stern, Sept. 3, 2003, available at *www.oag.state.ny.us/press/2003/sep/ canary_complaint.pdf* (visited on May 26, 2004).

[46] *Id.*

[47] *See, e.g., SEC* v. *Security Trust Co., N.A., supra* note 43 (as a result of its late trading and market timing assisted by Security Trust Co., Canary realized a profit of $85 million).

[48] *See, e.g., SEC* v. *Security Trust Co., N.A., supra* note 43 (Security Trust Co. received over $5.8 million in direct compensation from Canary).

[49] *See supra* note 45.

[50] *See* Harriet Johnson Brackey, *New Class of Hedge Funds Reaches Beyond the Wealthy, San Jose Mercury News,* Mar. 23, 2003; Pam Black, *Going Mainstream,* Registered Rep. (Mar. 1, 2004); *Let Us In,* Registered Rep., *supra* note 37; Jane Bryant Quinn and Temma Ehrenfeld, *The Street's Latest Lure: Some One Is Going to Mint Money With the New Hedge Funds For Smaller Investors,* Newsweek (May 26, 2003). *See also* two recent articles discussing hedge funds in publications for physicians. John J. Grande, *Alternative Investment Strategies Can Offer Significant ROI,* Ophthalmology Times (May 15, 2002); Leslie Kane, *Where to Put Your Money: Four Experts Tell Whether You Should Expect Happy Days for Stocks, and How to Invest Your Money,* Medical Economics (Jan. 9, 2004).

[51] *See supra* note 32, at 81.

[52] Any sales in the United States would, of course, be subject to the registration requirements of the Securities Act, and the hedge fund itself may be subject to the Investment Company Act, unless exemptions were available. The UK recently introduced a new type of vehicle which will be available only to sophisticated investors, but will still be authorized by the FSA, as a ''half way house'' between retail funds (fully regulated) and wholly unregulated funds. *See* Financial Services Authority, *The CIS Sourcebook—A New Approach, Feedback on CP185 and Made Text,* Mar. 2004, available at *www.fsa.gov.uk/pubs/policy/04_07.pdf* (visited on May 11, 2004). Starting Jan. 2004, funds of hedge funds may sell their shares to smaller investors in Germany subject to certain regulations and procedures. *See* Silvia Ascarelli and David Reilly, *Hedge Funds Are Coming to the Masses,* The Wall St. J., Apr. 15, 2004; EU Financial Services Group Briefing, Wilmer, Cutler & Pickering, *Hedge Funds in Germany—German Parliament Opens the Market for Alternative Investment Products,* Dec. 5, 2003, available at *http://www.wilmer.com/pubs/ results.aspx? iPractice* (visited on May 11, 2004). Since April 2003, funds of hedge funds may sell their shares to smaller investors in France, subject to certain regulations and procedures. *See* Commission des Operations de Bourse (France), *Regulating Alternative Multi-Management Investments,* News Release (Apr. 1, 2003) (available in File No. S7–30–04); Alain Gauvin and Guillaume Eliet, Capital Markets Dept., Coudert Freres, *Regulating Alternative Multi-Management Investments,* 2003, available at *http://www.coudert. com* (visited on May 17, 2004). In Ireland, funds of hedge funds may sell their shares to smaller investors subject to certain regulations and procedures. *See* Matheson Ormsby Prentice, *Establishing a Hedge Fund in Ireland,* 2003, available at *http://www.mop.ie/fileupload/ publications* (visited on May 17, 2004). In Asia, both Hong Kong and Singapore permit authorized hedge funds to sell their shares to investors subject to certain minimum subscription thresholds and regulations. *See* Donald E. Lacey, Jr., *Democratizing the Hedge Fund: Considering the Advent of Retail Hedge Funds,* Apr. 2003, (International Finance Seminar at Harvard Law School), available at *http://www.law.harvard.edu/ programs/pifs/pdfs/ donald_ lacey.pdf* (visited on May 17, 2004); Mattew Harrison, *Fund Management in Hong Kong and Singapore,* CSU Research and Policy, Jan. 6, 2003. In South Africa, regulators and trade associations recently issued a joint discussion paper to develop an acceptable regulated environment in which existing and new hedge funds can operate (including consideration of whether to permit certain hedge fund products to be marketed to the public). *See* The Financial Services Board, Association of Collective Investments and Alternative Investment Management Association, *The Regulatory Position of Hedge Funds in South Africa—A Joint Discussion Paper* (Mar. 9, 2004). *See also* Carla Fiford, *South African Hedge Fund Industry Grows by Stealth,* AIMA Journal (Feb. 2004).

[53] *The Street's Latest Lure: Some One Is Going to Mint Money With the New Hedge Funds For Smaller Investors, supra* note 50; *Going Mainstream, supra* note 50; Jessica Toonkel, *Firms Take Pause Before Launching Hedge Funds of Funds for Mass Affluent; Hold Your Horses!* Fund Action (Apr. 21, 2003); Michael P. Malloy and Jim Strangroom, *Registered Funds of Hedge Funds*, MFA Reporter (2002); *Fool's Gold,* The Economist (Sept. 1, 2001); Kimberly Hill, *Investors Need Help With Hedge Funds*, Fundfire, May 14, 2004.

[54] An additional 47 funds of hedge funds are registered with the Commission as investment companies but can be sold only through private offerings. The Commission does not have data on the number of additional funds of hedge funds that exist but are not registered with the Commission.

[55] According to Greenwich Associates, about 20 percent of corporate and public plans in the United States were investing in hedge funds in 2002, up from 15 percent in 2001. *See* BIM Alternative Investments SGR, *Odd Blend May Be a Match*, available at *http://www.bimalternativesgr.it/ italiano/hedge_funds/ news/2003/ 20030624_ticker_magazine* (visited on May 18, 2004); RMF Investment Management, RMF Investment Letter, available at *http://www.rmf.ch/ rmf_ investment_ letter_June_2003.pdf* (visited on May 18, 2004). Hennessee Group data indicate that pensions' investments in hedge funds increased from $13 billion in 1997 to $72 billion in 2004. See Testimony of Charles J. Gradante, *supra* note 33. *See also Hedge Funds Gaining Acceptance Among Pension Funds*, Morningstar Web site, June 27, 2003; Chris Clair, '*Unprecedented Pressure': Public Plans Race to Embrace Hedge Funds; This Time They Are Leading, Not Following, Their Corporate Counterparts*, Pensions and Investments, July 8, 2002, at 2; *Alaska Pension Allocates to Hedge Fund*, Alternative Investment News, July 1, 2004 (the Alaska State Pension Investment Board has chosen three firms to manage its first $300 million hedge fund allocation).

[56] Median strategic allocation to hedge funds by endowments and foundations was 11 percent in 2001, 10 percent in 2003 and forecast at 12.3 percent in 2005. *See* Goldman Sachs International

reports indicate that more of these institutions have also recently begun to consider these alternative investments.[57] Hedge funds are thus today being purchased by entities that are not traditional hedge fund investors, including pension plans that have millions of beneficiaries. As a result of the participation by these entities in hedge funds, as well as other sophisticated investment strategies, the assets of these entities are exposed to the risks of the hedge fund. Losses resulting from hedge fund investments, as with any other investment loss, may affect the entities' ability to satisfy their obligations to their beneficiaries or pursue other intended purposes.

II. Discussion

A. Need for Regulatory Action

Our responsibilities to protect investors and the nation's securities markets do not permit us to ignore these developments. Our current regulatory program for hedge funds and hedge fund advisers is inadequate—it relies almost entirely on enforcement actions brought after the fraud has occurred and investor assets are gone.[58] We have no oversight program that would provide us with the ability to deter or detect fraud by unregistered hedge fund advisers at an early stage. We lack basic information about hedge fund advisers and the hedge fund industry, and must rely on third party data that often conflict and may be unreliable.[59]

Hedge fund growth and the evolution of hedge fund ownership have resulted in both more significant and broader market and investor protection concerns, and have convinced us that we should consider taking steps to provide for greater oversight of hedge fund advisers. As the 2003 Staff Hedge Fund Report outlines, numerous institutions on which individual investors, savers, and pensioners depend today have a substantial exposure to the risks of hedge funds and the activities of hedge fund advisers. One survey reports that pension fund exposure to hedge funds has grown from $13 billion in 1997 to $72 billion today, an increase of 450 percent.[60] Hardly a week passes in which industry publications do not announce a decision by a public pension plan, endowment, foundation or other charitable organization to invest in hedge funds.[61] The growing demand for hedge funds has resulted in asymmetries of information: even institutional investors are often unable to acquire information on an ongoing basis about the hedge fund adviser, its operations and conflicts.[62]

The recent rapid growth of hedge fund investments also concerns us because of its potential impact on the behavior of hedge fund advisers. As substantial inflows chase absolute returns, hedge fund managers will have powerful incentives to pursue riskier strategies in order to generate substantial absolute returns under all market conditions. The capacity of hedge fund advisers to generate large absolute returns is limited because the use of similar financial strategies by other hedge fund advisers narrows spreads and decreases profitability.[63]

and Russell Investment Group, *Report on Alternative Investing by Tax-Exempt Organizations 2003,* available at *http://www.russell.com/II/Research_and Resources/Informative_Articles /Goldman_ Russell_ Survey.asp* (visited on May 18, 2004). Lewis Knox, *The Hedge Fund: Institutional Money is Swelling the Coffers of the World's Largest Hedge Fund Managers*, 28 Institutional Investor (International Edition) 53 (June 1, 2003); Dan Neel, *Michigan Preps For Hedge, Real Estate*, Investment Management Weekly, Apr. 28, 2003; *Virginia Exposure Soars to 60%*, Financial News (Daily), Apr. 27, 2003 (University of Virginia has invested 50 percent of its portfolio in hedge funds, and plans to increase its exposure to 60 percent of its total portfolio); Chris Clair, *Allocation Goal: 25%—UTIMCO Joins Billion-Dollar Hedge Fund Club*, Pensions and Investments, Apr. 14, 2003, at 3; Chidem Kurdas, *Hedge Funds Continue to Gain in Endowments' Alternative Investments*, HedgeWorld Daily News, Apr. 7, 2003; *Behind the Money Section; University of Wisconsin Searching for Hedge Funds*, 4 Alternative Investment News, Feb. 1, 2003, at 20 ($300 million University of Wisconsin endowment will allocate up to 10 percent, or $25–30 million, to a fund of funds manager); *Baylor University; Inside The Buyside; Increases Hedge Fund Activity by $20–25 Million*, 4 Alternative Investment News, Feb. 1, 2003 at 6; Susan L. Barreto, *Hedge Funds Become Saving Grace for Endowments in Tough Times*, HedgeWorld Daily News, Apr. 4, 2002.

[57] *Philly to Embrace Hedge Funds*, Alternative Investment News, June 21, 2004 (the $4.1 billion City of Philadelphia Board of Pension & Retirement system has carved out a 5 percent allocation to hedge funds—its first to the asset class); *Texas Plan to Search for Hedge Funds*, 6 Alternative Investment News, June 2004, at 6 ($1.5 billion San Antonio Fire and Police Retirement Fund expects to carve out a $75 million allocation to hedge funds); Updated Searches Section, 6 Alternative Investment News, June 2004, at 12 (Illinois State Board of Investment will issue an RFP in early fall for four funds of hedge funds to handle between $500–550 million for the pension plans under its oversight); *Auburn to Seek Alternatives Managers*, Alternative Investment News, June 10, 2004 (Auburn University will hire a few funds of hedge funds firms to fill its newly-created 20 percent allocation to absolute return strategies); *US Pension Plan Looks to Hedge Fund*, Financial Times (London), June 26, 2003, at Global Investing 21 (Virginia Retirement System plans to invest $1 billion in hedge funds); *NYC Fund Eyes Maiden Hedge Fund of Funds Investment*, 4 Alternative Investments, June 1, 2003, at 19 (Manhattan & Bronx Surface Transit Operating Authority Retirement Fund considers investment in hedge funds); *Florida Plan to Search for Funds of Funds*, 4 Alternative Investment News, Apr. 1, 2003, at 19 (Gainesville, Florida General Employees Pension Plan searches for hedge fund manager); *Indiana University Eyeing Single-Manager Hedge Funds*, 6 Foundation & Money Management, Mar. 1, 2003, at 1; *Kern County Seeks Hedge Funds*, 4 Alternative Investment News, Mar. 1, 2003, at 19 ($1.5 billion Kern County, California Employees Retirement Association will make a maiden foray into hedge funds with a $45 million search for multiple managers); *MassPRIM to Consider Hedge Funds in Review*, 4 Alternative Investment News, Feb. 1, 2003, at 19 ($27 billion Massachusetts Pension Reserves Investment Management Board is considering adding its first hedge funds this year).

[58] Robert Lenzner and Michael Maiello, *The Money Vanishes*, Forbes, Aug. 6, 2001 at 70 (''What does it mean to say that hedge funds are unregulated? It means that if there is mischief, the Securities and Exchange Commission will find out about it too late.'').

[59] William Fung and David Hsieh, *Measuring the Market Impact of Hedge Funds*, 7 Journal of Empirical Finance 1 (2000) (''There are varying estimates of the size of the hedge fund industry.''); *Hedg-matics: How Many Funds Exist?* The Wall St. J., May 22, 2003, at C5 (''Just how big is the hedge-fund industry? This simple question has been debated because the data on hedge funds are spotty.''); *Letter from Craig S. Tyle, General Counsel of the Investment Company Institute, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission*, July 2, 2003, available at www.ici.org (visited on Feb. 10, 2004) (''There is currently no universal database that contains records of all hedge funds, both those currently operating and those that have ceased operating.''); Gaurav S. Amin and Harry M. Kat, *Hedge Fund Performance 1990–2000: Do the ''Money Machines'' Really Add Value?*, 38 Journal of Financial and Quantitative Analysis 2 (June 1, 2003) (''Due to its private nature, it is difficult to estimate the current size of the hedge fund industry.''). *See also* Bing Liang, *Hedge Funds: The Living and the Dead*, 35 Journal of Financial and Quantitative Analysis 309–326 (2000) (study of statistical inconsistencies in two major hedge fund databases, noting hedge funds ''are basically not regulated. They report their fund information only on a voluntary basis. Therefore, the reliability of hedge fund data is an open question and is critical for hedge fund research and the investment community.''); Harry M. Kat, *10 Things That Investors Should Know About Hedge Funds*, Institutional Investor (Spring 2003) (noting that hedge fund databases are of low quality, that each database covers only a subset of the hedge fund universe, that all present survivorship bias, and that researchers attempting to analyze the hedge fund industry or fund performance may perceive matters very differently depending on the database or index they use).

[60] *See supra* note 55.

[61] *See supra* notes 55–57.

[62] *See* Roundtable Transcript of May 14 at 167–70 (statement of David Swensen) (private placement memoranda as disclosure documents are ''not particularly useful''); Roundtable Transcript of May 15 at 190 (statement of Sandra Manzke) (''[I]t would make my life a lot easier to have mandated disclosures * * * [I]t's very difficult to get answers out of managers, and they hold all the keys right now. If you want to get into a good fund, and you ask some difficult questions, you may not get that answer. Sure, there is a lot of access, to get online and do background checks, and hire firms * * * But that's expensive. And can the retail investor do it? No. Firms like ours, we spend a lot of money, we have a lot more people working for us now to uncover these types of situations.'').

[63] *See* David Reilly, *Hot Hedge Fund Vega Grapples With Growth: Global/Macro Style of Investing May Provide Room to Maneuver, But a Door Is Closed to New Cash*, The Wall St. J., June 4, 2004, at C1 (as hedge funds' assets explode, difficulties in finding winning strategies raises the specter of diminished returns and concentrations of investment risk that are difficult to unwind in a crisis); Mara Der Hovanesian, *Will Hedge Funds Be*

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We are also concerned that some hedge fund advisers may be pursuing strategies that may be inconsistent with disclosures provided regarding the advisers, or may be improper or unlawful, as we have seen with hedge funds pursuing late trading and market timing strategies.

Hedge funds present unique risks to the securities markets and investors that concern us and should concern all market participants. Unregistered hedge fund advisers operate largely in the shadows, with little oversight, are subject to the pressures of performance fee arrangements,[64] and in many cases are expected to generate positive returns even in down markets. While these conditions can stimulate a tremendous amount of investment creativity and profit, they are also a perfect medium for the germination and growth of frauds. As we have seen, hedge fund advisers are capable of serious transgressions that can harm ordinary citizens who in many cases are now their ultimate beneficiaries.

Our concern is and must be the protection of investors and the suppression of fraud. But we must also recognize the important role that hedge funds play in our markets. Hedge funds contribute to market efficiency and liquidity.[65] They play an important role in allocating investment risks by serving as counterparties to investors who seek to hedge risks.[66] They provide their investors with greater diversification of risk by offering them exposure uncorrelated with market movements.[67] Therefore, in evaluating alternative courses we might take, we have paid particular attention to the extent to which our actions might encumber the operation of hedge funds and thus damage the very markets we seek to protect.

B. Matters Considered by the Commission

We are proposing a new rule the effect of which would be to require hedge fund advisers to register under the Advisers Act. Registration under the Act would address several of our concerns described above while imposing only minimal burdens on hedge fund advisers.

1. Census Information

Hedge fund adviser registration would provide the Commission with important information about this growing segment of the U.S. financial system. Collecting information about the nation's investment advisers has been one aim of the Advisers Act since it was enacted in 1940.[68] However, just as data on *all* advisers was lacking before 1940, today there are no comprehensive data on hedge fund advisers currently available.[69] We have only limited indirect information about these firms and their trading practices, and we are hampered in our ability to develop regulatory policy regarding hedge fund advisers and their funds. Registering hedge fund advisers would permit us to collect information about the number of hedge funds that advisers manage, the amount of assets in hedge funds, the number of employees and types of clients these advisers have, other business activities they conduct, and the identity of persons that control or are affiliated with the firm.[70]

Although there may be other piecemeal sources for some of the information the Commission would obtain when a hedge fund adviser files Form ADV, much of the information is not readily available without substantial forensic efforts on the part of our staff. We need information that is reliable, current, and complete, and we need it in a format easily susceptible to analysis by our staff.

2. Deterrence and Early Discovery of Fraud

Registration under the Advisers Act gives us authority to conduct examinations of the adviser's hedge fund activities.[71] Our examinations permit us to identify compliance problems at an early stage, identify practices that may be harmful to investors, and provide a deterrent to unlawful conduct.[72] They are a key part of our investor protection program.

The prospect of an SEC examination increases the risk of getting caught, and thus will deter wrongdoers.[73] During an examination, our staff reviews the advisory firm's internal controls and procedures; they examine the adequacy of procedures for valuing client assets, for placing and allocating trades, and for arranging for custody of client funds and securities. Examination staff also review the adviser's performance claims and delivery of its client disclosure brochure. Each of these operational areas presents a greater opportunity for misconduct if it is not open to examination. Our examinations bring limited sunlight to advisory activities that are kept from sight from clients for competitive and other reasons. Examinations may be a particularly appropriate form of sunlight because of the highly proprietary nature of many hedge fund advisers' activities.[74]

Overrun By All The Traffic?, BusinessWeek, Mar. 11, 2002 (some hedge fund strategies are becoming less effective as the capacity of managers to generate high absolute returns diminishes when investment portfolios are too large). *See also* Alexander M. Ineichen, ABSOLUTE RETURNS (2003) at 47 (falling barriers to entry for new hedge fund advisers are causing a dilution of the talent pool, making adviser selection more difficult).

[64] *See* William Goetzmann, *et al.*, *High-Water Marks and Hedge Fund Management Contracts*, Yale International Center for Finance (Apr. 18, 2001).

[65] ''[M]any of the things which [hedge funds] do * * * tend to refine the pricing system in the United States and elsewhere. And it is that really exceptional and increasingly sophisticated pricing system which is one of the reasons why the use of capital in this country is so efficient * * * there is an economic value here which we should not merely dismiss * * *. I do think it is important to remember that [hedge funds] * * * by what they do, they do make a contribution to this country.'' Testimony of Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve, Before the House Committee on Banking and Finance (Oct. 1, 1998).

[66] *See A Primer on Hedge Funds, supra* note 19. *See also* PWG LTCM Report, *supra* note 27; 2003 Staff Hedge Fund Report, *supra* note 32, at 4.

[67] *See A Primer on Hedge Funds, supra* note 19. *See also* PWG LTCM Report, *supra* note 27; 2003 Staff Hedge Fund Report, *supra note* 32, at 4.

[68] Although the primary objective of the Advisers Act is the protection of advisory clients, the Act also serves as ''a continuing census of the Nation's investment advisers.'' H.R. Rep. No. 1760, 86th Cong., 2d Sess. 2 (1960). In 1940, Congress noted that it was difficult to ascertain the number of investment advisers in operation or the amount of funds under their influence and control. H.R. Rep. No. 1775, 76th Cong., 3d Sess. 21 (1940).

[69] *See* 2003 Staff Hedge Fund Report, *supra* note 32.

[70] Much of this information is currently collected from hedge fund advisers that are registered with the Commission. A registered adviser that is the general partner of a hedge fund must report that it advises a ''pooled vehicle'' in response to Item 5.D (6) of Part 1A of Form ADV, list each pooled vehicle on Schedule D (Section 7.B.) and disclose the amount of assets in the fund and the minimum amount of capital investment per investor.

[71] *See supra* note 13.

[72] Other protections of the Advisers Act would also act as deterrents to unlawful conduct by serving as a check on the advisers' control of assets in funds they advise and contribute to the protection of investors in those funds. Our custody rule, for example, requires the adviser to maintain fund assets with a qualified custodian. See rule 206(4)–2 under the Advisers Act.

[73] The facts of the action against Stevin R. Hoover and Hoover Capital Management, Inc. are instructive on this question. *See SEC* v. *Hoover and Hoover Capital Management, Inc.*, (*Second Amended Complaint of the SEC*), (available at *www.sec.gov/litigation/complr17487.htm*). Hoover was involved in a scheme to defraud clients of his advisory firm by, among other things, misappropriating assets and overbilling expenses. When Hoover became aware that the Commission staff was investigating his firm, he established a separate, unregistered advisory firm and perpetuated his fraud through use of a hedge fund he created and controlled.

[74] We are not proposing to require, nor have we ever required, investment advisers to disclose their clients' securities positions. Indeed, we recently declined requests to require advisers to publicly disclose how they voted client proxies out of a concern that they would thereby divulge client securities positions. *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) [68 FR 6585 (Feb. 7, 2003)]. The Advisers Act requires us to maintain as confidential information obtained by our examiners in the

Examination of hedge fund advisers should serve the same deterrent role that it does with respect to other types of advisers.[75] There is nothing unique about hedge fund advisers or the types of frauds they have committed that suggests that our examination program would not or could not play the same effective role. The fraud actions we have brought against unregistered hedge fund advisers have been similar to the types of fraud actions we have brought against other types of advisers, including misappropriation of assets,[76] portfolio pumping,[77] misrepresentation of portfolio performance,[78] falsification of experience, credentials and past returns,[79] misleading disclosure regarding claimed trading strategies[80] and improper valuation of assets.[81]

We have also charged registered hedge fund advisers with other types of fraud, including: misallocating favorable investment opportunities to a hedge fund, to the detriment of the adviser's other clients, *In the Matter of Nevis Capital Management, LLC, David R. Wilmerding, III and Jon C. Baker*, Investment Advisers Act Release No. 2214 (Feb. 9, 2004); misallocating investment opportunities to the personal account of a hedge fund adviser, to the detriment of the hedge fund, *In the Matter of Zion Capital Management LLC, and Ricky A. Lang*, Investment Advisers Act Release No. 2200 (Dec. 11, 2003); usurping a profitable, low-risk investment opportunity available to a hedge fund and taking it for the personal benefit of a hedge fund adviser, *SEC* v. *Schwendiman Partners, LLC, Gary Schwendiman, and Todd G. Schwendiman*, Investment Advisers Act Release No. 2043 (July 11, 2002); and causing hedge funds to pay commissions to a broker that had no role in executing trades, as reward for referring investors to the adviser's hedge funds, *In the Matter of Portfolio Advisory Services, LLC and Cedd L. Moses, supra* note 41. We have no reason to believe that unregistered advisers may not be perpetrating the same types of frauds, beyond our detection.

Improper valuation of hedge fund assets by hedge fund advisers is a matter of serious concern to us. A recent study of hedge funds identified valuation problems as playing a primary or contributing role in 35 percent of hedge fund failures, and fraud as the underlying cause for more than half of them.[82] The authors attribute these failures, in part, to a lack of regulatory oversight: ''Put these natural, inherent difficulties in pricing complex or illiquid investments [in which hedge funds invest] together with a powerful financial incentive [on the part of the adviser] to show (or hide weak) performance, and then situate these factors in an environment with minimal regulatory oversight, or without strict discipline and internal controls (still far too typical in the hedge fund industry), and there is potential for trouble.''[83]

Valuation problems arise in many cases when hedge fund advisers overstate assets in order to cover trading losses or to ''buy time'' until performance improves.[84] Registered investment advisers are not required to follow any particular valuation methodology, but our examiners consider whether the adviser's procedures for valuing the managed assets are effective, whether the adviser's actual practices in valuing client assets follow the procedures they have established, and how the adviser discloses, mitigates and manages the conflicts of interest that can arise with respect to valuation.[85]

3. Keeping Unfit Persons From Using Hedge Funds To Perpetrate Frauds

Registration with the Commission permits us to screen individuals associated with the adviser, and to deny registration if they have been convicted of a felony or had a disciplinary record subjecting them to disqualification.[86]

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course of an examination. *See* sections 210(b) and 210A of the Act. [15 U.S.C. 80b–210(b) and 210A].

[75] Of course, we are not suggesting our examination program would reduce investment risks. Our examination program is designed to uncover poor controls and to deter and expose misconduct. It is not designed to evaluate advisers' investment and trading strategies or to prevent losses that may result from legitimate investment risks.

[76] *SEC* v. *Jean Baptiste Jean Pierre, Gabriel Toks Pearse and Darius L. Lee*, Litigation Release No. 18216 (July 7, 2003); *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, LLC*, Litigation Release No. 18214 (July 3, 2003); *SEC* v. *David M. Mobley, Sr., et al., supra* note 40; *SEC* v. *Vestron Financial Corp., et al.*, Litigation Release No. 18065 (Apr. 2, 2003); *SEC* v. *Hoover and Hoover Capital Management, Inc., supra* note 42; *SEC* v. *Beacon Hill Asset Management LLC, et al., supra* note 40; *SEC* v. *House Asset Management, L.L.C., House Edge, L.P., Paul J. House, and Brandon R. Moore*, Litigation Release No. 17583 (June 24, 2002); *SEC* v. *Edward Thomas Jung, et al., supra* note 40; *SEC* v. *Evelyn Litwok & Dalia Eilat*, Litigation Release No. 16843 (Dec. 27, 2000); *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla, supra* note 40.

[77] *SEC* v. *Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC, supra* note 40; *SEC* v. *Burton G. Friedlander*, Litigation Rel. No. 18426 (Oct. 24, 2003).

[78] *In the Matter of Samer M. El Bizri and Bizri Capital Partners, Inc.*, Admin Proc. File No. 3–11521 (June 16, 2004); *SEC* v. *Millennium Capital Hedge Fund*, Litigation Release No. 18362 (Sept. 25, 2003); *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, LLC*, supra note 76; *SEC* v. *David M. Mobley, Sr., et al., supra* note 40; *SEC* v. *Hoover and Hoover Capital Management, Inc., supra* note 42; *SEC* v. *Beacon Hill Asset Management LLC, et al., supra* note 40; *SEC* v. *Edward Thomas Jung, et al., supra* note 40; *SEC* v. *Michael W. Berger, Manhattan Capital Management Inc., supra* note 40; *In the Matter of Charles K. Seavey and Alexander Lushtak*, Investment Advisers Act Release No. 1968 (Aug. 15, 2001); *In the Matter of Michael T. Higgins*, Investment Advisers Act Release No. 1947 (June 1, 2001); *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla, supra* note 40.

[79] *SEC* v. *J. Scott Eskind*, Litigation Release No. 18558 (Jan. 29, 2004); *SEC* v. *Jean Baptiste Jean Pierre, Gabriel Toks Pearse and Darius L. Lee, supra* note 76; *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, LLC, supra* note 76; *SEC* v. *Vestron Financial Corp., et al., supra* note 76; *SEC* v. *House Asset Management, L.L.C., House Edge, L.P., Paul J. House, and Brandon R. Moore, supra* note 76; *SEC* v. *Evelyn Litwok & Dalia Eilat, supra* note 76; *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla, supra* note 40.

[80] *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, LLC, supra* note 76; *SEC* v. *David M. Mobley, Sr., et al., supra* note 40; *SEC* v. *Edward Thomas Jung, et al., supra* note 40; *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla, supra* note 40.

[81] *SEC* v. *Global Money Management, L.P.*, Litigation Release No. 18666 (Apr. 12, 2004); *SEC* v. *Burton G. Friedlander, supra* note 77; *SEC* v. *Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC, supra* note 40; *SEC* v. *David M. Mobley, Sr., et al., supra* note 40; *SEC* v. *Beacon Hill Asset Management LLC, et al., supra* note 40; *SEC* v. *Edward Thomas Jung, et al., supra* note 40; *In the Matter of Charles K. Seavey and Alexander Lushtak, supra* note 78; *In the Matter of Michael T. Higgins, supra* note 78.

[82] Christopher Kundro and Stuart Feffer, *Valuation Issues and Operational Risk in Hedge Funds*, Capco White Paper (Dec. 2003) (valuation problems played a role in 35 percent of studied hedge fund failures, and 57 percent of those valuation problems were caused by fraud or misrepresentation) (available at *http://www.capco.com/pdf/j10art06.pdf*) (visited on July 12, 2004). *See also Proceed With Caution*, Investment Adviser, Apr. 12, 2004 (''Unreliable pricing of securities in a hedge fund manager's portfolio remains the single most significant cause of blow-ups in the industry * * *.''); Mara Der Hovanesian, *Hedge Fund Values: Stop the Fudging*, BusinessWeek, May 10, 2004, at 106.

[83] Kundro & Feffer, *supra* note 82 at 4.

[84] *See, e.g., SEC* v. *Michael W. Berger, Manhattan Capital Management Inc., supra* note 40; *SEC* v. *Edward Thomas Jung, et al., supra* note 40.

[85] *Examinations of Investment Companies and Investment Advisers*, SEC Staff Report (Mar. 2004) at 19, available at *http://www.sec.gov/news/extra/apx-ts031004lar.pdf*. One simple check our examiners perform is to determine the extent to which the sale price of fund securities deviates substantially from the price at which the securities are valued.

[86] *See, e.g., SEC* v. *J. Scott Eskind, supra* note 79 (Eskind, already barred by the Commission from association with any investment adviser, raised more than $3 million from investors for a purported hedge fund, and simply misappropriated it); *SEC* v. *Sanjay Saxena*, Litigation Release No. 16206 (July 8, 1999) (Saxena, already barred by the Commission from the securities industry, defrauded fund investors of approximately $700,000). Item 11 of

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Several of the hedge fund frauds appear to have been perpetrated by unscrupulous persons using the hedge fund as a vehicle to defraud investors. These persons appear to never have intended to establish a legitimate hedge fund, but used the allure of a hedge fund to attract their ''marks.'' [87]

We are concerned that these individuals may have been attracted to hedge funds because they could operate without regulatory scrutiny of their past activities. Our lack of oversight may have contributed to the belief that their frauds would not be exposed. Our ability to screen individuals and, in some cases, to block their entrance into the advisory profession should serve to discourage unscrupulous persons from using hedge funds as vehicles for fraud.[88]

4. Adoption of Compliance Controls

Registration under the Advisers Act would require hedge fund advisers to adopt policies and procedures designed to prevent violation of the Advisers Act, and to designate a chief compliance officer.[89] Because our examination staff resources are limited, we cannot be at the office of every adviser at all times. Compliance officers serve as the front line watch for violations of securities laws, and provide protection against conflicts of interests.

Hedge fund advisers have substantial conflicts of interest, both with their hedge funds and with their investors. These conflicts arise from management strategies, fee structures, use of fund brokerage and other aspects of hedge fund management. To protect against the adverse consequences of these conflicts, a hedge fund adviser must make compliance considerations a part of its business plan. While the 2003 Hedge Fund Staff Report indicated that many unregistered hedge fund managers had strong compliance controls, others had very informal procedures that appeared to be inadequate for the amount of assets under their management.[90] Application of our recent rule requiring more formalized compliance policies administered by an employee designated as a chief compliance officer should serve to better protect hedge fund investors.[91]

5. Limitation on Retailization

Registration under the Advisers Act would have the salutary effect of requiring all direct investors in most hedge funds to meet minimum standards of rule 205–3 under the Advisers Act.[92] Rule 205–3 requires that each investor generally have a net worth of at least $1.5 million or have at least $750,000 of assets under management with the adviser.[93] Many hedge fund advisers will rely on rule 205–3 to continue charging a ''performance fee'' to the funds they manage.

6. Imposition of Minimal Burdens

While it furthers these five important objectives, registration under the Advisers Act would meet another important objective of the Commission by imposing only minimal additional burdens on hedge fund advisers. As we discussed above, the Act does not require or prohibit an adviser to follow any particular investment strategies, nor does it require or prohibit specific investments. Its most significant provision, which requires full disclosure of conflicts of interest and prohibits fraud against clients, applies regardless of whether the adviser is registered under the Act.[94]

Many advisers registered with us today currently advise hedge funds,[95] and none has reported to us that registration made their hedge funds less competitive with other hedge funds.[96] Although some panelists on our Roundtable argued against requiring hedge fund advisers to register under the Act, none identified any impediment under the Advisers Act to managing a hedge fund.[97] Thus, registration under the Advisers Act should not interfere with the important functions that hedge funds play in our financial markets.

We request comment on the burdens our proposal would impose, and whether those burdens could be alleviated in some manner that also meets our objectives in proposing these rules.

Part 1 of Form ADV requires applicants for registration as an investment adviser to report felonies and other disciplinary events occurring during the last 10 years. Section 203(c)(2) of the Advisers Act [15 U.S.C. 80b–3(c)(2)] permits the Commission, after notice and opportunity for a hearing, to deny registration to an adviser that is subject to disqualification under Section 203(e) [15 U.S.C. 80b–3(e)]. The Commission's screening does not rely exclusively on an applicant's self-reporting of violations; our staff checks applicants against a large database of securities violators to determine whether there are any unreported disciplinary events.

[87] *SEC* v. *Jean Baptiste Jean Pierre, Gabriel Toks Pearse and Darius L. Lee, supra* note 76 (defendants raised nearly half a million dollars, the majority of which were simply misappropriated by Jean Pierre); *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, LLC, supra* note 76 (Chabot raised over $1.2 million for an alleged hedge fund but did not buy any stocks or other securities with the funds, instead using the money for his personal expenses).

[88] We acknowledge that many new sponsors of hedge funds may not have $25 million of assets under management and thus may not be required to register with us. *See* section 203A(a)(1) of the Act [15 U.S. 80b–3a(a)(1)] (prohibiting certain advisers having less than $25 million from registering with the Commission). It is likely that if we adopt this rule, prospective investors will insist that hedge fund advisers be registered with the Commission. These advisers will apply for registration pursuant to our rule 203A–2(d) [17 CFR 275.203A–2(d)], which permits an adviser with less than $25 million of assets under management to register with us if the adviser has a reasonable expectation that it will be eligible to register within 120 days.

[89] Rule 206(4)–7 [17 CFR 275.206(4)–7].

[90] *See* section VII.A.1.b. of the 2003 Staff Hedge Fund Report, supra note 32.

[91] *See Compliance Programs of Investment Companies and Investment Advisers*, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)].

[92] Most hedge fund advisers charge performance fees. Rule 205–3 permits registered investment advisers to charge performance fees only to ''qualified clients'' that have a net worth of at least $1.5 million or have at least $750,000 of assets under management with the adviser.

[93] Hedge funds in the United States are generally organized to avoid regulation under the Investment Company Act by qualifying for an exemption under section 3(c)(1) or 3(c)(7) of that Act. There are no performance fee restrictions on 3(c)(7) funds, but each investor in the fund must be a ''qualified purchaser,'' which for natural persons generally means having investments of at least $5 million. *See* section 2(a)(51) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)]. Rule 205–3 requires that each advisory client subject to a performance fee have $1.5 million in net worth or $750,000 under management with the investment adviser, and requires advisers to 3(c)(1) funds to consider each investor as a client.

[94] The antifraud prohibitions of section 206 [15 U.S.C. 80b–6], including provisions restricting an adviser's ability to engage in principal trades and agency cross-transactions with clients, apply to *any* investment adviser that makes use of the mails or any means of interstate commerce. In contrast, section 204 (authorizing the Commission to require advisers to issue reports and maintain books and records) applies to all advisers other than those specifically exempted from registration by section 203(b) of the Act.

[95] 95 Our data show that as of May 1, 2004 1,912 advisers reported in their Form ADVs that they provide advice to pooled investment vehicles other than investment companies, pension and profit sharing plans. Our staff's inspection experience indicates that a large percentage of these pools are hedge funds or funds of hedge funds.

[96] Five of the ten world's largest hedge fund managers (ranked by total assets under management) are currently registered with us. *See The Hedge Fund 100*, Institutional Investor (May 2004).

[97] In the past, hedge fund industry participants cited the restrictions on registered advisers charging performance-based compensation in section 205(a)(1) of the Act [15 U.S.C. 80b–5(a)(1)] as being incompatible with the operation of hedge funds. *See Hard Times Come to the Hedge Funds, supra* note 21; Lawrence J. Berkowitz, *Regulation of Hedge Funds*, 2 Rev. of Securities Reg. (Jan. 17, 1969). In 1998, however, the Commission eliminated this concern by adopting amendments to rule 205–3. *Exemption to Allow Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account*, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)]. No hedge fund industry participant with whom our staff spoke indicated that section 205 or the qualified client criteria in rule 205–3 present any concerns to hedge funds. *See* Section II. G. of this Release.

• Many hedge fund advisers voluntarily register under the Advisers Act in order to meet client needs or requirements.[98] We infer from these decisions that, in practice, advisers do not consider registration burdensome. Is this inference warranted?

• We specifically request comment from hedge fund advisers that are registered under the Act. Do they believe that registration has imposed undue burdens on them? Has registration impaired their ability to compete for investors with other hedge fund managers? Has registration affected their choices of management strategies or investments?

• Recently, we amended our rule governing the safekeeping of client assets by advisers that have custody of those assets.[99] Those rule amendments specifically accommodated the needs of hedge fund advisers,[100] which usually have custody of client assets.[101] Are there similar accommodations that could be made to other of our rules or forms that might make them work better for hedge fund advisers? Are there changes that should be made to our other rules or forms to tailor them to advisers to hedge funds? Should we further narrow or expand any of them when applied to hedge fund advisers? If so, how?

• Some have suggested that hedge fund advisers may move their operations offshore, *i.e.*, to other countries, in order to avoid registration under the Advisers Act.[102] Is that a likely result? Under the proposed rule, which we describe below, an adviser would not only have to persuade valuable employees to live abroad, it would also have to forgo capital from U.S. investors.[103]

• Many of the advisers registered with us are smaller firms with less than $50 million of assets under management.[104] Many of them are likely to have markedly less cash flow than hedge fund advisers, many of which have a substantial amount of assets under management and charge a customary fee of one to two percent of assets plus 20 percent of gains.[105] We infer from this that the Advisers Act does not impose an undue burden on smaller advisory firms, and that hedge fund advisers are in a position to bear that burden. Is our inference warranted? We request comment on this question particularly from smaller firms such as financial planners.

7. CFTC Regulation

Some have argued that registering hedge fund advisers under the Advisers Act is unnecessary because many may already be registered with the Commodity Futures Trading Commission (''CFTC'') as commodity pool operators (''CPOs'') and examined by the National Futures Association (''NFA''), a self-regulatory organization.[106] These examinations, however, necessarily focus more on the area of futures trading—that is, the activities of most concern to the CFTC and NFA.[107] Moreover, the CFTC is withdrawing its oversight of certain hedge fund advisers. The CFTC recently adopted rules that may permit most hedge fund advisers to now avoid registering as CPOs or commodity trading advisors (''CTAs'').[108] New entrants to the industry have an opportunity to structure their activities so as to avoid CFTC registration, and existing hedge fund advisers may deregister with the CFTC.[109]

8. Proper Administration of the Advisers Act

As we discussed above, many hedge fund advisers currently avoid registration under the Advisers Act by qualifying for the ''private adviser'' exemption that section 203(b)(3) provides to advisers that have had fourteen or fewer clients during the preceding twelve months and that do not hold themselves out generally to the public as investment advisers. The Act does not define the term ''client,'' and for many years it was unclear whether the Act required an adviser that served as a general partner to a limited partnership holding investment securities to count each limited partner as a client, because the pooled investment vehicle served primarily as a vehicle through which the adviser/general partner provided investment advice.[110] If advisers to hedge funds

[98] *See* Jeff Benjamin, *Oversight Concerns Aren't Registering With Hedge Funds*, InvestmentNews, Apr. 19, 2004 (between 30 percent and 50 percent of all U.S.-based hedge fund managers are already registered as investment advisers).

[99] *See Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Act Release No. 2176 (Sept. 25, 2003) [68 FR 56692 (Oct. 1, 2003)].

[100] *See* rule 206(4)–2(b)(3). We are proposing additional amendments to accommodate advisers to funds of hedge funds. *See* Section II. H. of this Release.

[101] Our custody rule makes it clear that an adviser acting as general partner to a pooled investment vehicle it manages has custody of the pool's assets. Rule 206(4)–2(c)(1)(iii).

[102] *See Letter from John G. Gaine, Managed Funds Association, to William Donaldson, Chairman, U.S. Securities and Exchange Commission* (Nov. 21, 2003), available in File No. S7–30–04. Managed Funds Association raised the concern that ''the burdens associated with mandatory registration might lead certain hedge fund advisers to relocate offshore, making existing regulation less effective.''

[103] Under rule 203(b)(3)–1(b)(5), an adviser with its principal place of business in another country must count each U.S. client to determine whether it is eligible for the private adviser exemption. Thus, under the proposed rule, a hedge fund adviser could not admit more than 14 U.S. residents into its hedge funds. At least one hedge fund consultant has suggested that for this reason hedge fund advisers are unlikely to move offshore. Ron Orol, *Firmly Rooted*, Daily Deal, July 14, 2003 (citing Arthur Bell of Arthur Bell & Associates as stating that U.S. investors would be ''virtually impossible to replace'').

[104] As of May 1, 2004, of the 8,275 advisers registered with the Commission, 2,640 reported on their Form ADV that they were managing less than $50 million in client assets.

[105] *See* 2003 Staff Hedge Fund Report, *supra* note 32, at ix.

[106] Roundtable Transcript of May 14 at 279 (statement of Anthony Artabane, Partner, Pricewaterhouse Coopers, LLP) (regulation should not be overlapping); Roundtable Transcript of May 15 at 144 (statement of Patrick J. McCarty, General Counsel, Commodity Futures Trading Commission) (to the extent the hedge fund adviser is registered with CFTC as a CPO or CTA, there is no need for SEC registration), and 231 (statement of Armando Belly, General Counsel, Soros Fund Management, LLC) (SEC registration is not worthwhile if the firm is already registered with the CFTC).

[107] Roundtable Transcript of May 15 at 236–37 (statement of Jane Thorpe that ''NFA certainly has the ability to go in and inspect vehicles that may not directly be trading in futures but based on a risk-based approach is going to focus on those areas that obviously it has the most and we have the most interest in.'').

[108] *Additional Registration* and *Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues* (Aug. 1, 2003) [68 FR 47221 (Aug. 8, 2003)] (''CFTC 2003 Exemptive Release'') (adopting new rule 4.13(a)(3), which exempts CPOs from registration if the pool is sold only to accredited investors and engages in limited trading of commodity interests, new rule 4.13(a)(4), which exempts CPOs from registration if the pool is offered only to persons reasonably believed to be ''qualified eligible persons,'' and new rule 4.14(a)(10), which exempts CTAs who during the preceding 12 months provide advice to fewer than 15 legal entities).

[109] *See* Susan Ervin, *Downsizing Commodity Pool Regulation: The CFTC's New Initiative,* Futures Industry 36 (May/June 2003) (The CFTC has embarked upon a fundamental change in its regulatory program, which would free very sizable portions of the industry from CFTC regulation. Many new entrants would not need to register with the CFTC and many currently registered persons may elect to withdraw from registration.).

We are not, however, seeking to require Advisers Act registration of hedge fund advisers whose business consists primarily of advising others with respect to investments in futures. Hedge fund advisers that are registered as CTAs with the CFTC may qualify for a separate exemption from SEC registration if their business does not consist primarily of acting as an investment adviser. *See* section 203(b)(6) of the Advisers Act.

[110] *See* Robert C. Hacker and Ronald D. Rotunda, *SEC Registration of Private Partnerships after Abrahamson* v. *Fleschner*, 78 Colum. L. Rev. 1471, 1478 (1978). It was also unclear whether the general partner was an adviser who gave advice to ''others'' within the meaning of section 202(a)(11) of the Act. That issue was resolved by the Second Circuit in *Abrahamson* v. *Fleschner*, 568 F.2d 862 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978), which held that general partners of limited partnerships investing in securities were investment advisers.

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were viewed as providing investment advice to one client—the fund—then they would not be required to register under the Act (assuming they advised no more than fourteen funds and did not hold themselves out to the public as investment advisers). If they were viewed as advising each partner of a partnership having more than fourteen partners, they would be required to register (assuming no other exemption were available).

In 1985, the Commission addressed this issue by adopting rule 203(b)(3)–1, which permits an adviser to treat a limited partnership as the ''client'' for purposes of the private adviser exemption if, among other things, the advice provided to the limited partnership is based on the investment objectives of the partnership rather than those of the various limited partners.[111] When we adopted rule 203(b)(3)–1, we concluded that when an adviser manages a group of client accounts on the basis of the investment objectives of the pool, it would be appropriate to view the pool (rather than each participant in the pool) as the client.[112] We acknowledged, however, that a different approach could be followed.[113]

But since 1985, circumstances have changed. Hedge fund assets have continued to grow,[114] the number of hedge funds has increased, the types of investors have changed and funds of hedge funds have emerged. Moreover, this growth has occurred in an environment where hedge fund advisers have not been required to register. Commensurate with this growth, fraud in the hedge fund industry has increased. It is clear that the implications of our 1985 decision have also grown. Today, advisers to hedge funds manage multiple hedge funds having hundreds of investors, and tens of millions of dollars of assets, without registering with the Commission. We are concerned that rule 203(b)(3)–1 may no longer be consistent with the underlying purposes of section 203(b)(3), which, as we noted above, seems intended to exempt from registration advisers that have only a few clients and whose clients are likely to be friends, associates or family members.[115]

In 1996, Congress amended the Advisers Act to allocate regulatory responsibility over advisers between the SEC and state regulatory authorities.[116] In doing so, Congress established a threshold for federal interest in advisers by requiring advisers to register with the Commission (unless they were otherwise exempt) if they have more than $25 million of assets under management.[117] While such a later amendment of the Act would not serve to expand or contract the scope of section 203(b)(3),[118] we believe it should inform our administration of the section. In this regard, rule 203(b)(3)–1 may provide too broad a safe harbor in light of the 1996 Congressional determination that there is a federal interest in the oversight of advisers that manage significant amounts of client assets.

In suggesting this conclusion, we are mindful of section 208(d) of the Act, which prohibits advisers from doing indirectly, or through or by another person, what they are prohibited from doing directly.[119] Rule 203(b)(3)–1 may thus be viewed to permit advisers to manage assets for more than fourteen clients ''through or by'' a hedge fund and remain unregistered.

C. Proposed Rule 203(b)(3)–2

Proposed rule 203(b)(3)–2 would require investment advisers to count each owner of a ''private fund'' as a client for purposes of determining the availability of the private adviser exemption of section 203(b)(3) of the Act. As a result, an adviser to a ''private fund,'' which is defined in the rule and discussed below, could no longer rely on the private adviser exemption if the adviser, during the course of the preceding twelve months, advised a private fund that had more than fourteen investors. And an adviser that advised individual clients directly would have to count those clients together with the investors in any private fund it advised in determining its total number of clients.

1. Minimum Assets Under Management

The new rule would not alter the minimum assets under management that an investment adviser must have in order to be eligible to register with the

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The Second Circuit originally characterized the individual limited partners as the ''clients'' of the general partner, (1976–77) Fed.Sec.L.Rep. (CCH) ¶ 95,889, at 91,282 n. 16, but later withdrew this characterization, 568 F. 2d at 872 n. 16, leaving unanswered the issue of whether the partnership, or each of the partners, should be counted as a client. *See Definition of ''Client'' of an Investment Adviser for Certain Purposes Relating to Limited Partnerships*, Investment Advisers Act Release No. 956 (Feb. 25, 1985) [50 FR 8740 (Mar. 5 1985)]. *See also* Hacker and Rotunda, *supra*, at 1484.

[111] *See Definition of ''Client'' of an Investment Adviser for Certain Purposes Relating to Limited Partnerships*, Investment Advisers Act Release No. 983 (July 12, 1985) [50 FR 29206 (July 18, 1985)]. In 1997, we expanded the rule to cover other types of legal entities that advisers use to pool client assets. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)]. Under rule 203(b)(3)–1(a)(2)(i), an investment adviser may count a legal organization as a single client so long as the investment advice is provided based on the objectives of the legal organization rather than the individual investment objectives of any owner of the legal organization.

[112] *See Definition of ''Client'' of an Investment Adviser for Certain Purposes Relating to Limited Partnerships, supra* note 111. In other circumstances, we look through pools to the investors themselves in specifying advisers' obligations under the Advisers Act. *See, e.g.*, rule 205–3(b) (requiring each investor in a private investment company to meet qualified client criteria if the adviser charges the private investment company a performance fee); rule 206(4)–2(a)(3)(iii) (requiring that custody account statements for funds and securities of limited partnerships for which the adviser acts as general partner be delivered to each limited partner); *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)] at n.117 and accompanying text (clarifying that an adviser acting as general partner of a limited partnership must provide Form ADV disclosures to each limited partner).

[113] *See Definition of ''Client'' of an Investment Adviser for Certain Purposes Relating to Limited Partnerships, supra* note 111. Until recently, the CFTC interpreted a similar provision of the Commodities Exchange Act (''CEA'') to require a commodity trading advisor to register by ''looking through'' a client that was not a natural person, *e.g.*, a limited partnership, to count the number of participants. Section 4m(1) of the CEA provides an exemption from registration for a commodity trading advisor that has not furnished commodity trading advice to more than 15 persons during the preceding 12 months and does not hold itself out to the public as a commodity trading advisor. When queried about its interpretation of ''person'' in the context of non-natural persons, the CFTC historically took the position that a commodity trading advisor providing advice to such entities would look through and count the individual participants for purposes of tabulating the number of persons it advises. *See, e.g.*, CFTC Interpretive Letter 95–39 (Dec. 5, 1994) (each partner in a limited partnership counts as a person) and CFTC Interpretive Letter 96–43 (May 15, 1996) (each shareholder in a corporation counts as a person). In 2003, the CFTC adopted new rule 4.14(a)(10) [17 CFR 4.14(a)(10)] that reversed its look-through interpretation by permitting commodity trading advisors to count legal entities, such as corporations or limited partnerships, as a single person. The rule is patterned after Advisers Act rule 203(b)(3)–1, and in the adopting release the CFTC confirmed that ''it intends to follow interpretations of rule 203(b)(3)–1 issued by the SEC and its staff.'' *See* CFTC 2003 Exemptive Release, *supra* note 91.

[114] *See supra* notes 33 and 34.

[115] *See supra* note 17.

[116] Pub L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code). Hedge fund advisers that avail themselves of the registration exemption under section 203(b)(3) may nevertheless be required to register as investment advisers with one or more states.

[117] Section 203A of the Advisers Act [15 U.S.C. 80b–3A].

[118] *See Capital Gains, supra* note 7, at 286–87 (declining to narrow construction of the Advisers Act as adopted in 1940 by reference to amendments enacted in 1960, stating ''[o]pinions attributed to a Congress twenty years after the event cannot be considered evidence of the Congress of 1940.'' (internal citations omitted)).

[119] 15 U.S.C. 80b–8(d). We note that neither the Advisers Act nor the Commission's 1985 release (*see supra* note 111), in our view, should be construed to provide an exemption for an adviser with greater than 14 clients merely because the adviser did not provide individualized advice to each of those clients.

Commission.[120] Thus, hedge fund advisers with assets under management of less than $25 million would continue generally not to be eligible for Commission registration (unless they also advise a registered investment company or qualify for registration under one of our exemptive rules).[121] Hedge fund advisers with assets under management between $25 and $30 million would be eligible, but not required, to register with the Commission.[122]

• We request comment on the applicability of the minimum asset thresholds to hedge fund advisers. Should they be higher? Should they be lower given that some of the frauds we have uncovered involved hedge fund advisers that never had $25 million of assets under management? [123]

2. Funds of Hedge Funds

The new rule would contain a special provision for advisers to hedge funds in which a registered investment company invests.[124] Hedge fund advisers would be required to count the investors in the registered fund as clients.[125] Without this provision, a hedge fund adviser could provide its services to thousands of mutual fund investors through fourteen or fewer mutual funds, each of which could invest in the private fund, and each of which would count as a single client.

• We request comment on our ''look through'' approach with respect to registered investment companies investing in hedge funds. Are its terms clear?

• Have we provided detailed enough guidance on how advisers should count clients? Or, are there points on which further guidance is needed?

3. Offshore Advisers

a. *Counting Clients of Offshore Advisers.* The proposal would require hedge fund advisers located offshore to look through the funds they manage, whether or not those funds are also located offshore, and count investors that are U.S. residents as clients. An adviser to any hedge fund that, in the course of the previous twelve months, has more than fourteen investors (or other advisory clients) that are U.S. residents would generally have to register under the Advisers Act.[126] Offshore advisers to hedge funds would, therefore, be treated in the same manner as any other type of offshore adviser providing advice to U.S. residents.[127]

• Should offshore advisers be required to look through their offshore funds only if assets attributable to U.S. residents comprise more than a threshold percentage? If we impose a threshold, what should it be? Should the threshold apply to the cumulative assets of all offshore funds advised by the offshore adviser?

• Would registration present difficulties for offshore advisers because of conflicts with the laws of their home jurisdiction? [128] Approximately 350 non-U.S. advisers are currently registered with us, and we are unaware of any conflicts that create problems for those dual registrants. Do offshore hedge fund advisers present different concerns or face different burdens? If so, what are they and how should we address them?

b. *Advisers to Offshore Publicly Offered Funds.* We do not want to require advisers to offshore publicly offered mutual funds or closed-end funds to register with us simply because more than fourteen of their investors are now resident in the United States.[129] Therefore, we have included in the proposed rule an exception to the definition of ''private fund'' for a company that has its principal office and place of business outside the United States, makes a public offering of its securities outside the United States, and is regulated as a public investment company under the laws of a country other than the United States.[130]

• Is the scope of this exception too broad or too narrow?

• Are there any other types of companies or entities that need to be included in the exception?

• Is there a significant concern that some hedge fund advisers would seek to use this exception to evade the requirements of the Act?

• Hedge funds may be offered publicly in some countries. Would our proposed rule exempt these hedge funds from the definition of ''private fund''? Should it?

c. *Advisers to Offshore Private Funds.* We are also proposing to limit the extraterritorial application of the Advisers Act that would otherwise occur as a result of these amendments. We do not apply most of the substantive provisions of the Act to the non-U.S. clients of an offshore adviser.[131] As a result, offshore advisers registered with us must, for example, comply with our rules regarding the safekeeping of client assets only with respect to assets of their

[120] *See* section 203A(a)(1)(A). The National Securities Markets Improvement Act of 1996 amended the Advisers Act to divide the responsibility for regulating investment advisers between the Commission and the state securities authorities. Section 203A of the Advisers Act effects this division by generally prohibiting investment advisers from registering with us unless they have at least $25 million of assets under management or advise a registered investment company, and preempting most state regulatory requirements with respect to SEC-registered advisers. *See* Pub. L. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[121] *See* rule 203A–2 [17 CFR 275.203A–2].

[122] *See* rule 203A–1 [17 CFR 275.203A–1].

[123] *See Securities and Exchange Commission* v. *J. Scott Eskind, Lorus Investments, Inc., and Capital Management Fund, Limited Partnership, supra* note 79; *SEC* v. *Hoover and Hoover Capital Management, Inc., supra* note 42.

[124] Proposed rule 203(b)(3)–2(b).

[125] An adviser to a fund underlying an unregistered fund of hedge funds would also count the investors in the top-tier fund as clients. However, where the top-tier fund is itself a ''private fund'' under the rule, the general provisions of the rule would compel looking through the top-tier fund and no special provision is needed. Our proposal would not require the adviser to the underlying fund to receive information as to the precise number or identities of the top-tier investors—it would be sufficient if the adviser to the top-tier fund confirms to the underlying adviser that the top-tier fund has more than 14 owners.

[126] Rule 203(b)(3)–1(b)(5) (adviser with principal place of business not in the United States need count only clients that are U.S. residents). The offshore adviser would not have to register, however, if it were eligible for some other exemption from registration. Absent the availability of an exemption, offshore advisers would be required to register regardless of the amount of assets managed by the adviser because the $25 million threshold does not apply to an adviser that does not have its principal place of business in the United States. *See Rules Implementing Amendments to the Investment Advisers Act of 1940, supra* note 111, at section II.E.

[127] *See supra* note 126.

[128] According to one law firm's analysis, registration under the Advisers Act would have little impact on most non-U.S. hedge fund managers: ''For unregistered non-U.S. investment managers, it is likely that the impact will be less significant because in most jurisdictions where hedge fund managers are concentrated, including, for example, London, Paris and Frankfurt and other European Union jurisdictions, management of third party assets is generally an activity which requires registration with local regulators and ongoing compliance with minimum operational standards, regardless of the number of 'clients' for whom these services are provided. It is likely therefore that most major non-U.S. hedge fund managers that will be affected by the SEC's recommendations will already be complying in their home jurisdictions with broadly similar requirements to those the Staff now seeks to impose.'' *See* Shearman & Sterling, *SEC Report: Implications of the Growth of Hedge Funds*, Jan. 2004, available in File No. S7–30–04.

[129] Section 7(d) of the Investment Company Act [15 U.S.C. 80a–7(d)] generally prohibits an unregistered foreign investment company from publicly offering its securities in the United States. That provision does not preclude unregistered foreign investment companies from making private offerings in the United States. *Resale of Restricted Securities*, Investment Company Act Release No. 17452 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)]. Nor does it prevent U.S. persons from being shareholders of foreign investment companies as a result of, for example, relocating to the United States. *See, e.g., Investment Funds Institute of Canada*, SEC Staff No-Action Letter (Mar. 4, 1996).

[130] 130 Proposed rule 203(b)(3)–2(d)(3).

[131] This policy was first set forth in a staff letter from our Division of Investment Management, in which Division staff stated that they would not recommend to the Commission enforcement action against an offshore fund adviser under such circumstances. *See Uniao de Banco de Brasileiros S.A.*, SEC Staff No-Action Letter (July 28, 1992) (''Unibanco letter'').

U.S. clients.[132] If those client assets are pooled and held, for example, in a hedge fund, our custody rule would, as a practical matter, require the adviser to meet many of the requirements of the rule with respect to all assets of the fund even if most of the fund investors are not U.S. residents.

It is not uncommon for U.S. investors to acquire interests in an offshore hedge fund that has few connections to the United States other than the investors (or the securities in which they invest). The laws governing such a fund would likely be those of the country in which it is organized or those of the country in which the adviser has its principal place of business. U.S. investors in such a fund generally would not have reasons to expect the full protection of the U.S. securities laws.[133] Moreover, as a practical matter, they may be precluded from an investment opportunity in offshore funds if their participation resulted in the full application of the Advisers Act and our rules.

Therefore, we propose to permit an offshore adviser to an offshore fund to treat the fund as its client (and not the investors) for all purposes under the Act, other than (i) determining the availability of the private adviser exemption (section 203(b)(3)), and (ii) those provisions prohibiting fraud (sections 206(1) and 206(2)).[134] Such an adviser would register with us, but because the fund would not be a U.S. client, most of the substantive provisions of the Advisers Act would not apply to the adviser's dealings with the fund or other of its non-U.S. clients.[135] We request comment on this provision.

- Is this exception a reasonable limitation on the extraterritorial application of the Advisers Act?
- Is there a significant concern that some U.S. hedge fund advisers would seek to use this exception to evade the requirements of the Act? An unregistered adviser could not establish a shell subsidiary in a foreign country through which to manage offshore hedge funds without violating section 208(d) of the Act, which prohibits any person from doing indirectly, or through or by any other person, anything it would be unlawful for the person to do directly.[136] Are there other means of evading the requirements of the Act that ought to concern us?
- Would it be sufficient to warn advisers seeking to circumvent the substantive provisions of the rule of the potential applicability of section 208(d)?
- As proposed, this exception would apply to an offshore adviser that advised an offshore hedge fund owned entirely by U.S. residents. Should we apply the substantive provisions of the Act to such an adviser? Should the exception be available to advisers only with respect to private funds owned primarily by non-U.S. residents?[137] If so, what should be the appropriate threshold?

D. Definition of ''Private Fund''

Advisers have many types of clients, some of which may be legal organizations such as trusts, partnerships, or corporations that have beneficial owners, *e.g.*, beneficiaries, limited partners, or shareholders. It would not serve the purpose of this regulatory initiative or of the Act if we were to require advisers to ''look through'' each and every business or other legal organization they advised for purposes of determining the availability of the ''private adviser'' exemption. To identify those legal organizations whose advisers would be required to look through, the rule would contain a definition of ''private fund.''

Our rule would define a ''private fund'' by reference to three characteristics shared by virtually all hedge funds. First, the private fund would be limited to a company that would be subject to regulation under the Investment Company Act of 1940 (the ''Investment Company Act'') but for the exception provided in either section 3(c)(1) (a ''3(c)(1) fund'') or section 3(c)(7) (a ''3(c)(7) fund'') of such Act.[138] By limiting the scope of the look-through provision to those entities relying on these two sections of the Investment Company Act, we would exclude advisers to most business organizations, including insurance companies, broker-dealers, and banks, and include advisers to many types of pooled investment vehicles investing in securities, including hedge funds.[139]

Second, a company would be a private fund only if it permits investors to redeem their interests in the fund (*i.e.*, sell them back to the fund) within two years of purchasing them.[140] Hedge funds typically offer their investors liquidity access following an initial ''lock-up'' period,[141] and thus most hedge fund advisers would be included within the rules. This ''redeemability'' requirement would, however, exclude persons who advise private equity funds,[142] venture capital funds,[143] and similar funds that require investors to make long-term commitments of capital. These funds are similar to hedge funds in some respects, but we have not encountered significant enforcement problems with advisers with respect to their management of these types of

[132] Rule 206(4)–2.

[133] *See Offshore Offers and Sales*, Securities Act Release No. 6863 (Apr. 24, 1990) [55 FR 18306 (May 2, 1990)].

[134] Proposed rule 203(b)(3)–2(c). Because the fund would not be a U.S. client of the adviser, the substantive provisions of the Act generally would not apply to the adviser's dealings with the fund under general principles first outlined in the Unibanco letter, *supra* note 131.

[135] *See supra* note 134.

[136] *See supra* note 119. *See also Richard Ellis, Inc.*, SEC Staff No-Action Letter (Sept. 17, 1981).

[137] *See, e.g.*, rule 14d–1(c)(1) [17 CFR 240.14(d)(c)(1)] (exempting securities of foreign private issuers from most provisions of the Securities Exchange Act of 1934 [15 U.S.C. 77a–77aa] and rules governing tender offers when U.S. security holders hold 10 percent or less of the subject securities).

[138] Proposed rule 203(b)(3)–2(d)(1)(i). Section 3(c)(1) exempts issuers with fewer than 100 shareholders from the definition of ''investment company'' under the Investment Company Act and section 3(c)(7) exempts issuers whose shareholders are exclusively ''qualified purchasers'' from that definition. *See* section 3(c)(1) and section 3(c)(7) of the Investment Company Act.

[139] It would also exclude, of course, advisers to registered investment companies. This exclusion would, however, have no effect on these advisers, which are not eligible for the private adviser exemption. *See* section 203(b)(3).

[140] Proposed rule 203(b)(3)–2(d)(1)(ii). Private equity and venture capital funds may offer redemption rights under extraordinary circumstances. These extraordinary redemptions do not change the basic character of the investment pool into a hedge fund. Accordingly, an investment pool could offer redemption rights in extraordinary and unforeseeable situations, such as an owner's death or total disability, or circumstances that make it illegal or impractical for the investor to continue to own the interest in the fund, without becoming a ''private fund'' under the new rule. Proposed rule 203(b)(3)–2(d)(2)(i). The proposed new rule would also provide an exception to the two-year redemption test for interests acquired with reinvested dividends. Proposed rule 203(b)(3)–2(d)(2)(ii). The two-year redemption test would apply to each investment in the fund, not only the investor's initial investment, and could be used on a ''first in, first out'' basis.

[141] Hedge funds often offer semi-annual, quarterly, or monthly liquidity terms to their investors. We understand that, because liquidity is important to hedge fund investors, some hedge fund advisers offer certain investors ''side letter agreements'' to provide shorter liquidity terms than other investors in the same fund may receive. *See* Alexander M. Ineichen, *Funds of Hedge Funds: Industry Overview*, 4 J. WEALTH MGMT. 47 (Mar. 22, 2002).

[142] Private equity funds concentrate their investments in unregistered (and typically illiquid) securities. Private equity investors typically commit to invest a certain amount of money with the fund over the life of the fund, and make their contributions in response to ''capital calls'' from the fund's general partner. Private equity funds offer little, if any, opportunity for investors to redeem their investments.

[143] Venture capital funds are generally organized to invest in the start-up or early stages of a company. Venture capital funds have the same features that distinguish private equity funds generally from hedge funds, such as capital contributions over the life of the fund and long-term nature of the investment. A venture capital fund typically seeks to liquidate its investment once the value of the company increases above the value of the investment.

funds. In contrast, the Commission has developed a substantial record of frauds associated with hedge funds. A key element of hedge fund advisers' fraud in most of our recent enforcement cases has been the advisers' misrepresentation of their funds' performance to current investors,[144] which in some cases was used to induce a false sense of security for investors when they might otherwise have exercised their redemption rights. Because hedge funds are where we have seen a recent growth in fraud enforcement actions, that is where we propose to focus our examination resources at this time.

In addition, as the staff discussed in its 2003 Staff Hedge Fund Report, private equity funds typically are long-term investments providing for liquidation at the end of a term specified in the fund's governing documents. They provide for little or no opportunity for investors to redeem their investments,[145] and moreover typically require investors to commit to invest an amount of money over the life of the fund, and make contributions in response to ''capital calls.'' Periodic redemption rights offered by hedge funds, however, provide the hedge fund investors with a level of liquidity that allows the investor to withdraw a portion of his or her assets, controlled by the adviser, or to terminate the relationship with the hedge fund adviser and choose a new adviser. Given the association between these redeemability features and potential abuses that could harm investors in the fund, this element of the private fund definition will help promote the purposes of the Act.

Third, interests in a private fund would be based on the ongoing investment advisory skills, ability or expertise of the investment adviser. In deciding whether to invest in a particular hedge fund, the adviser's history, experience, past performance with this or other client accounts, strategies, and disciplinary record, are likely important to investors, who rely on the adviser for the success of their investment. In that regard, hedge fund advisers emphasize the record of the manager and often provide prospective investors with information about the adviser and individual manager. This reliance by hedge fund investors implicates the need for the protections that the Advisers Act offers.[146]

Our approach to defining the scope of rule 203(b)(3)–2 is similar to that taken recently by the Department of Treasury in defining the scope of its proposed rule requiring ''private investment companies'' to adopt anti-money laundering programs.[147] Like the Treasury Department, we have tried to keep the definition simple, and provide a ''bright line'' indicator of when an adviser must look though a client that is a legal organization. We have avoided alternative approaches that would turn on the nature of the investments made by the pooled investment vehicle because we do not want registration concerns to affect investment decisions of the adviser.

We request comment on the proposal:

- Should we narrow the rule? If so, how?
- Should ''private fund'' include private equity, venture capital, and other investment pools that are not hedge funds? If so, how should we broaden the rule?
- Do the three characteristics used in the rule effectively distinguish hedge funds from these other types of funds? If not, what specific tests should apply?
- Is two years an appropriate time period for redemptions? If not, should it be longer or shorter, and why?
- Are there any other circumstances prompting redemptions that need to be excepted from the two-year test?

E. Amendments to Rule 203(b)(3)–1

We propose to amend rule 203(b)(3)–1 to clarify that investment advisers may not count hedge funds as single clients under that safe harbor. As discussed earlier, many hedge fund advisers have avoided Advisers Act registration by relying on paragraph (a)(2)(i) of this rule, which permits advisers to count a legal organization, rather than its owners, as a single client.[148] New paragraph (b)(6) would make it clear that advisers cannot rely on paragraph (a)(2)(i) with respect to private funds.[149]

F. Amendments to Rule 204–2

We are proposing to provide relief from a recordkeeping requirement for hedge fund advisers that would be required to register with us under new rule 203(b)(3)–2. Under our rules, a registered investment adviser that makes claims concerning its performance ''track record'' must keep documentation supporting those performance claims.[150] The supporting records must be retained for a period of five years after the performance information is last used.[151] Thus, if a registered adviser promotes its 20-year performance record in 2004, it must continue to keep its supporting records for its 1984 performance through 2009—five years after the last time that 1984 performance is included.

While it is important for our examiners to be able to substantiate an adviser's performance claims, we recognize that hedge fund advisers, like other investment firms, need to communicate their performance history to their clients and prospective clients. We question, however, whether advisers that were not previously subject to our rules will necessarily have retained adequate records from prior periods. It is not our intention to put these new registrants at a competitive disadvantage in promoting the returns they have earned, in some instances over many years. Accordingly, we would require these new registrants to retain whatever records they do have that support the performance they earned prior to their registration with us, but would excuse them from our recordkeeping rule to the extent that those records are incomplete or otherwise do not meet the

[144] *See, e.g., SEC* v. *Jean Baptiste Jean Pierre, Gabriel Toks Pearse and Darius L. Lee*, Litigation Release No. 17303 (Jan. 10, 2002) and *supra* note 76; *In the Matter of Michael T. Higgins, supra* note 78; *SEC* v. *David M. Mobley, Sr., et al.*, Investment Advisers Act Release No. 2131 (May 20, 2003); *SEC* v. *Michael W. Berger, Manhattan Capital Management Inc., supra* note 40; *SEC* v. *Todd Hansen and Nicholas Lobue*, Litigation Release No. 17299 (Jan. 9, 2002).

[145] *See supra* note 142.

[146] It is worth noting in this regard that section 203(b)(3) of the Advisers Act specifically excludes an adviser from relying on the exemption, even if it has fewer than 15 clients, if it holds itself out generally to the public as an investment adviser.

[147] *See supra* note 29.

[148] Rule 203(b)(3)–1(a)(2)(i).

[149] We are also proposing non-substantive changes to the wording of the preliminary note and paragraphs (a) (General), (a)(2)(i), (b)(1), (2), (3), (4) and (5), and (c) of rule 203(b)(3)–1 to clarify those sections.

[150] Rule 204–2(a)(16) requires registered investment advisers to make and keep ''[a]ll accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); *provided, however,* that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.''

[151] Rule 204–2(e)(3) specifies the retention period: ''Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.''

requirements of rule 204–2. Once a hedge fund adviser has registered with us, of course, it must comply with our recordkeeping rule going forward.

We ask comment on this aspect of our proposal.

• Is this exemption necessary? Or, do hedge fund advisers already routinely retain documents substantiating their performance claims that comply with our recordkeeping rules?

We are also proposing an amendment to rule 204–2 clarifying that, for purposes of section 204 of the Advisers Act, the books and records of a hedge fund adviser registered with us include records of the private funds for which the adviser acts as general partner, managing member, or in a similar capacity.[152] Section 204 of the Act generally subjects records of investment advisers to examination by the Commission. To determine whether a hedge fund adviser is meeting its fiduciary obligations to a private fund under the Advisers Act and rules, our examiners require access to all records relating to the adviser's activities with respect to the fund, including records relating to the adviser's service as the fund's general partner. The general partners effectively control all the operations and assets of the hedge fund. Because many hedge fund advisers establish a separate special purpose vehicle to be named as the fund's general partner, the proposed amendment would also cover private funds for which a related person of the adviser (as defined in Form ADV) acts as general partner, managing member, or in a similar capacity.

We ask comment on this aspect of our proposal.

• Is the scope of this provision too narrow or too broad?

• Are there other entities we should include?

G. Amendments to Rule 205–3

We are proposing to amend rule 205–3 under the Advisers Act to avoid requiring certain hedge fund investors to divest their current interests in the funds. Most hedge fund advisers charge a fee based on their fund's capital gains or appreciation—a ''performance fee.'' Rule 205–3 permits registered investment advisers to charge performance fees only to ''qualified clients,'' and requires the adviser to a 3(c)(1) fund to look through the fund to determine whether all investors are qualified clients.[153] Generally, to be a qualified client of a registered investment adviser an investor must place at least $750,000 under that adviser's management or have a net worth of $1.5 million.[154] While many hedge fund advisers place these or even more stringent requirements on the investors in their funds, not all do so. Some hedge funds are marketed to ''accredited investors,'' [155] and some may permit a small number of non-accredited investors.

Accordingly, there may be some small number of investors in hedge funds that are not qualified clients. It may, therefore, be against our current rules for the adviser to continue receiving a performance fee from some current investors.[156] While we would require hedge fund advisers to comply with our performance fee rules going forward, we do not believe it is necessary to disrupt existing arrangements with persons who have already invested in the hedge fund. Our proposed amendment to 205–3 would allow a hedge fund's current investors who are not qualified clients to retain their existing investment in that fund, and to add to that account. It would not give them an exemption to open new investment accounts in that hedge fund or other hedge funds.

We request comment on this aspect of our proposal:

• Is it appropriate to create this exemption for current investors? If not, should we require that investors who are not qualified clients exit the hedge funds, or should we require that they be carved out of paying the performance fee?

• Is the scope of the exemption appropriate? If it is too narrow, should we permit current investors to open new accounts or invest in other hedge funds managed by the same adviser? Alternatively, if it is too broad, should we prohibit current investors from adding to their investment?

• Are there other exceptions or exemptions we should create?

H. Amendments to Rule 206(4)–2

We propose to amend rule 206(4)–2, the adviser custody rule, to accommodate advisers to funds of hedge funds. Our custody rule makes it clear that an adviser acting as general partner to a pooled investment vehicle it manages has custody of the pool's assets.[157] Under the rule, advisers to pooled investment vehicles, including hedge funds, may satisfy their obligation to deliver custody account information to investors by distributing the pool's audited financial statements to investors within 120 days of the pool's fiscal year-end.[158] Some advisers to funds of hedge funds have encountered difficulty in obtaining completion of their fund audits prior to completion of the audits for the underlying funds in which they invest, and as a practical matter will be prevented from complying with the 120-day deadline. We propose to extend the period for pooled investment vehicles to distribute their audited financial statements to their investors from 120 days to 180 days, so that advisers to funds of hedge funds may comply with the rule.[159]

We request comments on the proposed amendments.

• Is the 180-day period too long?

• Would a 150-day period achieve the same goal?

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[152] Proposed rule 204–2(l).

[153] Rule 205–3(a) and (b). Rule 205–3 permits registered advisers to charge performance fees that would otherwise be prohibited by section 205(a). [15 U.S.C. 80b–5(a)]. Registered advisers are not prohibited from charging performance fees to 3(c)(7) funds, section 205(b)(4) [15 U.S.C. 80b–5(b)(4)], investors in which must all be ''qualified purchasers.'' *See supra* note 93.

[154] A ''qualified client'' under rule 205–3 is: (i) A natural person who or a company that immediately after entering into the contract has at least $750,000 under the management of the investment adviser; (ii) A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either: (A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into; or (B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(51)(A)) at the time the contract is entered into; or (iii) A natural person who immediately prior to entering into the contract is: (A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or (B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

[155] Regulation D under the Securities Act provides that an accredited investor includes certain institutional investors as well as any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 or who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

[156] In the absence of relief, the registered adviser would have to either force the non-qualified client out of the fund or restructure its fee so that the non-qualified client is not paying the performance-based component of the fee.

[157] Rule 206(4)–2(c)(1)(iii).

[158] Rule 206(4)–2(b)(3).

[159] Until the Commission takes action on this proposed amendment, the Division of Investment Management will not recommend that the Commission take any enforcement action against an adviser to a fund of funds that acts in accordance with the proposed amendment.

• Should we keep the 120-day requirement for non-fund of hedge funds advisers?

I. Amendments to Form ADV

We propose to amend Form ADV to identify advisers to hedge funds. The current Form ADV collects information about advisers to pooled investment vehicles without distinguishing hedge fund advisers from other advisers. We would amend Item 7B. of Part 1A and Section 7B. of Schedule D to require advisers to ''private funds'' as defined in the proposed rule to identify themselves as hedge fund advisers in Part 1A and Schedule D of Form ADV. We request comment on this aspect of our proposal.

• Are any other changes needed to Form ADV in connection with registering hedge fund advisers?

J. Compliance Period

We request comment on the length of time hedge fund advisers would need in order to register and revise their compliance systems so as to meet the requirements under the Advisers Act. Although many hedge fund advisers may be able to transition easily, we recognize that some firms may need to develop control policies and procedures in a number of areas.

• Would six months be sufficient?

• Would hedge fund advisers require as long as one year?

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 203(b)(3)–2 would require certain hedge fund advisers to register with us under the Investment Advisers Act of 1940. We are also proposing related recordkeeping and performance fee amendments to facilitate a smooth transition for hedge fund advisers, and amendments to the custody rule designed to facilitate a smooth transition particularly for advisers to funds of hedge funds. We have identified certain costs and benefits, which are discussed below, that may result from the proposed rule and amendments. We request comment on the costs and benefits of the proposed rule and amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

1. Benefits To Hedge Fund Investors

As discussed above in this Release, our proposal to require hedge fund advisers to register under the Advisers Act would benefit hedge fund investors, though these benefits are difficult to quantify.

(a) *Deter fraud and curtail losses.* Our oversight may prevent or diminish losses hedge fund investors would otherwise experience as a result of hedge fund advisers' fraud. Registration would allow us to conduct regular examinations of hedge fund advisers, and our examinations provide a strong deterrent to advisers' fraud, identify practices that may harm investors, and lead to earlier discovery of fraud that does occur.[160] Registration would also permit us to screen individuals seeking to advise hedge funds, and to deny entry to those with a history of disciplinary problems.[161]

In the last five years, the Commission has brought 46 enforcement cases in which we assert hedge fund advisers have defrauded hedge fund investors or used the fund to defraud others. While 3 of these frauds were detected in time to prevent investor losses, this was the exception rather than the rule.[162] In 35 of these cases, our staff estimates potential investor losses aggregate approximately $1.1 billion.[163] Staff cannot at this time estimate the amount of losses in the remaining eight cases.[164] We are concerned that individuals have targeted hedge fund investors and chosen hedge funds as a vehicle for fraud because these individuals could operate their funds without regulatory scrutiny of their activities. Only eight of the 46 cases involve investment advisers registered with the Commission, with over $75.7 million in estimated aggregate investor losses.[165] The

[160] *See* Section II.B.2 of this Release.

[161] *See* Section II.B.3 of this Release.

[162] *SEC* v. *EPG Global Private Equity Fund*, Litigation Release No. 18577 (Feb. 17, 2004); *SEC* v. *Millennium Capital Hedge Fund, L.P., Millennium Capital Group, LLC, and Andreas F. Zybell*, Litigation Release No. 18362 (Sept. 25, 2003); *In the Matter of John Christopher McCamey and Sierra Equity Partners, LP*, Securities Exchange Act Release No. 48917 (June 18, 2003).

[163] *In the Matter of Samer M. El Bizri and Bizri Capital Partners, Inc., supra* note 78; *SEC* v. *Daniel D. Dyer and Oxbow Capital Partners, LLC*, Litigation Release No. 18719 (May 19, 2004); *SEC* v. *J. Robert Dobbins, Dobbins Capital Corp., Dobbins Offshore Capital LLC, Dobbins Partners, L.P., and Dobbins Offshore, Ltd.*, Litigation Release No. 18634 (Mar. 23, 2004); *SEC* v. *Patrollers Capital Fund and Franklin S. Marone*, Litigation Release No. 18601 (Feb. 27, 2004); *SEC* v. *Darren Silverman and Matthew Brenner*, Litigation Release No. 18597 (Feb. 25, 2004); *In the Matter of Nevis Capital Management, LLC, David R. Wilmerding, III and Jon C. Baker, supra* note 80; *In the Matter of Robert T. Littell and Wilfred Meckel*, Investment Advisers Act Release No. 2203 (Dec. 15, 2003); *SEC* v. *Koji Goto*, Litigation Release No. 18456 (Nov. 14, 2003); *SEC* v. *John F. Turant, Jr., Russ R. Luciano, JTI Group Fund, LP, J.T. Investment Group, Inc., Evergreen Investment Group, LP, and New Resource Investment Group, Inc.*, Litigation Release No. 18351 (Sept. 15, 2003); *SEC* v. *Michael Batterman, Randall B. Batterman III, and Dynasty Fund, Ltd., et al.*, Litigation Release No. 18299 (Aug. 20, 2003); *SEC* v. *Ryan J. Fontaine and Simpleton Holdings Corporation a/k/a Signature Investments Hedge Fund, supra* note 19; *In the Matter of Ascend Capital, LLC, Malcolm P. Fairbairn, and Emily Wang Fairbairn*, Investment Advisers Act Release No. 2150 (July 17, 2003); *SEC* v. *Beacon Hill Asset Management LLC, et al., supra* note 40; *SEC* v. *J. Scott Eskind, Lorus Investments, Inc., and Capital Management Fund, Limited Partnership, supra* note 79; *SEC* v. *Michael L. Smirlock and LASER Advisers, Inc.*, Litigation Release No. 17630 (July 24, 2002); *SEC* v. *Schwendiman Partners, LLC, Gary Schwendiman, and Todd G. Schwendiman, supra* note 80; *SEC* v. *Von Christopher Cummings, Paramount Financial Partners, L.P., Paramount Capital Management, LLC, John A. Ryan, Kevin L. Grandy and James Curtis Conley*, Litigation Release No. 17598 (July 3, 2002); *SEC* v. *House Asset Management, L.L.C., House Edge, L.P., Paul J. House, and Brandon R. Moore, supra* note 76; *In the Matter of Portfolio Advisory Services, LLC and Cedd L. Moses, supra* note 41; *SEC* v. *Jean Baptiste Jean Pierre, Gabriel Toks Pearse and Darius L. Lee, supra* note 76; *In the Matter of Zion Capital Management LLC, and Ricky A. Lang, supra* note 80; *SEC* v. *Peter W. Chabot, Chabot Investments, Inc., Sirens Synergy and the Synergy Fund, supra* note 76; *SEC* v. *Vestron Financial Corp., et al., supra* note 76; *SEC* v. *Edward Thomas Jung, et al., supra* note 40; *SEC* v. *Burton G. Friedlander, supra* note 77; *SEC* v. *Hoover and Hoover Capital Management, Inc., supra* note 42; *SEC* v. *Evelyn Litwok & Dalia Eilat, supra* note 76; *SEC* v. *Ashbury Capital Partners, L.P., Ashbury Capital Management, L.L.C., and Mark Yagalla, supra* note 40; *SEC* v. *James S. Saltzman*, Litigation Release No. 17158 (Sept. 27, 2001); *In the Matter of Stephen V. Burns*, Investment Advisers Act Release No. 1910 (Nov. 17, 2002); *In the Matter of Michael T. Higgins, supra* note 78; *SEC* v. *David M. Mobley, Sr., et al., supra* note 40; *SEC* v. *Michael W. Berger, Manhattan Capital Management Inc., supra* note 78; *In the Matter of Charles K. Seavey and Alexander Lushtak, supra* note 78; *SEC* v. *Todd Hansen and Nicholas Lobue, supra* note 144.

[164] *SEC* v. *Global Money Management, LP, LF Global Investments, LLC, and Marvin I. Friedman*, Litigation Release No. 18666 (Apr. 12, 2004); *SEC* v. *KS Advisors, Inc. et al.*, Litigation Release No. 18600 (Feb. 27, 2004); *In the Matter of Alliance Capital Management, L.P., supra* note 43; *SEC* v. *Edward J. Strafaci*, Litigation Release No. 18432 (Oct. 29, 2003); *In the Matter of Stephen B. Markovitz, supra* note 43; *Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC, supra* note 40; *In the Matter of Martin W. Smith and World Securities, Inc.*, Investment Advisers Act Release No. 2124 (Apr. 18, 2003); *SEC* v. *Platinum Investment Corp. et al.*, Litigation Release No. 17643 (July 31, 2002).

[165] *In the Matter of Alliance Capital Management, L.P., supra* note 43; *SEC* v. *Michael L. Smirlock,*

Continued

remaining 38 cases involve advisers that were not registered with us, with over $1 billion in estimated aggregate investor losses.[166] While our regulatory oversight cannot guarantee hedge fund investors will never be defrauded, our oversight should reduce investor losses.[167]

(b) *Provide basic information about hedge fund advisers.* Form ADV information that hedge fund advisers would file in registering would aid hedge fund investors in evaluating potential managers.[168] Filing Form ADV would require hedge fund advisers to disclose information about their business, affiliates and owners, and disciplinary history. Many investors currently lack good access to this information about their hedge fund managers.[169] Although the information hedge fund advisers would provide on their Form ADV filings and to comply with our rules cannot substitute for an investor's due diligence, it would aid investors by providing a publicly accessible foundation of basic information.[170]

(c) *Improve compliance controls.* Hedge fund investors would benefit from their advisers' improved compliance controls. Once registered, hedge fund advisers would be required to have comprehensive compliance procedures and to designate a chief compliance officer.[171] Specific procedures governing proxy voting[172] and a code of ethics including requirements for personal securities reporting would also be required.[173] In addition, our examinations and the obligation to commit to a program of compliance controls foster adherence to a culture of compliance by advisers.[174] These compliance measures are the first line of defense in protecting investors against breaches of an adviser's fiduciary duties under the Act.

2. Benefits to Mutual Fund Investors

Mutual fund investors would benefit from hedge fund adviser registration to the extent that Commission oversight deters hedge funds and their advisers from illegal conduct that exploits mutual funds. Many of the market timers and illegal late traders involved in recent mutual fund scandals have been hedge funds.[175] The 46 enforcement cases discussed earlier do not include 12 other actions we have brought to date against persons charged with late trading of mutual fund shares on behalf of hedge fund groups, and against mutual fund advisers or principals for permitting hedge funds to market time mutual funds contrary to the mutual funds' prospectus disclosure.[176] Hedge fund advisers reaped huge profits for their funds over an extended period while costing our nation's retail mutual fund investors hundreds of millions of dollars.[177]

3. Benefits to Other Investors and Markets

Other investors, and markets, would benefit from hedge fund adviser registration to the extent that SEC oversight eliminates opportunities for hedge funds and their advisers to engage in other types of unlawful conduct in the securities markets. The mutual fund scandals have shown us that hedge fund advisers' improper or illegal activities can cause harm beyond the hedge funds' own investors. There may be other fraudulent activities by hedge fund advisers of which we are unaware because we cannot examine these advisers regularly.[178] Adviser registration, as discussed above, would lead to earlier discovery of fraudulent activities and thus would enhance protections to all investors in the securities markets.

4. Benefits to Regulatory Policy

Registration of hedge fund advisers would benefit all investors and market participants by providing us and other policy makers with better data. Better data would help us to form and frame appropriate regulatory policies regarding the hedge fund industry and its advisers, and to evaluate the effect of our policies and programs on this sector. We have limited information about hedge fund advisers and the hedge fund industry, and much of what we do have is indirect information extrapolated from other data. This hampers our ability to develop regulatory policy for the protection of hedge fund investors and investors in general.[179] Hedge fund adviser registration would provide the Congress, the Commission and other government agencies with important information about this rapidly growing segment of the U.S. financial system.[180]

5. Benefits to Hedge Fund Advisers

(a) *Curtail competitive disparities.* Mandatory registration would provide a level playing field for hedge fund advisers. Many hedge fund advisers have already registered with us,[181] and

supra note 163; *SEC* v. *Edward J. Strafaci, supra* note 164; *In the Matter of Nevis Capital Management, supra* note 80; *In the Matter of Martin W. Smith and World Securities, Inc., supra* note 164; *SEC* v. *Schwendiman Partners, LLC, Gary Schwendiman, and Todd G. Schwendiman, supra* note 80; *In the Matter of Portfolio Advisory Services, LLC and Cedd L. Moses, supra* note 41; *In the Matter of Zion Capital Management LLC, and Ricky A. Lang, supra* note 80. Staff cannot estimate the amount of losses in 3 of these cases at this time.

[166] Staff cannot estimate the amount of losses in 5 of these cases at this time.

[167] This benefit may be particularly important to hedge fund investors in an environment where there is excess demand for hedge funds. As substantial inflows chase absolute returns, average hedge fund risk can be expected to increase as hedge fund advisers compete for investment opportunities. This pressure may give hedge fund advisers incentives to engage in strategies that may not be consistent with the funds' disclosure or may be unlawful. *See supra* note 63 and accompanying text. In the absence of Commission oversight as a deterrent, these incentives may tempt hedge fund advisers to engage in fraud.

[168] *See supra* note 62 and accompanying text.

[169] *Id.*

[170] Participants at our Hedge Fund Roundtable last year spoke of the difficulty and costs that investors face in obtaining information from hedge fund advisers. Roundtable Transcript, May 15 (statement of Sandra Manzke) (''[I]t's very difficult to get answers out of managers, and they hold all the keys right now. If you want to get into a good fund, and you ask some difficult questions, you may not get that answer. Sure, there is a lot of access, to get online and do background checks, and hire firms * * *. But that's expensive. And can the retail investor do it? No. Firms like ours, we spend a lot of money, we have a lot more people working for us now to uncover these types of situations.'').

[171] *See* Section II.B.4 of this Release.

[172] Rule 206(4)–6 [17 CFR 275.206(4)–6].

[173] Rule 204A–1 [17 CFR 275.204A–1].

[174] *See* Section II.B.2 of this Release.

[175] *See supra* note 43.

[176] *Id.*

[177] *Id.*

[178] *See, e.g., Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC, supra* note 40 (Commission complaint asserting unregistered hedge fund adviser manipulated the market price of certain securities held by the hedge fund); *SEC* v. *Burton G. Friedlander, supra* note 77.

[179] *See* Section II.B.1. of this Release.

[180] In addition to the Commission, other federal and state government departments and agencies regulating the financial sectors of the country may need such information to form their regulatory policies. For example, the Commission was unable to provide the Department of Treasury with accurate information about the number of hedge funds for use in connection with its proposals to require hedge funds to adopt anti-money laundering programs. *Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies, supra* note 29. Because there is no government source of information to identify or locate hedge funds, the Treasury Department proposed a rule under the USA Patriot Act that will require that hedge funds, among others, to file a brief notice with the Department with certain information about their operations. *Id.* at p. 60622. *See also The President's Working Group Study on Hedge Funds: Hearing Before the House Comm. on Banking and Financial Services, 106th Cong.* (1999), p. 4 (statement of Representative John LaFalce, Member, House Comm. on Banking and Financial Services) (''The message of LTCM is not so much that the Federal Reserve set the stage for extricating very big and sophisticated principals and their lenders from a tight situation. The real message is that we can no longer doubt that we have a new powerful kind of financial institution in our midst, the hedge fund, and that we know very little about them.''); PWG LTCM Report, *supra* note 27 at 1(''[I]t is difficult to estimate precisely the size of the [hedge fund] industry * * *.'').

[181] Many advisers to hedge funds are required to register with us because of other advisory business

have organized their compliance procedures under the Advisers Act. Unregistered hedge fund advisers, however, vary substantially in their compliance practices.[182] While many of them have adopted sound compliance practices, many others, against whom they and the registered advisers compete, have not allocated resources to implement an effective compliance infrastructure. Mandatory registration would ensure that all hedge fund advisers compete on the same basis in this regard.

(b) *Legitimize a growing and maturing industry.* As discussed above, the hedge fund industry has been growing at an extraordinary pace in the past decade.[183] Registration under the Advisers Act would bring hedge fund advisers to the same compliance level as other SEC-registered advisers, thus legitimizing a growing and maturing industry that is currently perceived as operating in the shadows. In addition, without appropriate regulatory oversight to check growing hedge fund fraud, investors' confidence in hedge fund advisers and the hedge fund industry could eventually erode.

B. Costs

Registration of hedge fund advisers under the Advisers Act would not impede hedge funds' operations. The Act does not prohibit any particular investment strategies, nor does it require or prohibit specific investments. Instead of imposing specific procedures on registrants, the Advisers Act is principally a disclosure statute that requires registrants to fully inform clients of conflicts so that those clients can determine whether to give their consent. For the same reasons, registering hedge fund advisers should not impair the ability of hedge funds to continue their important roles of providing price information and liquidity to our markets.[184] Registration, however, imposes certain additional costs as discussed below.

1. Registration Costs

Hedge fund advisers would experience costs to register under the Advisers Act, but these costs would not be high. In order to register, advisers are required to file Part 1 of Form ADV (the registration form for advisers) electronically through the Investment Adviser Registration Depository (''IARD'') and pay initial filing fees and annual filing fees to the IARD system operator.[185] In addition to these filing fees, hedge fund advisers would also incur internal costs in connection with preparing Part 1, but these costs should be low because Form ADV readily accommodates registration by hedge fund advisers. Part 1 requires advisers to answer basic questions about their business, their affiliates and their owners, and Part 1 can be completed using information readily available to hedge fund advisers. Numerous hedge fund advisers have already registered with the Commission using Part 1, and none has reported to us that their business model presents any difficulty in using the form.[186] Advisers must also complete Part II of Form ADV and deliver a copy of Part II or a disclosure brochure containing the same information to clients.[187] Part II requires disclosure of certain conflicts of interest. We expect that hedge fund advisers would face relatively small internal costs in preparing a Part II, and would be likely to include their Part II information as part of their private placement memoranda for their hedge funds, reducing their overall costs even further.

2. Compliance Infrastructure Costs

New hedge fund adviser registrants would also face costs to bring their operations into conformity with the Advisers Act and the rules under the Act, and these costs would vary substantially across advisory firms. Registered advisers are required to comply with rules under the Advisers Act such as the books and records rule,[188] the custody rule,[189] the proxy voting rule,[190] the compliance rule,[191] and the code of ethics rule.[192] Many unregistered hedge fund advisers have already built sound compliance infrastructure because their business compels it. These firms already have procedures designed to keep good records of all transactions, to keep their clients' assets safe, to provide fair and full disclosure of conflicts of interest, and to prevent their supervised persons from breaching fiduciary duties. These advisory firms would face little cost to modify their current compliance practices to comply with the Advisers Act rules. For other hedge fund advisers that have not yet established sound compliance programs, however, the costs would be higher.

Based on discussions with industry, we estimate the costs to establish the required compliance infrastructure would be $20,000 in professional fees and $25,000 in internal costs including staff time.[193] These estimates are averages. As stated above, the costs would likely be less for new registrants that have already established sound compliance practices and more for new registrants that do not yet have good compliance procedures. These costs should not represent a barrier to entry for new hedge fund advisers. More than 2,500 smaller advisory firms are currently registered with us.[194] These firms have absorbed these compliance costs, notwithstanding the fact that their revenues are likely to be smaller than those of a typical hedge fund adviser.[195]

V. Effects on Commission Examination Resources

The proposed rule would also increase the workload of the Commission's investment adviser examination program, which is operated by our Office of Compliance Inspections and Examinations (''OCIE''). OCIE's examination program already covers a number of advisers to hedge funds. These advisers have registered with the SEC, either because they advise non-hedge fund clients for whom registration is required, or because they

they have. Still others have chosen to register with us because their investor clients require it. *See* Section II.B.6 of this Release. *See also supra* note 98.

[182] *See* Section VII.A.1.b. of the 2003 Staff Hedge Fund Report, *supra* note 32.

[183] *See* Section I. A. of this Release.

[184] *See* PGW LTCM Report *supra* note 27 at 2. The 2003 Staff Hedge Fund Report, also noted that hedge funds' trading brings price information to our securities markets, thus improving market efficiency, and hedge funds also provide liquidity to our capital markets. 2003 Staff Hedge Fund Report at 4, *supra* note 32.

[185] The initial filing fee for advisers with $25 million to $100 million of assets under management is $800 and for advisers with $100 million or more of assets under management is $1,100. The annual filing fee for advisers with $25 million to $100 million of assets under management is $400 and for advisers with more than $100 million of assets under management is $550. Available at *www.sec.gov/division/investment/iard/iardfee.shtml.*

[186] In fact, our proposal makes only one small change to Part 1, to better identify which advisers' pooled investment vehicles are hedge funds. *See* Section II. I. of this Release.

[187] *See* rule 204–3 [17 CFR 275.204–3], the brochure delivery rule.

[188] Rule 204–2.

[189] Rule 206(4)–2.

[190] Rule 206(4)–6.

[191] Rule 206(4)–7.

[192] Rule 204A–1.

[193] Our staff has estimated that between 690 and 1,260 hedge fund advisers would be new Advisers Act registrants under the proposed rules. *See infra* text following note 198. Aggregate start-up costs to establish required compliance infrastructure for all new registrants are therefore estimated to range from $31 to $57 million.

[194] As of May 1, 2004, 2,640 advisers registered with us reported that they were managing less than $50 million in client assets. These advisers represent 32 percent of our registrant pool.

[195] In addition to asset-based investment management fees that are comparable to advisory fees charged by non-hedge fund advisory firms, hedge fund advisers also typically earn incentive compensation equaling 20 percent of the fund's net investment income.

perceive SEC registration to be necessary to their business model. The proposed rule would increase the number of SEC-registered advisers by some amount, and increase our examination workload correspondingly.

There are various options we could pursue to lessen the effect of this increase. Though OCIE's resources would be spread over an expanded pool of investment adviser registrants, we could develop risk assessment tools that enhance the efficiency of our examination program. In addition, we have recently adopted measures that require advisory personnel to be more accountable for the efficacy of compliance programs. By October of this year, advisers must comply with our new compliance rule, which requires all registered investment advisers to implement comprehensive policies and procedures for compliance with the Advisers Act, under the administration of a chief compliance officer.[196] As advisers improve their own compliance regimes, we expect our examination program will enjoy increased efficiencies. Another option would be to increase the current threshold for SEC registration from $25 million of assets under management to a slightly higher amount, thereby reducing the number of smaller advisers overseen by the Commission (instead of state securities administrators). Or we could seek additional resources from Congress, if necessary.

Our ability to estimate the size of the increase in our workload has been hampered by the absence of any reliable and comprehensive database of hedge funds or advisers to hedge funds. Our staff tentatively estimates that the addition of new hedge fund advisers to our current registrant pool of 8,300 advisers could increase the total size of this pool by 8 to 15 percent.

Based on a review of the limited information available, our staff estimates that there are probably between 2,300 and 3,500 hedge fund advisers in the industry, advising approximately 7,000 funds.[197] After examining various private databases of hedge fund information, staff further estimates that approximately 60 percent of these firms are likely to have at least $25 million in assets under management, making them eligible to register with the Commission instead of the states. Staff further estimates that approximately 40 to 50 percent of those eligible advisers are already registered with the Commission, with registration rates likely to be higher for larger firms and lower for smaller firms.[198] Based on these estimates and assumptions:

- If the industry is comprised of approximately 2,300 hedge fund advisers, then approximately 1,380 are likely eligible to register with the Commission under the $25 million registration threshold. Of these 1,380 firms, approximately 550 to 690 are likely already SEC-registered, and the proposed rule would result in 690 to 830 new registrants.
- If the industry is comprised of approximately 3,500 hedge fund advisers, then approximately 2,100 are likely eligible to register with the Commission under the $25 million registration threshold. Of these 2,100 firms, approximately 840 to 1,050 are likely already SEC-registered, and the proposed rule would result in 1,050 to 1,260 new registrants.

We request comment on these estimates. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any alternative estimates.

VI. Paperwork Reduction Act

Proposed rule 203(b)(3)–2 contains no new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 to 3520). The rules proposed to be amended contain several collection of information requirements, but the proposed amendments do not change the burden per response from that under the current rules. Proposed rule 203(b)(3)–2 would have the effect of requiring advisers to hedge funds to register with the Commission under the Advisers Act and would therefore increase the number of respondents under several existing collections of information, and, correspondingly, increase the annual aggregate burden under those existing collections of information. The Commission has submitted, to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, the existing collections for information for which the annual aggregate burden would likely increase as a result of rule 203(b)(3)–2. The titles of the affected collections of information are: ''Form ADV,'' ''Form ADV–W and Rule 203–2,'' ''Rule 203–3 and Form ADV–H,'' ''Form ADV–NR,'' ''Rule 204–2,'' ''Rule 204–3,'' ''Rule 204A–1,'' ''Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers,'' ''Rule 206(4)–3,'' ''Rule 206(4)–4,'' ''Rule 206(4)–6,'' and ''Rule 206(4)–7,'' all under the Advisers Act. The existing rules affected by rule 203(b)(3)–2 contain currently approved collection of information numbers under OMB control numbers 3235–0049, 3235–0313, 3235–0538, 3235–0240, 3235–0278, 3235–0047, 3235–0596, 3235–0241, 3253–0242, 3235–0345, 3235–0571 and 3235–0585, respectively. 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. All of these collections of information are mandatory, and respondents in each case are investment advisers registered with us, except that (i) respondents to Form ADV are also investment advisers applying for registration with us; (ii) respondents to Form ADV–NR are non-resident general partners or managing agents of registered advisers; (iii) respondents to Rule 204A–1 include ''access persons'' of an adviser registered with us, who must submit reports of their personal trading to their advisory firms; (iv) respondents to Rule 206(4)–2 are only those SEC-registered advisers that have custody of clients' funds or securities; (v) respondents to Rule 206(4)–3 are advisers who pay cash fees to persons who solicit clients for the adviser; (vi) respondents to Rule 204(4)–4 are advisers with certain disciplinary histories or a financial condition that is reasonably likely to affect contractual commitments; and (vii) respondents to Rule 206(4)–6 are only those SEC-registered advisers that vote their clients' securities. Unless

[196] Rule 206(4)–7. *See Compliance Programs of Investment Companies and Investment Advisers, supra* note 91.

[197] Participants at our Hedge Fund Roundtable in May of 2003 estimated that there were approximately 6,000 hedge funds in operation at that time. 2003 Staff Hedge Fund Report, *supra* note 32 at n. 2. More recently, the Hennessee Group has estimated the total number of hedge funds at 7,000. *See* Testimony of Charles J. Gradante, *supra* note 33.

No similar estimates exist of the number of advisers managing these hedge funds. Many hedge fund advisers manage two or four funds (one or two management styles, with a U.S. and an off-shore version of each), while other smaller hedge fund advisers manage only one and some of the largest advisers manage more than four. If, on average, each hedge fund advisory firm is managing approximately two to three funds, that equates to approximately 2,300 to 3,500 firms.

[198] In reaching this estimate, staff reviewed information contained in private databases of hedge fund information. Form ADV does not presently require SEC-registered advisers to indicate whether they advise hedge funds. As of April 2004, approximately 1,900 advisers, representing 23 percent of all SEC-registered advisers, indicated on their Form ADV that they advised ''other pooled investment vehicles'' as clients, and approximately 600 out of the 1,900 indicated these pooled investment vehicles represented 75 percent or more of their client base. While these ''other pooled investment vehicles'' include hedge funds, they also include a variety of other non-hedge fund pools, and therefore we cannot use these responses to estimate how many of these advisers manage hedge funds.

otherwise noted below, responses are not kept confidential.

We cannot estimate with precision the number of hedge fund advisers that would be new registrants with the Commission under the Advisers Act if proposed rule 203(b)(3)–2 is adopted. As discussed earlier, our staff has estimated that between 690 and 1,260 hedge fund advisers would be new Advisers Act registrants under the proposed rules.[199] For purposes of estimating the increases in respondents to the existing collections of information, we have used the midpoint of this estimated range, or 975 new respondents. We request comment on the number of hedge fund advisers that would be subject to the proposed rule and to the applicable collections of information.

A. Form ADV

Form ADV is the investment adviser registration form. The collection of information under Form ADV is necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest. Rule 203–1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–1 requires each registered adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through the IARD. This collection of information is found at 17 CFR 275.203–1, 275.204–1, and 279.1. The currently approved collection of information in Form ADV is 102,653 hours. We estimate that 975 new respondents would file one complete Form ADV and one amendment annually, and comply with Form ADV requirements relating to delivery of the code of ethics. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under Form ADV by 28,958 hours [200] for a total of 131,611 hours.

B. Form ADV–W and Rule 203–2

Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W. The collection of information is necessary to apprise the Commission of advisers who are no longer operating as registered advisers. This collection of information is found at 17 CFR 275.203–2 and 17 CFR 279.2. The currently approved collection of information in Form ADV–W is 500 hours. We estimate that 975 hedge fund advisers that would be new registrants would withdraw from SEC registration at a rate of approximately 16 percent per year, the same rate as other registered advisers, and would file for partial and full withdrawals at the same rates as other registered advisers, with approximately half of the filings being full withdrawals and half being partial withdrawals. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under Form ADV–W and rule 203–2 by 78 hours [201] for a total of 578 hours.

C. Rule 203–3 and Form ADV–H

Rule 203–3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. An adviser requesting a temporary hardship exemption is required to file Form ADV–H, providing a brief explanation of the nature and extent of the temporary technical difficulties preventing it from submitting a required filing electronically. Form ADV–H requires an adviser requesting a continuing hardship exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense. Continuing hardship exemptions are available only to advisers that are small entities. The collection of information is necessary to provide the Commission with information about the basis of the adviser's hardship. This collection of information is found at 17 CFR 275.203–3, and 279.3. The currently approved collection of information in Form ADV–H is 10 hours. We estimate that the approximately 975 hedge fund advisers that would be new registrants would file for temporary hardship exemptions at approximately 0.1 percent per year, the same rate as other registered advisers.[202] Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under Form ADV–H and rule 203–3 by 1 hour [203] for a total of 11 hours.

D. Form ADV–NR

Non-resident general partners or managing agents of SEC-registered investment advisers must make a one-time filing of Form ADV–NR with the Commission. Form ADV–NR requires these non-resident general partners or managing agents to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. The collection of information is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners or agents for violations of the federal securities laws. This collection of information is found at 17 CFR 279.4. The currently approved collection of information in Form ADV–NR is 15 hours. We estimate that the approximately 975 hedge fund advisers that would be new registrants would make these filings at the same rate (0.2 percent) as other registered advisers. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under Form ADV–NR by 2 hours [204] for a total of 17 hours.

E. Rule 204–2

Rule 204–2 requires SEC-registered investment advisers to maintain copies of certain books and records relating to their advisory business. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[205] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[206] This collection of information is found at 17 CFR 275.204–2. The currently approved collection of information for rule 204–2 is 1,537,884 hours, or 191.78 hours per registered adviser. We estimate that all 975 advisers that would be new registrants would maintain copies of records under the requirements of rule 204–2. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 204–2 by 186,985.5 hours [207] for a total of 1,724,869.5 hours.

F. Rule 204–3

Rule 204–3, the ''brochure rule,'' requires an investment adviser to

[199] *See supra* text following note 198.

[200] 975 filings of the complete form at 22.25 hours each, plus 975 amendments at 0.75 hours each, plus 6.7 hours for each of the 975 hedge fund advisers to deliver copies of their codes of ethics to 10 percent of their 670 clients annually who request it, at 0.1 hours per response.

[201] 156 filings (975 × 0.16), consisting of 78 full withdrawals at 0.75 hours each and 78 partial withdrawals at 0.25 hours each.

[202] We expect that no hedge fund advisers would be small advisers that would be eligible to file for a continuing hardship exemption.

[203] 1 filing (975 × 0.001) at 1 hour each.

[204] 2 filings (975 × 0.002) at 1 hour each.

[205] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[206] *See* rule 204–2(e).

[207] 975 hedge fund advisers × 191.78 hours per adviser = 186,985.5 hours.

deliver or offer to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. Rule 204–3 also requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. The collection of information is necessary to assist clients in determining whether to retain, or continue employing, the adviser. This collection of information is found at 17 CFR 275.204–3. The currently approved collection of information for rule 204–3 is 5,412,643 hours, or 694 hours per registered adviser, assuming each adviser has on average 670 clients. We estimate that all 975 advisers that would be new registrants would provide brochures to their clients as required by rule 204–3. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 204–3 by 676,650 hours [208] for a total of 6,089,293 hours. We note that the average number of clients per adviser reflects a small number of advisers who have thousands of clients, while the typical SEC-registered adviser has approximately 76 clients. We ask comment on the number of clients of the average hedge fund adviser.

G. Rule 204A–1

Rule 204A–1 requires SEC-registered investment advisers to adopt codes of ethics setting forth standards of conduct expected of their advisory personnel and addressing conflicts that arise from personal securities trading by their personnel, and requiring advisers' ''access persons'' to report their personal securities transactions. 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. This collection of information is found at 17 CFR 275.204A–1. The currently approved collection of information for rule 204A–1 is 945,841 hours, or 117.95 hours per registered adviser. We estimate that all 975 advisers that would be new registrants would adopt codes of ethics under the requirements of rule 204A–1 and require personal securities transaction reporting by their ''access persons.'' Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 204A–1 by 115,001 hours [209] for a total of 1,060,842 hours.

H. Rule 206(4)–2

Rule 206(4)–2 requires advisers with custody of their clients' funds and securities to maintain controls designed to protect those assets from being lost, misused, misappropriated, or subjected to financial reverses of the adviser. The collection of information under rule 206(4)–2 is necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. This collection of information is found at 17 CFR 275.206(4)–2. The currently approved collection of information for rule 206(4)–2 is 72,113 hours. We estimate that all 975 hedge fund advisers that would be new registrants would have custody. We are proposing to amend rule 206(4)–2 to make it easier for hedge fund advisers to distribute audited financial statements to their investors annually in lieu of quarterly account statements sent by either the adviser or a qualified custodian and we estimate that all 975 new respondents would use this approach and would not be required to undergo an annual surprise examination. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 206(4)–2 by 326,625 hours [210] for a total of 398,738 hours.

I. Rule 206(4)–3

Rule 206(4)–3 requires advisers who pay cash fees to persons who solicit clients for the adviser to observe certain procedures in connection with solicitation activity. The collection of information under rule 206(4)–3 is necessary to inform advisory clients about the nature of a solicitor's financial interest in the recommendation of an investment adviser, so the client may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duties. This collection of information is found at 17 CFR 275.206(4)–3. The currently approved collection of information for rule 206(4)–3 is 10,982 hours. We estimate that approximately 20 percent of the 975 hedge fund advisers that would be new registrants would be subject to the cash solicitation rule, the same rate as other registered advisers. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 206(4)–3 by 1,373 hours [211] for a total of 12,355 hours.

J. Rule 206(4)–4

Rule 206(4)–4 requires registered investment advisers to disclose to clients and prospective clients certain disciplinary history or a financial condition that is reasonably likely to affect contractual commitments. This collection of information is necessary for clients and prospective clients in choosing an adviser or continuing to employ an adviser. This collection of information is found at 17 CFR 275.206(4)–4. The currently approved collection of information for rule 206(4)–4 is 10,118 hours. We estimate that approximately 17.3 percent of the 975 hedge fund advisers that would be new registrants would be subject to rule 206(4)–4, the same rate as other registered advisers. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 206(4)–4 by 1,265 hours [212] for a total of 11,383 hours.

K. Rule 206(4)–6

Rule 206(4)–6 requires an investment adviser that votes client securities to adopt written policies reasonably designed to ensure that the adviser votes in the best interests of clients, and requires the adviser to disclose to clients information about those policies and procedures. This collection of information is necessary to permit advisory clients to assess their adviser's voting policies and procedures and to monitor the adviser's performance of its voting responsibilities. This collection of information is found at 17 CFR 275.206(4)–6. The currently approved collection of information for rule 206(4)–6 is 103,590 hours. We estimate that all 975 hedge fund advisers that would be new registrants would vote their clients' securities. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 206(4)–6 by 16,283 hours [213] for a total of 119,873 hours.

[208] 975 hedge fund advisers times 694 hours per adviser.

[209] 975 hedge fund advisers at 117.95 hours per adviser annually.

[210] 975 hedge fund advisers times 670 clients times 0.5 hours per annual financial statement distribution.

[211] 195 respondents (975 × 0.2) at 7.04 hours annually per respondent.

[212] 169 respondents (975 × 0.173) at 7.5 hours annually per respondent.

[213] 975 hedge fund advisers would spend 10 hours each annually documenting their voting policies and procedures, and would provide copies of those policies and procedures to 10 percent of their 670 clients annually at 0.1 hours per response.

L. Rule 206(4)–7

Rule 206(4)–7 requires each registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, review those policies and procedures annually, and designate an individual to serve as chief compliance officer. This collection of information under rule 206(4)–7 is necessary to ensure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. This collection of information is found at 17 CFR 275.206(4)–7. The currently approved collection of information for rule 206(4)–7 is 623,200 hours, or 80 hours annually per registered adviser. We estimate all 975 advisers that would be new registrants would be required to maintain compliance programs under rule 206(4)–7. Accordingly, we estimate the proposal would increase the annual aggregate information collection burden under rule 206(4)–7 by 78,000 hours [214] for a total of 701,200 hours.

M. Request for Comment

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. S7–30–04. 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. S7–30–04, 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. Effects on Competition, Efficiency and Capital Formation

Section 202(c) of the Advisers Act 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.[215]

As discussed above, proposed rule 203(b)(3)–2 would, in effect, require hedge fund advisers to register with the Commission under the Advisers Act. The proposed rule is designed to provide the protection afforded by the Advisers Act to investors in hedge funds, and to enhance the Commission's ability to protect our nation's securities markets. We are also proposing rule amendments that would facilitate hedge fund advisers' transition to registration and improve the Commission's ability to identify hedge fund advisers from information filed on their Form ADV. The proposed rule and rule amendments may indirectly increase efficiency for hedge fund investors. Hedge fund adviser registration would provide hedge fund investors and industry participants with better access to important basic information about hedge fund advisers and the hedge fund industry. This improved access may allow investors to investigate and select their advisers more efficiently.

We do not anticipate that the proposed rule would introduce any competitive disadvantages. The proposed rule may provide a level playing field with respect to advisers' compliance infrastructures. Many hedge fund advisers are already registered with us, either because their investors demand it or because they have other advisory business that requires them to register. These registered advisers must adopt compliance procedures under the Advisers Act and must provide certain safeguards to their clients, including their hedge fund investors. While some unregistered hedge fund advisers have adopted sound comparable compliance procedures, others have not. Mandatory registration would require that all hedge fund advisers compete with each other and with other investment advisers on the same basis in this regard. The proposed amendment to rule 204–2 is designed to prevent newly-registered hedge fund advisers from being at a competitive disadvantage with respect to the promotion of their previous performance records, and the proposed amendment to rule 206(4)–2 is designed to allow advisers to funds of hedge funds to use the same approach under the adviser custody rule as do advisers to other pooled investment vehicles.

The proposed rule is unlikely to have a substantial effect on capital formation. To the extent that registration and the prospect of Commission examinations improves the compliance culture at hedge fund advisory firms, it may bolster investor confidence and investors may be more likely to entrust hedge fund advisers with their assets for investment. However, these assets may be diverted from other investments in the capital markets.

The Commission seeks comment regarding the impact of the proposed rules on efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VIII. Regulatory Flexibility Act

A. Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[216] the Commission hereby certifies that proposed rule 203(b)(3)–2 and the proposed amendments to rules 203(b)(3)–1, 204–2, 205–3 and Form ADV would not, if adopted, have a significant economic impact on a substantial number of small entities. Under Commission rules, for the purposes of the Advisers Act and 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

[214] 975 hedge fund advisers at 80 hours annually.

[215] 15 U.S.C. 80b–2(c).

[216] 5 U.S.C. 605(b).

million or more on the last day of its most recent fiscal year.[217]

Proposed rule 203(b)(3)–2 and the amendment to rule 203(b)(3)–1 would remove a safe harbor and require certain advisers to private funds to register with the Commission under the Advisers Act by requiring them to count investors in the fund as clients for purposes of the Advisers Act ''*de minimis*'' exemption from registration. Notwithstanding the proposed rule, investment advisers with assets under management of less than $25 million would remain generally ineligible for registration with the Commission under section 203A of the Advisers Act.[218] The proposed amendments to rules 204–2 and 205–3 would allow advisers affected by the proposed new rule to continue certain marketing practices and performance fees they now have in place. The proposed amendment to Form ADV would require advisers to private funds to identify themselves as such. No other entities would incur obligations from the proposed rules and amendments. Accordingly, the Commission certifies that proposed rule 203(b)(3)–2 and the proposed amendments to rules 203(b)(3)–1, 204–2, 205–3 and Form ADV would not have a significant economic impact on a substantial number of small entities.

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.

B. Amendment to Rule 206(4)–2

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') regarding the proposed amendment to rule 206(4)–2 in accordance with section 3(a) of the Regulatory Flexibility Act.[219]

1. Reasons for Proposed Action

We propose to amend rule 206(4)–2, the adviser custody rule, to accommodate advisers to private funds of funds, including funds of hedge funds.[220] Under the rule, advisers to pooled investment vehicles may satisfy their obligation to deliver custody account information to investors by distributing the pool's audited financial statements to investors within 120 days of the pool's fiscal year-end.[221] Some advisers to private funds of funds (including funds of hedge funds) have encountered difficulty in obtaining completion of their fund audits prior to completion of the audits for the underlying funds in which they invest, and as a practical matter will be prevented from complying with the 120-day deadline. We propose to extend the period for pooled investment vehicles to distribute their audited financial statements to their investors from 120 days to 180 days, so that advisers to funds of hedge funds may comply with the rule.

2. Objectives and Legal Basis

The objective of the proposed amendment to rule 206(4)–2 is to make the rule requirements easier to comply with for advisers to private funds of funds such as funds of hedge funds. Section IX of this Release lists the statutory authority for the proposed amendment.

3. Small Entities Subject To Rule

The Commission estimates that as of June 30, 2004,[222] approximately 490 SEC-registered investment advisers that would be affected by the amendment to the rule were small entities for purposes of the Advisers Act and the Regulatory Flexibility Act.[223]

4. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendment would impose no new reporting, recordkeeping or other compliance requirements. To the contrary, the proposed amendment would provide all advisers, big or small, that advise pooled investment vehicles with the opportunity to reduce the burdens they incur complying with the present rule's requirements to send pools' audited financial statements to their investors within 120 days.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendment.

6. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the amendment for such small entities.

The overall impact of the proposed amendment is to decrease regulatory burdens on advisers, and small advisers, as well as large ones, will benefit from the proposed rule. Moreover, the proposed amendment achieves the rule's objectives through alternatives that are already consistent in large part with advisers' current custodial practices. For these reasons, alternatives to the proposed amendment are unlikely to minimize any impact that the proposed rule may have on small entities. The 180-day rule cannot be further clarified, or improved by the use of a performance standard. Regarding exemption from coverage of the rule amendment, or any part thereof, for small entities, such an exemption would deprive small entities of the burden relief provided by the amendment.

7. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

IX. Statutory Authority

We are proposing amendments to rule 203(b)(3)–1 and proposing rule 203(b)(3)–2 pursuant to our authority under sections 202(a)(17),[224] 203, 204, 206(4) and 211(a) of the Advisers Act.[225] Section 211(a) gives us authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act.[226]

We are proposing amendments to rule 204–2 pursuant to our authority under

[217] Rule 0–7(a) [17 CFR 275.0–7(a)]

[218] 15 U.S.C. 80b–3A.

[219] 5 U.S.C. 603(a).

[220] Rule 206(4)–2 [17 CFR 275.206(4)–2].

[221] Rule 206(4)–2(b)(3).

[222] This estimate is based on the information provided submitted by SEC-registered advisers in Form ADV, Part 1A [17 CFR 279.1].

[223] *See* Section VIII.A. of this Release for the definition of a small entity. Unlike the other rules and amendments the Commission is proposing today, the scope of the proposed amendment to rule 206(4)–2 is not limited to hedge fund advisers that would be subject to registration requirements under proposed rule 203(b)(3)–2.

[224] 15 U.S.C. 80b–2(a)(17).

[225] 15 U.S.C. 80b–3, 80b–4, 80b–6(4) and 80b–11(a).

[226] Section 211(a) also provides that ''the Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission * * *.''

sections 204, 206(4), and 211(a) of the Advisers Act.

We are proposing amendments to rule 205–3 pursuant to the authority set forth in section 205(e) and 206A of the Advisers Act.[227]

We are proposing amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act.

We are proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933,[228] sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934,[229] section 319(a) of the Trust Indenture Act of 1939,[230] section 38(a) of the Investment Company Act of 1940,[231] and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940.[232]

Text of Proposed Rule, Rule Amendments and Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Investment Advisers, 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 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for Part 275 is revised to read 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.

* * * * *

2. Section 275.203(b)(3)–1 is revised to read as follows:

§ 275.203(b)(3)–1 Definition of ''client'' of an investment adviser.

Preliminary Note to § 275.203(b)(3)–1. This section is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act. Under paragraph (b)(6) of this section, the safe harbor is not available with respect to private funds.

(a) *General.* You may deem the following to be a single client for purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)):

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2) (i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a ''legal organization'') to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, other securityholders or beneficiaries (any of which are referred to hereinafter as an ''owner''); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special rules.* For purposes of this section:

(1) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization, *provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(3) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

(4) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

(5) If you have your principal office and place of business outside of the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients; and

(6) You may not rely on paragraph (a)(2)(i) of this section with respect to any private fund as defined in § 275.203(b)(3)–2(d).

(c) *Holding out.* If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public as an investment adviser, within the meaning of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), solely because you participate in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

3. Section 275.203(b)(3)–2 is added to read as follows:

§ 275.203(b)(3)–2 Definition of ''client'' for certain private funds.

(a) For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), you must count the shareholders, limited partners, members, other securityholders or beneficiaries (any of which are referred to hereinafter as an ''owner'') of a private fund as clients.

(b) If you provide investment advisory services to a private fund in which an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64) is, directly or indirectly, an owner, you must count the owners of that investment company as clients for purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)).

(c) If both you and the private fund have your principal offices and places of business outside the United States, you may treat the private fund as your client for all other purposes under the Act, other than sections 206(1) and 206(2) (15 U.S.C. 80b–6(1) and (2)).

(d)(1) A private fund is a company:

(i) That would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act (15 U.S.C. 80a–3(c)(1) or (7));

(ii) That permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests; and

(iii) Interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser.

(2) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it permits its owners to redeem their ownership interests within two years of the purchase of such interests only in the case of:

(i) Events you find after reasonable inquiry to be extraordinary and unforeseeable at the time the interest was issued; and

(ii) Interests acquired with reinvested dividends.

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[227] 15 U.S.C. 80b–5(e) and 80b–6a.

[228] 15 U.S.C. 77s(a).

[229] 15 U.S.C. 78w(a) and 78bb(e)(2).

[230] 15 U.S.C. 77sss(a).

[231] 15 U.S.C. 78a–37(a).

[232] 15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a).

(3) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it has its principal office and place of business outside the United States, makes a public offering of its securities in a country other than the United States, and is regulated as a public investment company under the laws of the country other than the United States.

4. Section 275.204–2 is amended by:

(a) Redesignating paragraph (e)(3) as (e)(3(i); and

(b) Adding paragraphs (e)(3)(ii) and (l).

The additions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(e) * * *

(3)(i) * * *

(ii) *Transition rule.* If you are an investment adviser to a private fund as that term is defined in § 275.203(b)(3)–2, and you were exempt from registration under section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)) prior to [insert effective date of the final § 275.203(b)(3)–2], paragraph (e)(3)(i) of this section does not require you to maintain or preserve books and records that would otherwise be required to be maintained or preserved under the provisions of paragraph (a)(16) of this section to the extent those books and records pertain to the performance or rate of return of such private fund for any period ended prior to [insert effective date of the final § 275.203(b)(3)–2], provided that you were not registered with the Commission as an investment adviser during such period, and provided further that you continue to preserve any books and records in your possession that pertain to the performance or rate of return of such private fund for such period.

* * * * *

(1) *Records of private funds.* If an investment adviser subject to paragraph (a) of this section advises a private fund (as defined in § 275.203(b)(3)–2(d)), and the adviser or any related person (as defined in Form ADV [17 CFR 279.1]) of the adviser acts as the private fund's general partner, managing member, or in a comparable capacity, the books and records of the private fund are records of the adviser for purposes of section 204 of the Act [15 U.S.C. 80b–4].

5. Section 275.205–3 is amended by redesignating paragraph (c) as (c)(1) and adding paragraph (c)(2) to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for registered investment advisers.

* * * * *

(c)(1) * * *

(2) *Private funds.* If you are an investment adviser to a private investment company that is a private fund as that term is defined in § 275.203(b)(3)–2, and you were exempt from registration under section 203(b)(3) of the Act [15 U.S.C. 80b–3(b)(3)] prior to [insert effective date of the final § 275.203(b)(3)–2], paragraph (b) of this section will not apply to any equity owner of that company that was an equity owner of that company prior to [insert effective date of the final § 275.203(b)(3)–2].

* * * * *

6. Section 275.206(4)–2 is amended by revising paragraph (b)(3) to read as:

§ 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

* * * * *

(b) * * *

(3) *Limited partnerships subject to annual audit.* You are not required to comply with paragraph (a)(3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 180 days of the end of its fiscal year; and

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. 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.*

8. Form ADV (referenced in § 279.1) is amended by:

a. In Part 1A, Item 7, revising Item 7B; and

b. In Schedule D, revising Section 7.B.

The revisions read as follows:

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Part 1A

* * * * *

Item 7 Financial Industry Affiliations

* * * * *

B. Are you or any related person a general partner in an investment-related limited partnership or manager of an investment-related limited liability company, or do you advise any other ''private fund,'' as defined under SEC rule 203(b)(3)–2?

☐ Yes ☐ No

If ''yes,'' for each limited partnership, limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser *and* you have related persons that are *SEC-registered advisers* who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) That you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

* * * * *

Schedule D

* * * * *

SECTION 7.B. Limited Partnership or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a related person is a general partner, each limited liability company for which you or a related person is a manager, and each other private fund that you advise.

Check only one box:

☐ Add ☐ Delete ☐ Amend

Name of Limited Partnership, Limited Liability Company, or other Private Fund:

_____

Name of General Partner or Manager:

_____

If you are registered or registering with the SEC, is this a ''private fund'' as defined under SEC rule 203(b)(3)–2?

☐ Yes ☐ No

Are your clients solicited to invest in the limited partnership, limited liability company or other private fund?

☐ Yes ☐ No

Approximately what percentage of your clients have invested in this limited partnership, limited liability company, or other private fund?_____%

Minimum investment commitment required of a limited partner, member, or other investor: $_____

Current value of the total assets of the limited partnership, limited liability company, or other private fund: $_____

Dated: July 20, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins to Proposing Release No. IA–2266; Proposed Registration Under the Advisers Act of Certain Hedge Fund Advisers

The majority proposes a new rule and rule amendments under the Investment Advisers Act of 1940 that would require advisers to all hedge funds to register with the Commission.[1] We write jointly to dissent from this proposal. Our primary purpose in writing this dissent is to encourage commenters to respond to the issues discussed in the Proposing Release and to address the numerous issues that the release does not raise.

The majority proposes a solution to an ill-defined problem without having given proper consideration to viable alternative solutions in light of the limitations of our own capabilities. We acknowledge that the Commission does not know everything it would like to about hedge funds and hedge fund advisers. Mandatory registration of hedge fund advisers under the Advisers Act would not fill in these information gaps, but would significantly increase industry and Commission burdens. We are confident that there are other ways of obtaining information that would help us with our investor protection mission. However, before attempting a systematic collection of information, we must determine what information we want or need. We hope that commenters can provide us guidance about the types of useful information that would assist the Commission in discovering and deterring hedge fund fraud.

Hedge Funds Have Long Been the Subject of SEC Study

As the Proposing Release points out, the Commission has been studying hedge funds since the 1960s.[2] As recently as 1992, in response to a Congressional inquiry, the Commission's staff discussed the ''difficulties'' that unregulated advisers pose to our enforcement efforts.[3] The report concluded ''the Commission has substantial powers to obtain information for enforcement purposes, including the power to compel testimony and document production.''[4] Further, the report noted that ''the purpose of regulation is to protect investors, not to simplify investigations'' and ''the potential need to obtain information from hedge funds for enforcement purposes would not seem to be an adequate reason for registration.''[5] Seven years later, the President's Working Group on Financial Markets, of which the Commission is a member, issued a report after the near collapse of Long Term Capital Management.[6] This report concluded ''requiring hedge fund managers to register as investment advisers would not seem to be an appropriate method to monitor hedge fund activity.''[7]

Last year, however, our staff, after conducting another study of the hedge fund industry, issued a report that recommended, among other things, that the Commission consider requiring hedge fund managers to register as investment advisers under the Advisers Act.[8] This report was the culmination of a study that the Commission authorized the staff to conduct in June 2002 in order to determine the necessity of new rules or legislation for hedge funds.[9] The Commission gave the staff subpoena power to ensure that it could obtain the information that it needed. Of particular concern was whether hedge funds were becoming ''retailized'' and whether the growth in hedge funds was accompanied by a disproportionate incidence of fraud.

The 2003 Staff Hedge Fund Report found no retailization and no significant increase in fraud. These conclusions were consistent with the views expressed at the Commission's May 2003 roundtable, at which 60 panelists, including representatives of Federal, State and foreign government regulators, securities industry professionals, and academics testified. Notwith-standing these findings, the staff recommended registering hedge fund advisers. The Proposing Release fails to make a convincing case that this change from the President's Working Group position, supported by the Commission four years earlier, is warranted. It dismisses the conclusion in the PWG LTCM Report on the basis that the Report and the Proposing Release serve ''different purposes.''[10] Nonetheless, the Proposing Release cites as a concern underlying the proposed rulemaking the very anomalies and marketplace risks that were a central focus of the PWG LTCM Report.[11]

Registration Will Not Reduce Enforcement Actions

In support of its proposal, the majority cites Commission enforcement actions. First, it notes that the Commission has brought 46 enforcement actions in the past five years in which hedge fund advisers have defrauded hedge fund investors or used a hedge fund to defraud others. By comparison, the Commission initiated approximately 2,600 enforcement actions during fiscal years 1999 through 2003.[12] As the staff's 2003 Hedge Fund Report states, there is ''no evidence indicating that hedge funds or their advisers engage disproportionately in fraudulent activity.''[13]

Even assuming that the number of hedge fund cases is rising disproportionately, the nature of the cases suggests that registration of hedge fund advisers will not stem the increase. The 46 cases suggest that the typical ''hedge fund'' fraud is perpetrated by an adviser that is too small to be registered with the Commission, was registered already with the Commission, or evaded registration

[1] The term ''hedge fund'' generally refers to an unregistered pooled investment, privately organized, not advertised, and administered by professional investment managers, whose securities are privately placed with wealthy individual and institutional investors. *See generally Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission,* at 3 (available at *http://www.sec.gov/ spotlight/ hedgefunds.htm*) (''2003 Staff Hedge Fund Report'').

[2] *See* Proposing Release, at n. 24 and accompanying text.

[3] *See* Letter from Richard C. Breeden, Chairman, SEC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives (June 12, 1992), transmitting Memorandum from William H. Heyman, Director, Division of Market Regulation, and Marianne K. Smythe, Director, Division of Investment Management, to Chairman Breeden, regarding Hedge Funds, at 10 (available at SEC's public reference room under file no. S7–30–04).

[4] *Id.* at 10.

[5] *Id.* at 10.

[6] *See* Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management—Report of the President's Working Group on Financial Markets, by representatives from the Commission, the Treasury Department, the Federal Reserve and the Commodity Futures Trading Commission (Apr. 1999) (available at: *http://www.treas.gov/press/ releases/reports/hedgfund.pdf*) (''PWG LTCM Report'').

[7] *Id.* at B–16.

[8] 2003 Staff Hedge Fund Report, *supra* note 1.

[9] The objective of the study was to aid the Commission in determining whether regulatory or legislative changes were necessary to respond to the growth in hedge funds. Commission staff reviewed documents and information from 65 hedge fund advisers managing more than 650 different hedge funds, visited hedge fund advisers and prime brokers, and conducted a series of examinations of registered funds of hedge funds. *See* 2003 Staff Hedge Fund Report, *supra* note 1, at vii.

[10] *See* Proposing Release at text following n. 32.

[11] *See* Proposing Release at text accompanying nn. 38 and 39. The majority speaks ominously of the fact that certain hedge fund managers are active traders, but this just indicates their important role in providing liquidity. *See* Proposing Release at n. 38 and accompanying text (citing Marcia Vickers, *The Most Powerful Trader on Wall Street You've Never Heard Of*, Business Week, July 21, 2003, at 66 (noting that SAC Capital Advisors ''routinely accounts for as much as 3% of the New York Stock Exchange's average daily trading, plus up to 1% of the NASDAQ's'')). Federal Reserve Chairman Alan Greenspan explained the important role hedge funds can play. Alan Greenspan, Chairman, Federal Reserve Board, Testimony before the Senate Banking, Housing And Urban Affairs Committee (Feb. 12, 2004) (''Greenspan Testimony'') (''The value that these institutions have is to create a very significant amount of liquidity in our system, and I think that while they have a reputation of being a sort of peculiar type of financial group, I think they've been very helpful to the liquidity and, hence, the international flexibility of our financial system.'').

[12] *See* Securities and Exchange Commission, 2002 Annual Report at 2, and 2003 Annual Report at 17 (reporting number of civil injunctive actions and administrative proceedings initiated during fiscal years 1999 through 2003).

[13] *See* 2003 Staff Hedge Fund Report, *supra* note 1, at 73.

requirements.[14] Mandatory hedge fund adviser registration would not add to the Commission's ability to combat these types of fraud.[15] Importantly, the majority's recitation of these fraud cases illustrates the fact that hedge fund advisers are subject to the antifraud provisions regardless of their registration status.

To substantiate requiring registration, the majority also points to the recent market timing and late trading scandal in the investment company industry in which some hedge funds were implicated. The majority posits that had our examiners been inspecting the hedge funds, they would have found these abuses sooner. But mutual funds and their advisers *are* registered, and examiners were inspecting the mutual funds involved in the scandals and did not find the abuses. We have been and are continuing to punish fund advisers and their employees for orchestrating these schemes.[16] Although our enforcement actions have been targeted primarily at the regulated advisers of mutual funds, hedge fund advisers are also answerable—and will be punished—for their violations of the securities laws.[17] In addition to our enforcement actions, we have adopted certain regulatory measures [18] and are considering others to address any underlying, widespread problems.[19] We should revisit our oversight methods rather than looking for more entities to inspect. For example, had we reviewed mutual funds' flow data and understood how to extract the relevant information, we might have discerned these abusive practices.

Form ADV Does Not Meet the Information ''Needs'' Articulated by the Majority

The majority believes that the information that hedge fund advisers will provide on Form ADV could otherwise only be obtained through ''substantial forensic efforts on the part of our staff.'' [20] Without considerable further amendment, information filed on Form ADV will not provide the details about hedge fund advisers that the majority suggests it needs to assist the Commission in addressing the concerns that the majority refers to in the release.[21] Part I of Form ADV yields little more than a census of name, address, and amount of assets under management. Part II of Form ADV, although more substantive, is unlikely to produce information that would prove useful to the Commission because hedge fund advisers will feel compelled to draft their disclosure to protect proprietary information. Perhaps it is proponents' realization that the Form ADV may not provide all the information they need that causes them to characterize the proposal to require hedge fund advisers to register as a modest first step. This begs the question of what this is a first step towards.[22]

No Evidence of Significant Retailization

The majority contends that the retailization of hedge funds is a growing problem. They assert that as more investors qualify as accredited investors, unsophisticated investors might be gaining inappropriate access to hedge funds. Adjustments to the eligibility criteria would address concerns about potential retailization more directly than hedge fund adviser registration.[23]

The majority also points to indirect retailization through pension fund investments in hedge funds.[24] The proposing release cites an increase in pension investments and hedge funds from $13 billion to $72 billion since 1997.[25] This amount is approximately one percent of the total amount invested in private and public pension plans.[26] Despite the small portion of pension assets invested in hedge funds, the Proposing Release assumes that pension plan participants' financial well-being depends on Commission protection. Pension plan participants rely on professional money managers, who are fiduciaries of the pension plans, to evaluate investment options on behalf of the plan. Further, pension funds fall under either the oversight of either the Department of Labor or, in the case of public funds, state oversight.

Similarly, the majority points to creeping retailization through publicly-offered funds of hedge funds, noting that currently ''there are 40 registered funds of hedge funds that offer or plan to offer their shares publicly.'' [27] However, these publicly-offered funds must be managed by a registered investment adviser and the fund must also comply with the more prescriptive provisions of the Investment Company Act. The Commission is able to examine registered advisers to registered funds of hedge funds as often as it deems appropriate. The Commission may ask for additional information from a registered adviser. It is therefore unclear how mandatory hedge fund adviser registration

[14] Specifically, 8 of these 46 cases involve hedge fund advisers who were already registered with the Commission. In 5 of the 46 cases, the fund should have been registered under the Investment Company Act, so their advisers already should have been registered under current rules. In 20 of the 46 cases, the hedge funds were too small to be covered by the proposed rulemaking. In 2 cases, the fraud involved a principal of a registered broker-dealer or investment adviser, over whom we already had full regulatory oversight. Three of the 46 cases were garden-variety fraud designed to swindle investors, regardless of whether the vehicles were called hedge funds, venture capital funds, limited partnerships or prime banks. Registration might have deterred them from using the term ''hedge fund,'' but would not have deterred the fraud itself.

[15] In only 8 of the 46 cases the existence of the rule might have increased in the Commission's oversight. These 8 cases, however, do not justify the proposed rulemaking. Most involve valuation problems, which have been notoriously difficult for us to detect even if the adviser is registered. In addition, only perfectly timed inspections would have improved the Commission's detection of the frauds at issue. With respect to all advisers, registered or unregistered, tips from knowledgeable insiders or third parties are often the key to discovering the fraud. Indeed, tips pointed us to the fraud in 7 of the 8 remaining cases.

[16] *See, e.g.*, In the Matter of Alliance Capital Management, L.P., Investment Advisers Act Release No. 2205 (Dec. 18, 2003); In the Matter of Banc One Investment Advisors Corporation and Mark A. Beeson, Investment Advisers Act Release No. 2254 (June 29, 2004); In the Matter of James Patrick Connelly, Jr., Investment Advisers Act Release No. 2183 (Oct. 16, 2003); In the Matter of Pilgrim Baxter & Associates, Ltd., Investment Advisers Act Release No. 2251 (June 21, 2004); In the Matter of Strong Capital Management, Inc., Investment Advisers Act Release No. 2239 (May 20, 2004); *SEC* v. *Security Trust Co.,* N.A., Litigation Release No. 18653 (Apr. 1, 2004); In the Matter of Steven B. Markovitz, Release No. 33–8298 (Oct. 2, 2003).

[17] The Proposing Release states that the staff has identified up to 40 hedge funds that have been involved in the Commission's late trading and market timing actions. *See* Proposing Release at n. 44 and accompanying text. The reliance on this information to substantiate the proposal is unwarranted. The majority never counted the number of hedge fund advisers, the entities it proposes to register. We estimate that the number of advisers involved with these funds would have been approximately half. In addition, it is unclear at this point how many of the advisers to these 40 funds actually violated the securities laws.

[18] *See, e.g.*, Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26418 (Apr. 16, 2004) [69 FR 22299 (Apr. 23, 2004)] and Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74713 (Dec. 24, 2003)].

[19] *See, e.g.*, Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) [68 FR 70387 (Dec. 17, 2003)].

[20] *See* Proposing Release at text following n. 70.

[21] Form ADV and its instructions are available at *http://www.sec.gov/about/forms/formadv.pdf.*

[22] The staff recommended one possible next step. *See* 2003 Hedge Fund Staff Report, *supra* note 1, at 97 (recommending that Commission consider requiring advisers to provide a brochure specifically designed for hedge funds).

[23] This would directly address the staff's concern that although it ''has not uncovered evidence of significant numbers of retail investors investing directly in hedge funds,'' ''[n]evertheless, the increased number of retail investors qualifying as accredited investors raises our concern that hedge funds and broker-dealers might begin to seek out these investors as a new source of capital for hedge funds.'' *See* 2003 Staff Hedge Fund Report, *supra* note 1, at 80–81. If, as the majority suggests, there are an excess of investor dollars waiting to flow into hedge funds, then it is unclear why hedge funds would need to look to retail investors. *See From Alpha to Omega; Hedge Funds,* ECONOMIST, July 17, 2004 (''[M]any of the oldest and best-known hedge funds will not accept any new money'' because ''[f]or many trading strategies * * * there is a limit to the amount of money that can be moved around cheaply and briskly. While punting large amounts on the highly liquid foreign-exchange or government-bond markets is easy, betting on illiquid corporate bonds or shares is far harder. And the larger the amounts, the more expensive the bets are.'').

[24] The majority also expresses concern about an increase in hedge fund investment by universities, endowments, foundations, and other charitable organizations because ''[l]osses resulting from hedge fund investments, as with any other investment loss, may affect the entities' ability to satisfy their obligations to their beneficiaries or pursue other intended purposes.'' *See* Proposing Release at text following n. 57. We applaud the majority's concern for the nation's educational and charitable institutions, but these organizations hire experienced money managers to invest their money in a way that maximizes the ability of those organizations to carry out their objectives.

[25] *See* Proposing Release at text accompanying n. 60.

[26] *See* Board of Governors of the Federal Reserve System, *Federal Reserve Statistical Release: Flow of Funds Accounts of the United States* (June 10, 2004) (reporting for year 2003, $4.21 trillion in private pension fund reserves and $2.21 trillion in public pension fund reserves).

[27] *See* Proposing Release at text accompanying n. 54.

would be helpful in this context. However, if the Commission can demonstrate that publicly-offered funds of hedge funds pose real undisclosed risks to retail investors, the Commission could consider whether the problem can be addressed by reversing past regulatory actions that have permitted these funds of hedge funds to be publicly offered.

Scope of the Proposed Rule

The majority's proposal would reach fund advisers that advise ''private funds,'' which it defines as funds that: (1) Would be subject to regulation under the Investment Company Act of 1940 but for the exception provided in either section 3(c)(1) or section 3(c)(7) of the Act; (2) permit investors to redeem their interests in the fund within two years of purchasing them; and (3) interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser. We question whether the two year lock-up will simply cause hedge fund advisers to lengthen their redemption periods, which would not benefit investors. Further, the majority points to valuation as one of the problems that the proposed rulemaking would address.[28] If valuation concerns are motivating the push for hedge fund registration, we should have the same concerns about private equity and venture capital funds.[29]

Costs of Registration

The proposing release seeks to minimize the burden of registration.[30] It downplays the complexities involved in registering as an investment adviser. Although proponents seem to believe that, even under the current regulatory regime, Advisers Act registration is the only choice for legitimate advisers,[31] there is no indication that advisers undertake the process of registration lightly.[32] While the burden of this first step is likely to exceed the majority's expectations, future, more substantive regulation may bring even higher costs, such as the stifling of hedge funds' ability to carry out their business.[33]

It is far from certain that the oversight afforded through registration under the Advisers Act will reduce hedge fund investor fraud losses. By contrast, it is certain that fund investors will bear the cost of the additional regulations.[34] The information collected on Form ADV will not be a sufficient basis for hedge fund advisers' investment decisions; hedge fund investors will continue to do their own research to supplement this information.

Even apart from the Form ADV discussion, the majority discounts the fact that registration implies inspection. Effective inspection of all hedge fund advisers will require the Commission to invest substantial resources and expertise that it does not yet have. Targeted exams will not necessarily be less burdensome than routine exams either for the Commission or for those advisers inspected. If we fail to devote adequate resources and develop the necessary expertise to carry out effective risk-based examinations, we are providing a false sense of security by suggesting to the marketplace that, through registration, we have bathed hedge funds in ''sunlight.''

The majority ignores the opportunity costs of its proposal. The Commission does not have unlimited resources. Resources we devote to regulating hedge fund advisers are resources that we could be devoting to other, perhaps higher, priorities. It is abundantly clear from recent events that we have more work to do in other, more traditional, areas under our jurisdiction.[35] Would investors be better served if we devoted our additional resources to more effective regulation of mutual funds, the investment of choice for over ninety million Americans, as opposed to hedge funds, whose direct investors are limited to institutions and an estimated 200,000 sophisticated high net worth investors? The Commission is moving away from routine inspections and towards a risk-based inspections system. The majority views hedge fund advisers as ideal candidates for the risk-based approach.[36] As the Commission determines what it is looking for, hedge fund advisers may face repeated, ad-hoc requests for paper and electronic documents. Such an approach cannot be deemed to be ''modest.''

The Commission Should Explore Alternative Approaches

Before making this proposal, the Commission should have undertaken a study that complements the descriptive overview of

[28] The Proposing Release cites a recent study finding valuation problems in hedge funds, and noted that ''the authors attribute these failures, in part, to a lack of regulatory oversight.'' *See* Proposing Release at n. 83 and accompanying text (citing Christopher Kundro and Stuart Feffer, *Valuation Issues and Operational Risk in Hedge Funds,* Capco White Paper (Dec. 2003)). The article does not call for enhanced government regulation, but for more rigorous internal valuation procedures with adequate managerial supervision and, when necessary, utilization of third-party pricing services. *See id.* at 8–9.

[29] Probate and taxation of investors' estates, financing transactions based on balance sheet assets, marketing to investors of follow-on funds, and secondary sales of investment interests all raise potential valuation issues for private equity and venture funds.

[30] The majority estimated filing fees of approximately $1,000 in the first year and approximately $500 subsequently. In addition, the majority estimated average initial compliance costs of $20,000 in professional fees and $25,000 in internal costs including staff time. *See* Proposing Release at Section IV.B. At the same time the majority characterizes the costs associated with hedge fund adviser registration as small, it contends that the proposal will level the playing field among hedge fund advisers. *See* Proposing Release at IV.A.5.a.. A level playing field already exists; hedge fund advisers can decide to register and, if registration is important to investors, the market will reward registered advisers. Others suggest that hedge funds have an unfair advantage over mutual funds. This is not the only area in which the Commission permits a mix of unregistered and registered products in order to enhance investors' options without compromising investor protection. Rule 144A [17 CFR 230.144A] private offerings, for example, exist alongside public offerings.

[31] Indeed, underlying this proposal is an apparent belief that advisers that are willing to register are better than those who do not. *See* William Donaldson, Chairman, Securities and Exchange Commission, Testimony before the Senate Banking Committee (July 18, 2004) (''I don't get much push back from people who are operating good funds,'' he said. ''I don't get much push back from people who have nothing to hide.'').

[32] Adviser registration already carries with it certain substantive requirements, including adherence to rule 206(4)–6 [17 CFR 275.206(4)–6], the proxy voting rule, and rule 206(4)–7 [17 CFR 275.206(4)–7], the compliance rule. More generally, as with any disclosure document, Forms ADV can serve as the basis for a litigation against an adviser, so they are prepared with great care and often costly legal advice.

[33] Federal Reserve Chairman Alan Greenspan warned of the likelihood of substantive regulation following registration. *See* Greenspan Testimony, *supra* note 11. (''I grant you that registering advisers in and of itself is not a problem. The question is: What is the purpose of that unless you're going to go further? And therefore I feel uncomfortable about that issue.'').

[34] The majority argues that all investors, regardless of their wealth, deserve the protection of the Investment Advisers Act. *See,* Proposing Release at nn. 15–17. Wealthy investors might not want or need the same level of protection. They often employ well-trained professionals to select investments appropriate for them. If they desire the comfort afforded by a more rigorous regulatory regime, they may select mutual funds or other investments managed by advisers registered with the Commission or rely on a registered investment adviser to invest their money for them. Thus, the majority should view the benefit of enhanced protection for wealthy investors against the costs, including limitations on their investment options and potentially higher fees. *See,* Erik J. Greupner, Comment, *Hedge Funds Are Headed Down-market: A Call for Increased Regulation?,* 40 SAN DIEGO L. REV. 1555, 1578 (2003) (''[R]egulatory action aimed at eliminating every vestige of fraud in a given market would place such a heavy and costly burden of compliance upon issuers that investors would be safe but unable to achieve any meaningful return on their investments. The regulatory agency would also incur a high cost of enforcement. Carried to its logical end, investor protection as a sole reason for regulation, without also granting markets the freedom to reward those who take risk, ironically keeps investors safe and yet fails to fully protect the investors' sole interest in investing in the first instance: to achieve the highest return commensurate with their individual tolerance for risk.'').

[35] The majority contends that hedge fund advisers fall within our traditional jurisdiction, but for the safe harbor provision in rule 203(b)(3)–1 [17 CFR 275.203(b)(3)–1 (''A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership'')]. *See* Proposing Release at text accompanying n. 119. We disagree with the majority's suggestion that rule 203(b)(3)–1 conflicts with the spirit of section 208(d) of the Act, which prohibits a person from doing indirectly or through another person something that would be unlawful for the person to do directly. *See* Definition of ''Client'' of Investment Adviser for Certain Purposes Relating to Limited Partnerships, Investment Advisers Act Release No. 956 (Feb 22, 1985) (when the Commission proposed rule 203(b)(3)–1, it explained that the rule's availability is limited ''to situations where the general partner advises the partnership based on the investment objectives of the limited partners as a group'' to ''prevent a general partner, in contravention of section 208(d) of the Advisers Act, from using the partnership to do what it could not do directly itself, namely, provide individualized investment advice to 15 or more clients without registering as an investment adviser''). Hedge fund advisers provide advice to hedge fund investors as a group, not individually, and, therefore, they should not be deemed to be managing the assets of more than 14 persons in contravention of the Act.

[36] Absent clearly identified red flags, we are concerned that high performance will likely invite extra Commission scrutiny.

hedge funds provided by the 2003 Staff Hedge Fund Report and focuses on identifying the qualitative and quantitative information that would raise red flags and provide systematic data on hedge fund trends and practices. Although speed of implementation seems to be of great concern to the majority, the Commission can defer consideration of adoption of the proposal pending the completion of such an analysis.

This study would include a survey of hedge funds, hedge fund investors, prime brokers, bank lenders and auditors and other relevant sources. The Commission should also review the vast array of data that the Commission and other government agencies already receive.[37] The Commission can glean additional information from investor complaints, examinations of prime brokers and registered hedge fund advisers, and in hedge fund enforcement cases. Another source of information may be hedge funds' filings under the USA Patriot Act.[38] After completing such a study, we could consider whether to require hedge fund advisers to file periodically certain information, which we could then monitor for red flags and trends.[39]

If the data point us to specific problems with hedge funds, we may be able to work with prime brokers, which are already registered with the Commission, to develop solutions. The Proposing Release does not even ask any questions about the role that prime brokers can play, even though prime brokers have already helped us to identify some fraudulent activity at hedge funds.

Request for Comment

We urge commenters to address the following questions and any other issues raised here and in the Proposing Release.

- What are the concerns with respect to hedge funds that we should be addressing through rulemaking?
- Would approaches other than hedge fund registration be effective in addressing the concerns raised by the majority? Should we, for example, adjust the eligibility criteria for hedge fund investors? If so, what should the revised criteria be? For example, should we devise another definition of ''accredited investor'' that differs from that we employ for Regulation D purposes? Would a notice filing and reporting regime be a better alternative to Advisers Act registration? Are there more effective ways of addressing valuation? What measures could we take to enlist prime brokers in identifying valuation problems, fraud, and other red flags at hedge funds?
- What effect will universal registration have on investor demand for hedge fund investment opportunities? Would the registration of all hedge fund advisers expand the universe of eligible hedge funds and encourage even more pension fund investment in hedge funds? Would universal registration lead to calls for a reduction in eligibility criteria for investors because of a belief that registration enhances safety?[40]
- Is there a justifiable basis for distinguishing between the advisers covered by the proposed rulemaking and advisers to venture capital and private equity funds?[41] Are there risks that are peculiar to hedge fund advisers?
- If the Commission adopts the proposal, should it include an exemption for advisers that are registered with another government agency, *e.g.*, the Commodity Futures Trading Commission?
- Would the proposed rulemaking conflict with the securities laws' traditional view that sophisticated investors do not need the full oversight of the Commission?[42]
- Is the information provided on Form ADV sufficient to address the majority's concerns about hedge funds? What effect would the availability of information on the Form ADV have on the costs investors incur in researching hedge funds? What effect would registration have on the due diligence performed by hedge fund investors and the professionals they hire?
- Are the majority's estimates of the costs of registration and the costs of maintaining a compliance program under rule 206(4)–2, and the costs of complying with other rules under the Advisers Act, accurate? What are the anticipated effects of this rule proposal on new entrants in the marketplace? Would fears about more substantive regulation of hedge fund activity, business models, and business practices drive hedge fund advisers offshore? What burdens will hedge fund advisers face in responding to targeted, time-sensitive document requests under the Commission's new risk-based approach to oversight of registrants? What costs would investors bear as a result of the proposed rulemaking (including any reduction in the number of hedge fund offerings)?

Although the proposal seems innocuous on its face, it may harm investors without helping us perform our role. We need to know more about hedge funds. Registration of hedge fund advisers is not the best way to learn more, and it is unlikely that the Commission will determine in the next sixty days what it needs to know. While we would not normally oppose issuing a rule proposal to solicit comment, we cannot support a proposing release that papers over the weaknesses of the approach it puts forward, overstates the purported benefits, and ignores the possibility that viable, and indeed preferable, alternative approaches may exist.

For all of the foregoing reasons, we respectfully dissent.

Cynthia A. Glassman,
Commissioner.

Paul S. Atkins,
Commissioner.

[FR Doc. 04–16888 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–P

[37] Systemic risk issues are properly addressed jointly with the Treasury and the Federal Reserve. As Federal Reserve Chairman Alan Greenspan has stated, hedge funds have ''been very helpful to the liquidity and hence the international flexibility of our financial system.'' Greenspan testimony, *supra* note 11. If well-meaning, but ineffective regulation inhibits hedge funds from performing their important function of lubricating our financial system, it could have a negative effect on our economy. The Chairman of the CFTC has expressed a desire for cooperation across agencies. *See* CFTC Chairman James Newsome, *Financial Times,* 5 April 2004 (''But my concern is that before any regulatory agency drives specific rules, you have to remember that hedge funds run across multiple jurisdictions. So I would suggest that the [President's] working group is the appropriate mechanism because that group takes the broader context.'').

[38] *See* Anti-Money Laundering Programs for Unregistered Investment Companies, 67 FR 60617 (Sept. 26, 2002) (proposing to require, among other things, that unregistered investment companies file a notice containing certain basic information with the Department of Treasury's Financial Crimes Enforcement Network).

[39] Proponents tend to paint the proposed approach as little more than a notice filing approach. We suspect that many advisers already regulated under the Advisers Act would not share that view.

[40] As the Proposing Release points out, in some other countries, there is pressure to open up hedge funds, subject to certain regulations, to a wider range of investors. *See* Proposing Release at n. 52.

[41] The majority distinguishes them by noting that, despite similarities, ''we have not encountered significant enforcement problems with advisers with respect to their management of these types of funds.'' *See* Proposing Release at text accompanying notes 142 through 144. The majority links the higher incidence of abuses to the relative ease with which hedge fund investments can be redeemed. *See id.* at text accompanying n. 145.

[42] *See, e.g.*, section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], Regulation D [17 CFR 230.501–230.508] and rule 144A [17 CFR 230.144A] promulgated thereunder, and sections 3(c)(1) [15 U.S.C. 80a–3(c)(1)] and 3(c)(7) [15 U.S.C. 80a–3(c)(7)] of the Investment Company Act.

Federal Register

Wednesday,
July 28, 2004

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Plain Language Uniform Offering Circular; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Plain Language Uniform Offering Circular

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds) by converting it to plain language. We are issuing this amendment to make our marketable securities auction rules easier to understand. This amendment will also make certain minor revisions to better make the auction rules conform to current practices.

DATES: Effective July 28, 2004.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr*. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular (UOC), in conjunction with the announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes and bonds.[1] We have rewritten the UOC in plain language because the wide variety of bidders in our securities auctions—broker-dealers, depository institutions, non-financial firms, individuals, etc.—have widely different levels of experience in dealing with federal regulations in general and with securities-related concepts and regulations in particular. We also believe that better understanding of the auction rules may increase direct participation in our auctions and improve the auction process overall, resulting in lower borrowing costs.

On December 23, 2003, we issued a proposed amendment to the UOC to convert it to plain language.[2] We received one comment on the proposed rule, from The Bond Market Association (TBMA), which fully supported the proposal.[3] ''We believe that Treasury has improved the UOC and * * * has again demonstrated a strong commitment to continually enhance its auction rules, process and procedures,'' the commenter said.

TBMA also suggested one modification, which was to reinsert the definition of ''Delivery and payment agreement'' in the definitions section of the UOC.[4] The term is defined in the current UOC, but was inadvertently omitted in the proposed plain-language UOC. We agree with this suggestion and have reinserted a definition of ''Delivery and payment agreement'' into § 356.2 of the final amendment.

We are also making various other definitional changes from the proposed amendment in § 356.2. We are expanding the definition of ''Bidder'' to include the situation where we deem an account controlled by an investment adviser to be a bidder when an investment adviser bids in the controlled account's name.[5] We are modifying the definition of ''Bidder Identification Number'' to clarify that it can apply to noncompetitive bidders as well as to competitive bidders. We are also modifying the definition of ''Price'' to clarify that the term is expressed per 100 dollars of the stated value of a security.

In addition, we are adding paragraph (4) to § 356.11(a), which discusses bidding requirements. The paragraph makes submitters responsible for bids submitted using computer equipment on their premises, whether or not such bids are authorized. A paragraph to this effect is in the current UOC,[6] but was inadvertently omitted in the proposed plain-language UOC.

We are also adding paragraph (4) to § 356.11(c), which discusses bidding for securities to be held in the TreasuryDirect system. This paragraph provides TreasuryDirect investors the same ability as bidders in the commercial book-entry system[7] to bid by telephone in a contingency situation such as power outages.

The proposed rule amendment[8] eliminated all references to multiple-price auctions since we now use single-price auctions for all marketable Treasury securities. Upon further reflection, we are adding back the references to multiple-price auctions in § 356.20 of the final rule amendment to preserve our flexibility should Treasury ever wish to reintroduce multiple-price auctions. Accordingly, we are also adding back the defined terms ''Multiple-price auction,'' ''Single-price auction,'' and ''Weighted average'' to § 356.2, and expanding the definition of ''Noncompetitive bid'' to incorporate language that was omitted in the proposed amendment.

Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Although we issued a proposed rule on December 23, 2003, to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The Office of Management and Budget previously approved the collections of information in this final amendment in accordance with the Paperwork Reduction Act under control number 1535–0112. We are only rewriting the UOC in plain language and are not making substantive changes to these requirements that would impose additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

■ We are revising 31 CFR Part 356 to read as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

Subpart A—General Information

Sec.

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 411). The circular, as amended, is codified at 31 CFR Part 356.

[2] 68 FR 74293 (December 23, 2003).

[3] The proposed rule and the comment letter, dated February 23, 2004, are available for downloading from *www.publicdebt.treas.gov* and for inspection and copying at the Treasury Department Library at the address provided earlier in this final rule.

[4] 31 CFR 356.2.

[5] § 365.15 includes the specific provisions of the UOC applicable to bidder through investment advisers.

[6] 31 CFR 356.11(c)(5) of the current UOC.

[7] 31 CFR 356.11(b)(3) of this final rule.

[8] See *supra* note 2.

356.0 What authority does the Treasury have to sell and issue securities?
356.1 To which securities does this circular apply?
356.2 What definitions do I need to know to understand this part?
356.3 What is the role of the Federal Reserve Banks in this process?
356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?
356.5 What types of securities does the Treasury auction?

Subpart B—Bidding, Certifications, and Payment

356.10 What is the purpose of an auction announcement?
356.11 How are bids submitted in an auction?
356.12 What are the different types of bids and do they have specific requirements or restrictions?
356.13 When must I report my net long position and how do I calculate it?
356.14 What are the requirements for submitting bids for customers?
356.15 What rules apply to bids submitted by investment advisers?
356.16 Do I have to make any certifications?
356.17 How and when do I pay for securities awarded in an auction?

Subpart C—Determination of Auction Awards; Settlement

356.20 How does the Treasury determine auction awards?
356.21 How are awards at the high yield or discount rate calculated?
356.22 Does the Treasury have any limitations on auction awards?
356.23 How are the auction results announced?
356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?
356.25 How does the settlement process work?

Subpart D—Miscellaneous Provisions

356.30 When does the Treasury pay principal and interest on securities?
356.31 How does the STRIPS program work?
356.32 What tax rules apply?
356.33 Does the Treasury have any discretion in the auction process?
356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?
356.35 Who approved the information collections?
Appendix A to Part 356—Bidder Categories
Appendix B to Part 356—Formulas and Tables
Appendix C to Part 356—Investment Considerations
Appendix D to Part 356—Description of the Consumer Price Index

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

Subpart A—General Information

§ 356.0 What authority does the Treasury have to sell and issue securities?

Chapter 31 of Title 31 of the United States Code authorizes the Secretary of the Treasury to issue United States obligations, and to offer them for sale with the terms and conditions that the Secretary prescribes.

§ 356.1 To which securities does this circular apply?

The provisions in this part, including the appendices, and each individual auction announcement govern the sale and issuance of marketable Treasury securities issued on or after March 1, 1993. This part also governs all securities eligible for the STRIPS (Separate Trading of Registered Interest and Principal of Securities) Program (See § 356.31.). In addition, these provisions and the auction announcements govern any other types of securities we may issue under this part.

§ 356.2 What definitions do I need to know to understand this part?

Accrued interest means an amount that bidders must pay to us for interest income as part of the settlement amount. Accrued interest compensates us up front for interest that bidders will be paid but did not earn because it is attributable to a period of time prior to the issue date. (See Appendix B, section I, paragraph C of this part for additional explanation and examples.)

Adjusted value means, for an interest component stripped from an inflation-protected security, an amount derived by:

(1) Multiplying the semiannual interest rate by the par amount, and then

(2) Multiplying this value by: 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, section IV of this part for an example of how to calculate the adjusted value.)

Auction means a bidding process by which we sell marketable Treasury securities to the public.

Autocharge agreement means an agreement in a format acceptable to Treasury between a submitter or clearing corporation and a depository institution that authorizes us to:

(1) Deliver awarded securities to either:

(i) The book-entry securities account of a designated depository institution in the commercial book-entry system, or

(ii) A TreasuryDirect account, and

(2) Charge a funds account of a designated depository institution for the settlement amount of the securities.

Bid means an offer to purchase a stated par amount of securities, either competitively or noncompetitively, in an auction.

Bid-to-cover ratio means the total par amount of securities bid for in an auction divided by the total par amount of securities awarded. It excludes bids by, and awards to, the Federal Reserve for its own account.

Bidder, as further defined in Appendix A, means a person or an entity that offers to purchase Treasury securities in an auction either directly or through a depository institution or dealer. We may consider two or more persons or entities to be one bidder based on their relationship or their actions in participating in an auction. We consider a controlled account to be a bidder when an investment adviser bids in the name of the controlled account (See § 356.15.).

Bidder Identification Number means a number we assign to each institutional submitter and to certain other bidders. We assign such numbers either to identify certain bidders or to grant separate bidder status to different parts of the same corporate or partnership structure.

Book-entry security means a security that is issued and maintained as an accounting entry or electronic record in either the commercial book-entry system or in TreasuryDirect. (See § 356.4.)

Business day means any day on which the Federal Reserve Banks are open for business.

Call means the redemption of a security prior to maturity under the terms specified in its auction announcement.

Clearing corporation means a clearing agency as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)). A clearing corporation must be registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 and its rules.

Competitive bid means a bid to purchase a stated par amount of securities at a specified yield or discount rate.

Consumer Price Index (CPI) means the monthly non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. We use the CPI as the basis for adjusting the principal amounts of inflation-protected securities. (*See* Appendix D.)

Corpus means the principal component of a security that has been stripped of its interest components.

CUSIP number means the unique identifying number assigned to each separate security issue and each separate STRIPS component. CUSIP numbers are provided by the CUSIP Service Bureau of Standard & Poor's Corporation. CUSIP is an acronym for Committee on Uniform Securities Identification Procedures.

Customer means a bidder that directs a depository institution or dealer to submit or forward a bid for a specific amount of securities in a specific auction on the bidder's behalf. Only depository institutions and dealers may submit bids for customers directly to us, or forward them to another depository institution or dealer.

Dated date means the date from which interest accrues for notes and bonds. The dated date and issue date are usually the same. In those cases where interest begins accruing prior to the issue date, however, the dated date will be prior to the issue date. An example is when the dated date is a Saturday and the issue date is the following Monday.

Dealer means an entity that is registered or has given notice of its status as a government securities broker or government securities dealer under Section 15C(a)(1) of the Securities Exchange Act of 1934.

Delivery and payment agreement means a written agreement between a clearing corporation and a submitter, acknowledged by a Federal Reserve Bank, regarding securities awarded to the submitter for its own account. It authorizes us to deliver such securities to, and accept payment from, a depository institution acting on behalf of the clearing corporation under an acknowledged autocharge agreement.

Depository institution means:

(1) An entity described in Section 19(b)(1)(A), excluding subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

(2) Any agency or branch of a foreign bank as defined by the International Banking Act of 1978, as amended (12 U.S.C. 3101).

Discount means the difference between par and the price of the security, when the price is less than par. (*See* Appendix B for formulas and examples.)

Discount amount means the discount divided by 100 and multiplied by the par amount. (*See* Appendix B for formulas and examples.)

Discount rate means a rate of return, on an annual basis, on bills held until they mature. The discount rate is expressed in percentage terms and based on a 360-day year. It is also referred to as the ''bank discount rate.'' (*See* Appendix B for formulas and examples.)

Funds account means a cash account maintained by a depository institution at a Federal Reserve Bank.

Index means the Consumer Price Index.

Index ratio means, for an inflation-protected security, the Reference CPI of a particular date divided by the Reference CPI of the original issue date. (When the dated date is different from the original issue date, the denominator of the index ratio is the Reference CPI of the dated date rather than that of the original issue date.)

Inflation-adjusted principal means, for an inflation-protected security, the value of the security derived by multiplying the par amount by the applicable index ratio as described in Appendix B, section I, paragraph B.

Interest rate means the annual percentage rate of interest paid on the par amount (or the inflation-adjusted principal) of a specific issue of notes or bonds. (*See* Appendix B for methods and examples of interest calculations on notes and bonds.)

Intermediary means a depository institution or dealer that forwards bids for customers to another depository institution or dealer. An intermediary does not submit bids directly to us.

Issue date means the date specified in the auction announcement on which we issue a security as an obligation of the United States. Interest normally begins to accrue on a security's issue date.

Marketable security means a security that may be bought, sold and transferred in the secondary market.

Maturity date means the date on which a security becomes due and payable, and ceases to earn interest. The maturity date is specified in the auction announcement.

Minimum to bid means the smallest amount of a security that may be bid for in an auction as stated in the auction announcement.

Multiple to bid means the smallest additional amount of a security that may be bid for in an auction as stated in the auction announcement.

Multiple-price auction means an auction in which each successful competitive bidder pays the price equivalent to the yield or rate that it bid.

Noncompetitive bid means, for a single-price auction, a bid to purchase a stated par amount of securities at the highest yield or discount rate awarded to competitive bidders. For a multiple-price auction, a noncompetitive bid means a bid to purchase securities at the weighted average yield or discount rate of awards to competitive bidders.

Offering amount means the par amount of securities we are offering to the public for purchase in an auction, as specified in the auction announcement.

Par means a price of 100. (*See* Appendix B.)

Par amount means the stated value of a security at original issuance.

Person means a natural person.

Premium means the difference between par and the price of the security, when the price is greater than par.

Premium amount means the premium divided by 100 and multiplied by the par amount.

Price means the price of a security per 100 dollars of its stated value as calculated using the formulas in Appendix B.

Real yield means, for an inflation-protected security, the yield based on the payment stream in constant dollars. In other words, the real yield is the yield in the absence of inflation.

Reference CPI (Ref CPI) means, for an inflation-protected security, the index number applicable to a given date. (*See* Appendix B, section I, paragraph B.)

Reopening means the auction of an additional amount of an outstanding security.

Security means a Treasury bill, note, or bond, each as described in this part. Security also means any other obligation we issue that is subject to this part according to its auction announcement. Security includes an interest or principal component under the STRIPS program.

Settlement means final and complete payment for securities awarded in an auction and delivery of those securities.

Settlement amount means the total of the par amount of securities awarded, less any discount amount or plus any premium amount, and plus any accrued interest. For inflation-protected securities, the settlement amount also includes any inflation adjustment when such securities are reopened or when the dated date is different from the issue date.

Single-price auction means an auction in which all successful bidders pay the same price regardless of the yields or rates they each bid.

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means our program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. These components are maintained and transferred in the commercial book-entry system.

Submitter means a person or entity submitting bids directly to us for its

own account, for customer accounts, or both. Only depository institutions and dealers are permitted to submit bids for customer accounts. We permit investment advisers to submit bids on behalf of controlled accounts.

TINT means an interest component from a stripped security.

TreasuryDirect® means the TreasuryDirect Book-Entry Securities System. (*See* 31 CFR 357, subpart C.)

We (or ''us'') means the Secretary of the Treasury and his or her delegates, including the Department of the Treasury, Bureau of the Public Debt, and their representatives. The term also includes Federal Reserve Banks acting as fiscal agents of the United States.

Weighted-average means the average of the yields or discount rates at which we award securities to competitive bidders weighted by the par amount of securities allotted at each yield or discount rate.

Yield means the annualized rate of return to maturity on a fixed-principal security. Yield is expressed as a percentage. For an inflation-protected security, yield means the real yield. Yield is also referred to as ''yield to maturity.'' (*See* Appendix B.)

You means a prospective bidder in an auction.

§ 356.3 What is the role of the Federal Reserve Banks in this process?

The Treasury Department authorizes Federal Reserve Banks, as fiscal agents of the United States, to perform all activities necessary to carry out the provisions of this part, any auction announcements, and applicable regulations.

§ 356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?

We issue Treasury marketable securities into either of two book-entry securities systems—the commercial book-entry system or TreasuryDirect. We maintain and transfer securities in these two book-entry systems at their par amount. For example, par amounts of inflation-protected securities do not include adjustments for inflation. Securities may be transferred from one system to the other. *See* Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR Part 357).

(a) *The commercial book-entry system.* When depository institutions or dealers submit bids for Treasury securities in an auction, securities awarded as a result of those bids are generally held in the commercial book-entry system. Specifically, we maintain book-entry accounts in the National Book-Entry System® (''NBES'') for Federal Reserve Banks, depository institutions, and other authorized entities, such as government and international agencies and foreign central banks. In their accounts, depository institutions maintain securities held for their own account and for the accounts of others. The accounts held for others include those of other depository institutions and dealers, which may, in turn, maintain accounts for others.

(b) *TreasuryDirect.* In this system, we maintain the book-entry securities of account holders directly on the records of the Bureau of the Public Debt, Department of the Treasury. Bids for securities to be held in TreasuryDirect are generally submitted directly to us, although such bids may also be forwarded to us by a depository institution or dealer.

§ 356.5 What types of securities does the Treasury auction?

We offer securities under this part exclusively in book-entry form and as direct obligations of the United States issued under Chapter 31 of Title 31 of the United States Code. The securities are subject to the terms and conditions in this part, the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR Part 357), and the auction announcements. When we issue additional securities with the same CUSIP number as outstanding securities, we consider them to be the same securities as the outstanding securities.

(a) *Treasury bills.*

(1) Are issued at a discount;

(2) Are redeemed at their par amount at maturity; and

(3) Have maturities of not more than one year.

(b) *Treasury notes*—(1) Treasury fixed-principal[1] notes.

(i) Are issued with a stated rate of interest to be applied to the par amount;

(ii) Have interest payable semiannually;

(iii) Are redeemed at their par amount at maturity;

(iv) Are sold at discount, par, or premium, depending upon the auction results; and

(v) Have maturities of at least one year, but of not more than ten years.

(2) *Treasury inflation-protected notes.*

(i) Are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date;

(ii) Have interest payable semiannually;

(iii) Are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater;

(iv) Are sold at discount, par, or premium, depending on the auction results (*See* Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.); and

(v) Have maturities of at least one year, but not more than ten years.

(c) *Treasury bonds*—(1) Treasury fixed-principal bonds.

(i) Are issued with a stated rate of interest to be applied to the par amount;

(ii) Have interest payable semiannually;

(iii) Are redeemed at their par amount at maturity;

(iv) Are sold at discount, par, or premium, depending on the auction results; and

(v) Have maturities of more than ten years.

(2) *Treasury inflation-protected bonds.*

(i) Are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date;

(ii) Have interest payable semiannually;

(iii) Are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater;

(iv) Are sold at discount, par, or premium, depending on the auction results; and

(v) Have maturities of more than ten years. (*See* Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

Subpart B—Bidding, Certifications, and Payment

§ 356.10 What is the purpose of an auction announcement?

By issuing an auction announcement, we provide public notice of the sale of bills, notes, and bonds. The auction announcement lists the specifics of each auction, *e.g.*, offering amount, term and type of security, CUSIP number, and issue and maturity dates. The auction announcement and this part, including the Appendices, specify the terms and conditions of sale. If anything in the auction announcement differs from this part, the auction announcement will control. If you intend to bid, you should read the applicable auction announcement along with this part.

[1] We use the term ''fixed-principal'' in this part to distinguish such securities from ''inflation-protected'' securities. We refer to fixed-principal notes and fixed-principal bonds as ''notes'' and ''bonds'' in official Treasury publications, such as auction announcements and auction results press releases, as well as in auction systems.

§ 356.11 How are bids submitted in an auction?

(a) *General.* (1) Bids must be submitted using an approved method, which depends on whether you are requesting us to issue the awarded securities in the commercial book-entry system or in TreasuryDirect (*See* § 356.4.). The approved submission methods for these respective systems are explained in this section. A bidder must provide its assigned bidder identification numbers if it has been assigned one. We have the option of accepting or rejecting incomplete bids.

(2) We must receive competitive and noncompetitive bids prior to their respective closing times, which are stated in the auction announcement. We will not include late bids in the auction. For bids other than those submitted on paper forms, our computer time stamp will establish the receipt time. You are bound by your bids after the closing time.

(3) We are not responsible for any delays, errors, or omissions. We are not responsible for any failures or disruptions of equipment or communications facilities used for participating in Treasury auctions.

(4) Submitters are responsible for bids submitted using computer equipment on their premises, whether or not such bids are authorized.

(b) *Commercial book-entry system.* (1) If you are a submitter and the awarded securities are to be issued in the commercial book-entry system, you must submit bids using one of our approved electronic methods except for contingency situations.

(2) You must have an agreement on file with us under which you agree to our terms and conditions for access to our system for participating in our auctions.

(3) In contingency situations, such as a power outage, we may accept bids by a telephone call to designated Treasury employees if you submit them prior to the relevant bidding deadline.

(c) *TreasuryDirect.* (1) If you are a submitter and the awarded securities are to be issued in TreasuryDirect, you may submit bids by using one of our approved methods, *e.g.*, computer, automated telephone service, or paper forms. You may also reinvest the proceeds of maturing securities into new securities by completing the appropriate transaction request on time.

(2) If you are submitting bids by paper form, you must use forms authorized by the Bureau of the Public Debt and provide the requested information. We have the option of accepting or rejecting bids on any other form. You are responsible for ensuring that we receive bids in paper form on time. A competitive bid is on time if we receive it prior to the deadline for the receipt of competitive bids. A noncompetitive bid is on time if:

(i) we receive it on or before the issue date, and

(ii) the envelope it arrived in bears evidence, such as a U.S. Postal Service cancellation, that it was mailed prior to the auction date.

(3) If you are submitting a bid by computer or automated telephone service you must be an established TreasuryDirect account holder with a Taxpayer Identification Number. You may not submit a competitive bid by computer or telephone.

(4) In contingency situations, such as a power outage, we may accept bids by a telephone call to designated Treasury employees if you submit them prior to the relevant bidding deadline and you are an established TreasuryDirect account holder.

§ 356.12 What are the different types of bids and do they have specific requirements or restrictions?

(a) *General.* All bids must state the par amount of securities bid for and must equal or exceed the minimum to bid amount stated in the auction announcement. Bids in larger amounts must be in the multiple stated in the auction announcement.

(b) *Noncompetitive bids*—(1) *Maximum bid.* You may not bid noncompetitively for more than $1 million in a bill auction or more than $5 million in a note or bond auction. The maximum bid limitation does not apply if you are bidding solely through a TreasuryDirect reinvestment request. A request for reinvestment of securities maturing in TreasuryDirect is a noncompetitive bid.

(2) *Additional restrictions.* You may not bid noncompetitively in an auction in which you are bidding competitively. You may not bid noncompetitively if, in the security being auctioned, you hold a position in when-issued trading or in futures or forward contracts at any time between the date of the auction announcement and the time we announce the auction results. During this same timeframe, a noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. For this paragraph, futures contracts include those:

(i) That require delivery of the specific security being auctioned;

(ii) For which the security being auctioned is one of several securities that may be delivered; or

(iii) That are cash-settled.

(c) *Competitive bids.*

(1) *Bid format*—(i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with three decimals in .005 percent increments. The third decimal must be either a zero or a five, for example, 5.320 or 5.325.

(ii) *Treasury fixed-principal securities.* A competitive bid must show the yield bid, expressed with three decimals, for example, 4.170.

(iii) *Treasury inflation-protected securities.* A competitive bid must show the real yield bid, expressed with three decimals, for example, 3.070.

(2) *Maximum recognized bid.* There is no limit on the maximum dollar amount that you may bid for competitively, either at a single yield or discount rate, or at different yields or discount rates. However, a competitive bid at a single yield or discount rate that exceeds 35 percent of the offering amount will be reduced to that amount. For example, if the offering amount is $10 billion, the maximum bid amount we will recognize at any one yield or discount rate from any bidder is $3.5 billion. (See § 356.22 for award limitations.)

(3) *Additional restriction.* You may not bid competitively in an auction in which you are bidding noncompetitively.

§ 356.13 When must I report my net long position and how do I calculate it?

(a) *Net long position reporting threshold.* (1) If you are bidding competitively in an auction, you must report your net long position when the total of your bids plus your net long position in the security being auctioned equals or exceeds the net long position reporting threshold (*See* table.). We will specify this threshold in the auction announcement for each security (*See* § 356.10.). The threshold is typically 35 percent of the offering amount, but we may state a different threshold in the auction announcement. To see whether you must report your net long position, follow this table:

If . . .	And if . . .	Then . . .
(i) the total of your bids and your net long position in the security being auctioned equals or exceeds the reporting threshold.		you must report your net long position (which does not include your bids).
(ii) the total of your bids in the auction equals or exceeds the reporting threshold.	you have no position or a net short position in the security being auctioned.	you must report a zero.
(iii) the total of your bids and your net long position in the security being auctioned is less than the reporting threshold.		you may either report nothing (leave the field blank) or report your net long position.

(2) Also, if you have more than one bid in an auction and you must report either your net long position or a zero, you must report that figure only once. Finally, if you are a customer and must report either your net long position or a zero, you must report that figure through only one depository institution or dealer. (See § 356.14(d).)

(b) *''As of'' time for calculating net long position.* You must calculate your net long position as of one half-hour prior to the closing time for receipt of competitive bids.

(c) *Components of the net long position.* Except as modified in paragragh (d) of this section, your net long position is the sum total of the par amounts of:

(1) Your holdings of outstanding securities with the same CUSIP number as the security being auctioned;

(2) Your holdings of STRIPS principal components of the security being auctioned, and;

(3) Your positions, in the security being auctioned, in:

(i) When-issued trading, including when-issued trading positions of the STRIPS principal components;

(ii) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled); and

(iii) Forward contracts that require delivery of the specific security being auctioned or of the STRIPS principal component of that security.

(d) *Calculating the net long position in a reopening.* In a reopening (additional issue) of an outstanding security, you may subtract the exclusion amount stated in the auction announcement from:

(1) Your holdings of the outstanding securities (paragraph (c)(1) of this section) combined with

(2) Your holdings of STRIPS principal components of the security being auctioned (paragraph (c)(2) of this section). We will specify the amount of holdings that you may exclude from the net long position calculation in the auction announcement. You may not take the exclusion if your combined holdings are zero or less. The exclusion is optional, but if you take the exclusion, you must include any holdings that exceed the exclusion amount in calculating your net long position. If the exclusion amount is greater than your combined holdings (paragraphs (c)(1) and (2) of this section), you may calculate the combined holdings as zero, but they cannot be included in the calculation as a negative number.

§ 356.14 What are the requirements for submitting bids for customers?

(a) *Institutions that may submit bids for customers.* Only depository institutions or dealers may submit bids for customers, or for customers of intermediaries, under the requirements set out in this section. If a bid from a depository institution or a dealer fulfills a guarantee to a customer to sell a specified amount of securities at an agreed-upon price, or a price fixed in terms of an agreed-upon standard, then the bid is a bid of that depository institution or dealer. It is not a customer bid.

(b) *Payment.* Submitters must remit payment for bids they submit on behalf of customers, including customers of intermediaries, that result in awards of securities in the auction.

(c) *Identifying customers.* Submitters must provide the names of customers whenever they submit bids for them. Submitters must provide the names of their direct customers as well as customers of any intermediaries who are forwarding customer bids. For individuals, submitters must provide the customer's full name (first and last). For institutional customers, submitters must provide the name of the institution, and the bidder identification number if the customer provides it. For trusts or other fiduciary estates (See Appendix A.), submitters must provide on the customer list:

(1) The full name or title of the trustee or fiduciary;

(2) A reference to the document creating the trust or fiduciary estate with date of execution; and

(3) The employer identification number (not social security number) of the trust or fiduciary estate. We do not consider trusts to be a separate bidder that have not been assigned, or that do not provide, an employer identification number.

(d) *Competitive customer bids.* For each customer competitive bid, the submitter must provide the customer's name, the amount bid, and the yield or discount rate. The submitter or intermediary must also report the net long position amount if the customer provides it. The submitter must inform a customer of the net long position reporting requirement (See § 356.13.) if the customer is bidding for $100 million or more of securities. If the submitter's or intermediary's personnel know that the customer's position information is not correct, the submitter or intermediary may not submit the customer's bid.

(e) *Noncompetitive customer bids.* For each noncompetitive bid, the submitter must provide the customer's name and the amount bid. Submitters may either provide the customer's name with the bid or, if the list of customers is lengthy, the submitter may provide a summary bid amount covering all noncompetitive customers. If it provides a summary bid amount, the submitter must transmit the list of individual customers and their bid amounts by close of business on the auction day. However, the submitter must be able to provide the customer list details by the noncompetitive bidding deadline if requested.

§ 356.15 What rules apply to bids submitted by investment advisers?

(a) *General.* The auction rules that apply to investment advisers are determined by the relationship between ''investment advisers'' and ''controlled accounts.'' An investment adviser means any person or entity that has investment discretion for the bids or positions of a different person or entity (a controlled account). A person or entity has investment discretion if it determines what, how many, and when securities will be purchased or sold on behalf of another person or entity. We consider a person that is employed or

supervised by an investment adviser to be part of that investment adviser. We also consider the bids or positions of controlled accounts to be separate from the bids or positions of the person or entity with which they would otherwise be associated under the bidder categories in Appendix A of this part.

(b) *Bidding options.* (1) An investment adviser has two options for whose name to use when bidding on behalf of controlled accounts.

An investment adviser may bid for a controlled account . . .	In such cases, we consider the bidder to be . . .
(i) in the investment adviser's own name	the investment adviser.
(ii) in the name of the controlled account	the controlled account.

(2) Using the first option (paragraph (b)(1)(i)), an investment advisor could bid noncompetitively up to the noncompetitive bidding limit only for itself, as a single bidder. Using the second option (paragraph (b)(1)(ii)), an investment adviser could bid noncompetitively for each separately named controlled account up to the noncompetitive bidding limit. The investment adviser could also bid noncompetitively in its own name in the same auction up to the noncompetitive bidding limit. An investment adviser may not bid for a controlled account both noncompetitively and competitively in the same auction. If an investment adviser is bidding competitively in the name of a controlled account, the controlled account is subject to the award limitations of § 356.22(b).

(c) *Reporting net long positions.* If it is bidding competitively, an investment adviser must calculate the amount of its bids and positions for purposes of the net long position reporting requirement found in § 356.13(a). In addition to its own competitive bids and positions, the investment adviser must also include in the calculation all other competitive bids and positions that it controls. If the net long position is reportable, the investment adviser must report it as a total in connection with only one bid as stated in § 356.13(a). This requirement applies regardless of whether the investment adviser bids in its own name or in the name of its controlled accounts. The following table shows which positions an investment adviser must include to determine whether it meets the net long position reporting threshold in § 356.13(a). If an investment adviser does meet the reporting threshold, the table also shows which positions must be included in, and which may be excluded from, the net long position calculation.

If an investment adviser is bidding competitively, and . . .	Then . . .
(1) the investment adviser has a net long position for its own account	that position must be included in the investment adviser's net long position calculation.
(2) the investment adviser's competitive bid is for a controlled account	any net long position of that account must be included in the investment adviser's net long position calculation.
(3) the investment adviser is not bidding competitively for a controlled account and . . .	
(i) the controlled account has a net long position of $100 million or more.	that position must be included in the investment adviser's net long position calculation.
(ii) the controlled account has a net long position that is less than $100 million.	that position may be excluded from the investment adviser's net long position calculation.
(iii) any net long position is excluded under paragraph (b)(3)(ii) of this table.	all net short positions of controlled accounts under $100 million must also be excluded.

(d) *Certifications.* When an investment adviser bids for a controlled account, we deem the investment adviser to have certified that it is complying with this part and the auction announcement for the security. Further, we deem the investment adviser to have certified that the information it provided about bids for controlled accounts is accurate and complete.

(e) *Proration of awards.* Investment advisers that submit competitive bids in the names of controlled accounts are responsible for prorating any awards at the highest accepted yield or discount rate using the same percentage that we announce. See § 356.21 for examples of how to prorate.

§ 356.16 Do I have to make any certifications?

(a) *Submitters.* If you submit bids or other information in an auction, we deem you to have certified that:

(1) You are in compliance with this part and the auction announcement;

(2) The information provided with regard to any bids for your own account is accurate and complete; and

(3) The information provided with regard to any bids for customers accurately and completely reflects information provided by your customers or intermediaries.

(4) If you submit bids by computer, you must have on file a written certification that, each time you submit such bids, you are in compliance with this part and the applicable auction announcement. An authorized person must sign and date the certification on behalf of the submitter, and it must be filed with us and renewed at least annually.

(b) *Intermediaries.* If you forward bids in an auction, we deem you to have certified that:

(1) You are in compliance with this part and the applicable auction announcement; and

(2) That the information you provided to a submitter or other intermediary with regard to bids for customers accurately and completely reflects information provided by those customers or intermediaries.

(c) *Customers.* By bidding for a security as a customer we deem you to have certified that:

(1) You are in compliance with this part and the auction announcement and;

(2) The information you provided to the submitter or intermediary in connection with the bid is accurate and complete.

§ 356.17 How and when do I pay for securities awarded in an auction?

(a) *General.* By bidding in an auction, you agree to pay the settlement amount for any securities awarded to you. (See § 356.25.) For notes and bonds, the

settlement amount may include a premium amount, accrued interest, and, for inflation-protected securities, an inflation adjustment.

(b) *TreasuryDirect.* Unless you make other provisions, you must pay by debit entry to a deposit account or submit payment with your bids. To pay by debit entry, you must first authorize us to make debit entries to your deposit account under 31 CFR part 370. Payment by debit entry occurs on the settlement date for the actual settlement amount due. (See § 356.25.) You may also pay for reinvestments with maturing securities, however, you must pay separately for any premium, accrued interest, or inflation adjustment as soon as you receive your Payment Due Notice.

(1) *Bidding by computer or by telephone.* If you are bidding by computer or by telephone, you must pay for any securities awarded to you by debit entry to a deposit account.

(2) *Bidding by paper form.* If you are mailing bids to us on a paper form, you may either enclose your payment with the form or pay for any securities awarded to you by debit entry to a deposit account.

(i) *Payment with paper form.* For bills, you may pay by depository institution (cashier's or teller's) check, certified check, or currently dated Treasury or fiscal agency check made payable to you. For notes or bonds, in addition to the payment options for bills, you may also pay by personal check. If you submit a personal check, make it payable to TreasuryDirect and mail it to the Federal Reserve Bank handling your account. In your payment amount you must include the par amount and any announced accrued interest and/or inflation adjustment.

(ii) *Payment by debit entry to a deposit account.* If a depository institution or dealer is submitting your bids for securities to be held in TreasuryDirect, payment may be either by debit entry to a deposit account or by allowing us to charge the Federal Reserve Bank funds account of a depository institution.

(3) *Payment by maturing securities.* You may use maturing securities held in TreasuryDirect as payment for reinvestments into new securities that we are offering, as long as we receive the appropriate transaction request on time.

(c) *Commercial book-entry system.* Unless you make other provisions, payment of the settlement amount must be by charge to the funds account of a depository institution at a Federal Reserve Bank.

(1) A submitter that does not have a funds account at a Federal Reserve Bank or that chooses not to pay by charge to its own funds account must have an approved autocharge agreement on file with us before submitting any bids. Any depository institution whose funds account will be charged under an autocharge agreement will receive advance notice from us of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's bids.

(2) A submitter that is a member of a clearing corporation may instruct that delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account. To do this, the following requirements must be met prior to submitting any bids:

(i) We must have acknowledged and have on file an autocharge agreement between the clearing corporation and a depository institution. By entering into such an agreement, the clearing corporation authorizes us to provide aggregate par and price information to the depository institution whose funds account will be charged under the agreement. The clearing corporation is responsible for remitting payment for auction awards of the clearing corporation member.

(ii) We must have acknowledged and have on file a delivery and payment agreement between the submitter and the clearing corporation. By entering into such an agreement, the submitter authorizes us to provide award and payment information to the clearing corporation.

Subpart C—Determination of Auction Awards; Settlement

§ 356.20 How does the Treasury determine auction awards?

(a) *Determining the range and amount of accepted competitive bids—*

(1) *Accepting bids.* First we accept in full all noncompetitive bids that were submitted by the noncompetitive bidding deadline. After the closing time for receipt of competitive bids we start accepting those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the offering amount. When necessary, we prorate bids at the highest accepted yield or discount rate as described below. If the amount of noncompetitive bids would absorb most or all of the offering amount, we will accept competitive bids in an amount sufficient to provide a fair determination of the yield or discount rate for the securities we are auctioning.

(2) *Accepting bids at the high yield or discount rate.* Generally, the total amount of bids at the highest accepted yield or discount rate exceeds the offering amount remaining after we accept the noncompetitive bids and the competitive bids at the lower yields or discount rates. In order to keep the total amount of awards as close as possible to the announced offering amount, we award a percentage of the bids at the highest accepted yield or discount rate. We derive the percentage by dividing the remaining par amount needed to fill the offering amount by the par amount of the bids at the high yield or discount rate and rounding up to the next hundredth of a whole percentage point, for example, 17.13%.

(b) *Determining the interest rate for new note and bond issues.* We set the interest rate at a ⅛ of one percent increment.

(1) *Single-price auctions.* The interest rate we establish produces the price closest to, but not above, par when evaluated at the yield of awards to successful competitive bidders.

(2) *Multiple-price auctions.* The interest rate we establish produces the price closest to, but not above, par when evaluated at the weighted-average yield of awards to successful competitive bidders.

(c) *Determining purchase prices for awarded securities.* We round price calculations to three decimal places on the basis of price per hundred, for example, 99.954 (See Appendix B.).

(1) *Single-price auctions.* We award securities to both noncompetitive and competitive bidders at the price equivalent to the highest discount rate or yield at which bids were accepted. For inflation-protected securities, the price for awarded securities is the price equivalent to the highest accepted real yield.

(2) *Multiple-price auctions*—(i) *Competitive bids.* We award securities to competitive bidders at the price equivalent to each yield or discount rate at which their bids were accepted.

(ii) *Noncompetitive bids.* We award securities to noncompetitive bidders at the price equivalent to the weighted average yield or discount rate of accepted competitive bids.

§ 356.21 How are awards at the high yield or discount rate calculated?

(a) *Awards to submitters.* We generally prorate bids at the highest accepted yield or discount rate under § 356.20(a)(2) of this part. For example, if 80.15% is the announced percentage at the highest yield or discount rate, we award 80.15% of the amount of each bid at that yield or rate. A bid for $100

million at the highest accepted yield or discount rate would be awarded $80,150,000 in this example. We always make awards for at least the minimum to bid, and above that amount we make awards in the appropriate multiple to bid. For example, Treasury bills may be issued with a minimum to bid of $1,000 and multiples to bid of $1,000. Say we accept an $18,000 bid at the high discount rate, and the percent awarded at the high discount rate is 88.27%. We would award $16,000 to that bidder, which is an upward adjustment from $15,888.60 ($18,000 × .8827) to the nearest multiple of $1,000. If we were to award 4.65% of bids at the highest accepted rate, for example, the award for a $10,000 bid at that rate would be $1,000, rather than $465, in order to meet the minimum to bid for a bill issue.

(b) *Awards to customers.* The same prorating rules apply to customers as apply to submitters. Depository institutions and dealers, whether submitters or intermediaries, are responsible for prorating awards for their customers at the same percentage that we announce. For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each customer bid at that yield or rate must be awarded 80.15%.

§ 356.22 Does the Treasury have any limitations on auction awards?

(a) *Awards to noncompetitive bidders.* The maximum award to any bidder is $1 million for bills and $5 million for notes and bonds. This limit does not apply to bidders bidding solely through TreasuryDirect reinvestment requests.

(b) *Awards to competitive bidders.* The maximum award is 35 percent of the offering amount less the bidder's net long position as reportable under § 356.13. For example, in a note auction with a $10 billion offering amount, and therefore a maximum award of $3.5 billion, a bidder with a reported net long position of $1 billion could receive a maximum auction award of $2.5 billion. When the bids and net long positions of more than one person or entity must be combined, as is the case with investment advisers and controlled accounts (See § 356.15(c).), we will use this combined amount for the purpose of this 35 percent award limit.

§ 356.23 How are the auction results announced?

(a) After the conclusion of the auction, we will announce the auction results through a press release that is available on our Web site at *www.publicdebt.treas.gov.*

(b) The press release will include such information as:

(1) The amounts of bids we accepted and the amount of securities we awarded;

(2) The range of accepted yields or discount rates;

(3) The proration percentage;

(4) The interest rate for a note or bond;

(5) A breakdown of the amounts of noncompetitive and competitive bids we accepted from, and awarded to, the public;

(6) The amounts of bids tendered and accepted from the Federal Reserve Banks for their own accounts;

(7) The bid-to-cover ratio; and

(8) Other information that we may decide to include.

§ 356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?

(a) *Notice of awards*—(1) *Notice to submitters.* We will provide notice to all submitters letting them know whether their bids were successful or not.

(2) *Notice to clearing corporations.* If we are to deliver awarded securities under a delivery and payment agreement, we will provide notice of the awards to the clearing corporation that is a party to the agreement.

(b) *Notification of awards to customers.* If you are a submitter for customers, you are responsible for notifying them of their awards. You are also responsible for notifying any intermediaries that forwarded successful bids to you. Similarly, an intermediary is responsible for providing notification of any awards to its customers and any intermediaries from whom it received bids.

(c) *Notification of awards and settlement amounts to a depository institution having an autocharge agreement with a submitter or a clearing corporation.* We will notify each depository institution that has entered into an autocharge agreement with a submitter or a clearing corporation of the amount to be charged, on the issue date, to the institution's funds account at the Federal Reserve Bank servicing the institution. We will provide this notification no later than the day after the auction.

(d) *Customer confirmation.* Any customer awarded a par amount of $500 million or more in an auction must send us a confirmation containing the information in paragraphs (d)(1) and (2) of this section. The confirmation must be sent no later than 10:00 a.m. on the day following the auction. The confirmation must be signed by the customer or authorized representative. If signed by an authorized representative, the confirmation must include the capacity in which the representative is acting. A submitter or intermediary submitting or forwarding bids for a customer must notify the customer of this requirement if we award the customer $500 million or more as a result of those bids. The information the customer must provide in writing is:

(1) A confirmation of the awarded bid(s), including the name of the submitter that submitted the bid(s) on the customer's behalf, and

(2) A statement indicating whether the customer had a reportable net long position as defined in § 356.13. If a position had to be reported, the statement must provide the amount of the position and the name of the submitter that the customer requested to report the position.

§ 356.25 How does the settlement process work?

Securities bought in the auction must be paid for by the issue date. The payment amount for awarded securities will be the settlement amount as defined in § 356.2. (See formulas in Appendix B.) There are several ways to pay for securities:

(a) *Payment by debit entry to a deposit account.* If you are paying by debit entry to a deposit account as provided for in § 356.17(b)(1) or (b)(2), we will charge the settlement amount to the specified account on the issue date.

(b) *Payment by authorized charge to a funds account.* Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in § 356.17(c)(1) and (c)(2), we will charge the settlement amount to the specified funds account on the issue date.

(c) *Payment with bids.* If you paid the par amount with your bids as provided for in § 356.17(b)(2), you may have to pay an additional amount, or we may have to pay an amount to you, as follows:

(1) *When we owe an amount to you.* If the amount you paid is more than the settlement amount, we will refund the balance to you after the auction. This situation will generally be the case if you submit payment with your bids. A typical example would be an auction where the price is a discount from par and there is no accrued interest.

(2) *When you must remit an additional amount.* If the settlement amount is more than the amount you paid, we will notify you of the additional amount due, which you will be responsible for remitting immediately. You may owe us such an additional amount if the auction

calculations result in a premium or if accrued interest or an inflation adjustment is due.

Subpart D—Miscellaneous Provisions

§ 356.30 When does the Treasury pay principal and interest on securities?

(a) *General.* We will pay principal on bills, notes, and bonds on the maturity date as specified in the auction announcement. Interest on bills consists of the difference between the discounted amount paid by the investor at original issue and the par value we pay to the investor at maturity. Interest on notes and bonds accrues from the dated date. Interest is payable on a semiannual basis on the interest payment dates specified in the auction announcement through the maturity date. If any principal or interest payment date is a Saturday, Sunday, or other day on which the Federal Reserve System is not open for business, we will make the payment (without additional interest) on the next business day. If a bond is callable, we will pay the principal prior to maturity if we call it under its terms, which include providing appropriate public notice.

(b) *Treasury inflation-protected securities.* (1) This table explains the amount that we will pay to holders of inflation-protected securities at maturity.

At maturity, if . . .	then . . .
(i) the inflation-adjusted principal is equal to or more than the par amount of the security..	we will pay the inflation-adjusted principal.
(ii) the inflation-adjusted principal is less than the par amount of the security, and the security has not been stripped..	we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount.
(iii) the inflation-adjusted principal is less than the par amount of the security, and the security has been stripped..	to holders of principal components only we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount.

(2) Regardless of whether or not we pay an additional amount, we will base the final interest payment on the inflation-adjusted principal at maturity.

(c) *Discharge of payment obligations—*

(1) *The commercial book-entry system.* We discharge our payment obligations when we credit payment to the account maintained at a Federal Reserve Bank for a depository institution or other authorized entity, or when we make payment according to the instructions of the person or entity maintaining the account. Further, we do not have any obligations to any person or entity that does not have an account with a Federal Reserve Bank. We also will not recognize the claims of any person or entity:

(i) That does not have an account at a Federal Reserve Bank, or

(ii) With respect to any accounts not maintained at a Federal Reserve Bank.

(2) *TreasuryDirect.* We discharge our payment obligations when we make payment to a depository institution for credit to the account specified by the owner of the security, or when we make payment according to the instructions of the security's owner or the owner's legal representative.

§ 356.31 How does the STRIPS program work?

(a) *General.* Notes or bonds may be ''stripped''—divided into separate principal and interest components. These components must be maintained in the commercial book-entry system. Stripping is done at the option of the holder, and may occur at any time from issuance until maturity. We provide the CUSIP numbers and payment dates for the principal and interest components in auction announcements and on our website at *www.publicdebt.treas.gov.*

(b) *Treasury fixed-principal securities (notes and bonds other than Treasury inflation-protected securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of a fixed-principal security that may be stripped is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, at their par amount. They have a CUSIP number that is different from the CUSIP number of the fully constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from fixed-principal securities have the following features:

(i) They are maintained in accounts, and transferred, at their original payment value, which is derived by multiplying the semiannual interest rate and the par amount;

(ii) Their interest payment date becomes the maturity date for the component;

(iii) All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped, and therefore are fungible (interchangeable).

(iv) the CUSIP numbers of interest components are different from the CUSIP numbers of principal components and fully constituted securities, even if they have the same maturity date, and therefore are not fungible.

(c) *Treasury inflation-protected securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of an inflation-protected security that may be stripped is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from inflation-protected securities are maintained in accounts, and transferred, at their par amount. At maturity, the holder will receive the inflation-adjusted principal or the par amount, whichever is greater. (See § 356.30.) A principal component has a CUSIP number that is different from the CUSIP number of the fully constituted (unstripped) security.

(3) *Interest components.*—(i) *Adjusted value.* Interest components stripped from inflation-protected securities are maintained in accounts, and transferred, at their adjusted value. This value is derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by: 100 divided by the Reference CPI of the original issue date. (The dated date is used instead of the original issue date when the dates are different.) See Appendix B, Section IV of this part for an example of how to do this calculation.

(ii) *CUSIP numbers.* When an interest payment is stripped from an inflation-protected security, the interest payment date becomes the maturity date for the component. All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. Such interest components are fungible (interchangeable). The CUSIP numbers of interest components are different from the CUSIP numbers of principal

components and fully constituted securities, even if they have the same maturity date.

(iii) *Payment at maturity.* At maturity, the payment to the holder will be derived by multiplying the adjusted value of the interest component by the Reference CPI of the maturity date, divided by 100. See Appendix B, Section IV of this part for an example of how to do this calculation.

(iv) *Rebasing of the CPI.* If the CPI is rebased to a different time base reference period (See Appendix D.), the adjusted values of all outstanding inflation-protected interest components will be converted to adjusted values based on the new base reference period. At that time, we will publish information that describes how this conversion will occur. After rebasing, any interest components created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

(d) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, that is, put back together into their fully constituted form. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts or adjusted values, must be submitted together for reconstitution. Because inflation-protected interest components are different from fixed-principal interest components, they are not interchangeable for reconstitution purposes.

(e) *Applicable regulations.* Subparts A, B, and D of part 357 of this chapter govern notes and bonds stripped into their STRIPS components, unless we state differently in this part.

§ 356.32 What tax rules apply?

(a) *General.* Securities issued under this part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986, or its successor. Under section 3124 of title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

(b) *Treasury inflation-protected securities.* Special federal income tax rules for inflation-protected securities, including stripped inflation-protected principal and interest components, are set forth in Internal Revenue Service regulations.

§ 356.33 Does the Treasury have any discretion in the auction process?

(a) We have the discretion to:

(1) Accept, reject, or refuse to recognize any bids submitted in an auction;

(2) Award more or less than the amount of securities specified in the auction announcement;

(3) Waive any provision of this part for any bidder or submitter; and

(4) Change the terms and conditions of an auction.

(b) Our decisions under this part are final. We will provide a public notice if we change any auction provision, term, or condition.

(c) We reserve the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time.

§ 356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?

(a) *General.* If a person or entity fails to comply with any of the auction rules in this part, we will consider the circumstances and take what we deem to be appropriate action. This could include barring the person or entity from participating in future auctions under this part. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to pay for awarded securities in a timely manner, we may require you to pay liquidated damages of up to one percent of the par amount of securities we awarded to you. Our use of this liquidated damages remedy does not preclude us from using any other appropriate remedy.

§ 356.35 Who approved the information collections?

The Office of Management and Budget approved the collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in Appendix A of this part under control number 1535–0112.

Appendix A to Part 356—Bidder Categories

I. Categories of Eligible Bidders

We describe below various categories of bidders eligible to bid in Treasury auctions. You may use them to determine whether we consider you and other entities to be one bidder or more than one bidder for auction bidding and compliance purposes. For example, we use these definitions to apply the competitive and noncompetitive award limitations and for other requirements. Notwithstanding these definitions, we consider any persons or entities that intentionally act together with respect to bidding in a Treasury auction to collectively be one bidder. Even if an auction participant does not fall under any of the categories listed below, it is our intent that no auction participant receives a larger auction award by acquiring securities through others than it could have received had it been considered one of these types of bidders.

(a) *Corporation*—We consider a corporation to be one bidder. A corporation includes all of its affiliates, which may be persons, partnerships, or other entities. We use the term ''corporate structure'' to refer to the collection of affiliates that we consider collectively to be one bidder. An affiliate is any:

- Entity that is more than 50% owned, directly or indirectly, by the corporation;
- Entity that is more than 50% owned, directly or indirectly, by any other affiliate of the corporation;
- Person or entity that owns, directly or indirectly, more than 50% of the corporation;
- Person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the corporation; or
- Entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation, or of any affiliate of the corporation.

We consider a business trust, such as a Massachusetts or Delaware business trust, to be a corporation.

(b) *Partnership*—We consider a partnership to be one bidder if it is a partnership for which the Internal Revenue Service has assigned a tax-identification number. A partnership includes all of its affiliates, which may be persons, corporations, general partners acting on behalf of the partnership, or other entities. We use the term ''partnership structure'' to refer to the collection of affiliates that we consider collectively to be one bidder. We may consider a partnership structure that contains one or more corporations as a ''partnership'' or a ''corporation,'' but not both.

An affiliate is any:

- Entity that is more than 50% owned, directly or indirectly, by the partnership;
- Entity that is more than 50% owned, directly or indirectly, by any other affiliate of the partnership;
- Person or entity that owns, directly or indirectly, more than 50% of the partnership;
- Person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the partnership; or
- Entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

(c) *Government-related entity*—We consider each of the following entities to be one bidder:

(1) A state government or the government of the District of Columbia

(2) A unit of local government, including any county, city, municipality, or township, or other unit of general government as defined by the Bureau of the Census for statistical purposes.

(3) A commonwealth, territory, or possession of the United States.

(4) A governmental entity, body, or corporation established under Federal, State, or local law.

(5) A foreign central bank, the government of a foreign state, or an international

organization in which the United States holds membership. This type of entity applies only when such entity is not using an account at the Federal Reserve Bank of New York (See paragraph (f).).

We generally consider an investment, reserve, or other fund of one of the above government-related entities as part of that entity and not a separate bidder. We will consider a government-related entity's fund to be a separate bidder if it meets the definition of the ''trust or other fiduciary estate'' category, or if applicable law requires that the investments of such fund be made separately.

(d) *Trust or other fiduciary estate*—We consider a legal entity created under a valid trust instrument, court order, or other legal authority that designates a trustee or fiduciary to act for the benefit of a named beneficiary to be one bidder. The following conditions must also be met for us to consider a trust entity to be one bidder:

- The legal entity must be able to be identified by:

1. The name or title of the trustee or fiduciary;

2. Specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and

3. The unique IRS-assigned employer identification number (not social security number) for the entity.

- The trustee or fiduciary must make the decisions on participating in auctions on behalf of the trust or fiduciary estate.

(e) *Individual*—We consider a person to be one bidder, regardless of whether he or she is acting as an individual, a sole proprietor, or for any entity not otherwise defined as a bidder. If a person meets the definition of an affiliate within a corporate or partnership structure, we will consider him or her to be a bidder in this ''individual'' category if the corporation or partnership is not bidding in the same auction. We do not consider a person acting in an official capacity as an employee or other representative of a bidder defined in any other category to be an ''individual'' bidder. We consider a person, his or her spouse, and any children under the age of 21 having a common household to be one ''individual'' bidder.

(f) *Foreign and International Monetary Authority (''FIMA'')*—We consider one or more parties making up a foreign or international monetary organization that is not private in nature to be a bidder called a FIMA entity if at least one of the parties is a foreign or international entity that is (i) financial in nature, or (ii) not financial in nature but is authorized to open an account at the Federal Reserve Bank of New York. We consider each of the following entities to be a single FIMA entity:

(1) A foreign central bank or regional central bank.

(2) A foreign governmental monetary or finance entity.

(3) A non-governmental international financial organization that is not private in nature (for example, the International Monetary Fund, the World Bank, the Inter-American Development Bank, and the Asian Development Bank).

(4) A non-financial international organization that the United States participates in (for example, the United Nations).

(5) A multi-party arrangement of a governmental ministry and/or a foreign central bank or monetary authority with a United States Government Department and/or the Federal Reserve Bank of New York.

(6) A foreign or international monetary entity or an entity authorized by statute or by us to open accounts at the Federal Reserve Bank of New York.

(g) *Other Bidder*—We do not consider a bidder defined by any of the above categories to be a bidder in this category. For purposes of this definition, ''other bidder'' means an institution or organization with a unique IRS-assigned employer identification number. This definition includes such entities as an association, church, university, union, or club. This category does not include any person or entity acting in a fiduciary or investment management capacity, a sole proprietorship, an investment account, an investment fund, a form of registration, or investment ownership designation.

II. How To Obtain Separate Bidder Recognition

Under certain circumstances, we may recognize a major organizational component (*e.g.*, the parent or a subsidiary) in a corporate or partnership structure as a bidder separate from the larger corporate or partnership structure. We also may recognize two or more major organizational components collectively as one bidder. All of the following criteria must be met for such component(s) to qualify for recognition as a separate bidder:

(a) Such component(s) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the corporate or partnership structure;

(b) Such component(s) must not be created for the purpose of circumventing our bidding and award limitations;

(c) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component(s). Employees of such component(s) that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the corporate or partnership structure; and

(d) The records of such component(s) related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component(s). Those records must be identifiable—separate and apart from similar records for other components within the corporate or partnership structure. To obtain recognition as a separate bidder, each component or group of components must request such recognition from us, provide a description of the component or group and its position within the corporate or partnership structure, and provide the following certification:

[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in Appendix A to 31 CFR Part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

(1) Exchanging any of the following information with any other part of the corporate [partnership] structure: (a) yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow regarding the security being auctioned, or

(2) In any way intentionally acting together with any other part of the corporate [partnership] structure with respect to formulating or entering bids in a Treasury auction.

The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid.

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes.
II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.
III. Formulas for Conversion of Inflation-Protected Security Yields to Equivalent Prices.
IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Protected Interest Components.
V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

The examples in this appendix are given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this part. In some of the following examples, we use intermediate rounding for ease in following the calculations. In actual practice, we generally do not round prior to determining the final result.

If you use a multi-decimal calculator, we recommend setting your calculator to at least 13 decimals and then applying normal rounding procedures. This should be sufficient to obtain the same final results. However, in the case of any discrepancies, our determinations will be final.

I. Computation of Interest on Treasury Bonds and Notes

A. Treasury Fixed-Principal Securities

1. *Regular Half-Year Payment Period.* We pay interest on marketable Treasury fixed-principal securities on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a fixed-principal note with a par amount of $1,000 and an interest rate of 8% is made in

this manner: ($1,000 × .08) / 2 = $40. Specifically, a semiannual interest payment represents one half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

2. *Daily Interest Decimal.* We compute a daily interest decimal in cases where an interest payment period for a fixed-principal security is shorter or longer than six months or where accrued interest is payable by an investor. We base the daily interest decimal on the actual number of calendar days in the half-year or half-years involved. The number of days in any half-year period is shown in Table 1.

TABLE 1

Interest period	Beginning and ending days are 1st or 15th of the months listed under interest period (number of days)		Beginning and ending days are the last days of the months listed under interest period (number of days)	
	Regular year	Leap year	Regular year	Leap year
January to July	181	182	181	182
February to August	181	182	184	184
March to September	184	184	183	183
April to October	183	183	184	184
May to November	184	184	183	183
June to December	183	183	184	184
July to January	184	184	184	184
August to February	184	184	181	182
September to March	181	182	182	183
October to April	182	183	181	182
November to May	181	182	182	183
December to June	182	183	181	182

Table 2 below shows the daily interest decimals covering interest from 1/8% to 20% on $1,000 for one day in increments of 1/8 of one percent. These decimals represent 1/181, 1/182, 1/183, or 1/184 of a full semiannual interest payment, depending on which half-year is applicable.

TABLE 2

[Decimal for one day's interest on $1,000 at various rates of interest, payable semiannually or on a semiannual basis, in regular years of 365 days and in years of 366 days (to determine applicable number of days, see table 1.)]

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
1/8	0.003396739	0.003415301	0.003434066	0.003453039
1/4	0.006793478	0.006830601	0.006868132	0.006906077
3/8	0.010190217	0.010245902	0.010302198	0.010359116
1/2	0.013586957	0.013661202	0.013736264	0.013812155
5/8	0.016983696	0.017076503	0.017170330	0.017265193
3/4	0.020380435	0.020491803	0.020604396	0.020718232
7/8	0.023777174	0.023907104	0.024038462	0.024171271
1	0.027173913	0.027322404	0.027472527	0.027624309
1 1/8	0.030570652	0.030737705	0.030906593	0.031077348
1 1/4	0.033967391	0.034153005	0.034340659	0.034530387
1 3/8	0.037364130	0.037568306	0.037774725	0.037983425
1 1/2	0.040760870	0.040983607	0.041208791	0.041436464
1 5/8	0.044157609	0.044398907	0.044642857	0.044889503
1 3/4	0.047554348	0.047814208	0.048076923	0.048342541
1 7/8	0.050951087	0.051229508	0.051510989	0.051795580
2	0.054347826	0.054644809	0.054945055	0.055248619
2 1/8	0.057744565	0.058060109	0.058379121	0.058701657
2 1/4	0.061141304	0.061475410	0.061813187	0.062154696
2 3/8	0.064538043	0.064890710	0.065247253	0.065607735
2 1/2	0.067934783	0.068306011	0.068681319	0.069060773
2 5/8	0.071331522	0.071721311	0.072115385	0.072513812
2 3/4	0.074728261	0.075136612	0.075549451	0.075966851
2 7/8	0.078125000	0.078551913	0.078983516	0.079419890
3	0.081521739	0.081967213	0.082417582	0.082872928
3 1/8	0.084918478	0.085382514	0.085851648	0.086325967
3 1/4	0.088315217	0.088797814	0.089285714	0.089779006
3 3/8	0.091711957	0.092213115	0.092719780	0.093232044
3 1/2	0.095108696	0.095628415	0.096153846	0.096685083
3 5/8	0.098505435	0.099043716	0.099587912	0.100138122
3 3/4	0.101902174	0.102459016	0.103021978	0.103591160
3 7/8	0.105298913	0.105874317	0.106456044	0.107044199
4	0.108695652	0.109289617	0.109890110	0.110497238
4 1/8	0.112092391	0.112704918	0.113324176	0.113950276
4 1/4	0.115489130	0.116120219	0.116758242	0.117403315
4 3/8	0.118885870	0.119535519	0.120192308	0.120856354
4 1/2	0.122282609	0.122950820	0.123626374	0.124309392
4 5/8	0.125679348	0.126366120	0.127060440	0.127762431

TABLE 2—Continued

[Decimal for one day's interest on $1,000 at various rates of interest, payable semiannually or on a semiannual basis, in regular years of 365 days and in years of 366 days (to determine applicable number of days, see table 1.)]

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
4¾	0.129076087	0.129781421	0.130494505	0.131215470
4⅞	0.132472826	0.133196721	0.133928571	0.134668508
5	0.135869565	0.136612022	0.137362637	0.138121547
5⅛	0.139266304	0.140027322	0.140796703	0.141574586
5¼	0.142663043	0.143442623	0.144230769	0.145027624
5⅜	0.146059783	0.146857923	0.147664835	0.148480663
5½	0.149456522	0.150273224	0.151098901	0.151933702
5⅝	0.152853261	0.153688525	0.154532967	0.155386740
5¾	0.156250000	0.157103825	0.157967033	0.158839779
5⅞	0.159646739	0.160519126	0.161401099	0.162292818
6	0.163043478	0.163934426	0.164835165	0.165745856
6⅛	0.166440217	0.167349727	0.168269231	0.169198895
6¼	0.169836957	0.170765027	0.171703297	0.172651934
6⅜	0.173233696	0.174180328	0.175137363	0.176104972
6½	0.176630435	0.177595628	0.178571429	0.179558011
6⅝	0.180027174	0.181010929	0.182005495	0.183011050
6¾	0.183423913	0.184426230	0.185439560	0.186464088
6⅞	0.186820652	0.187841530	0.188873626	0.189917127
7	0.190217391	0.191256831	0.192307692	0.193370166
7⅛	0.193614130	0.194672131	0.195741758	0.196823204
7¼	0.197010870	0.198087432	0.199175824	0.200276243
7⅜	0.200407609	0.201502732	0.202609890	0.203729282
7½	0.203804348	0.204918033	0.206043956	0.207182320
7⅝	0.207201087	0.208333333	0.209478022	0.210635359
7¾	0.210597826	0.211748634	0.212912088	0.214088398
7⅞	0.213994565	0.215163934	0.216346154	0.217541436
8	0.217391304	0.218579235	0.219780220	0.220994475
8⅛	0.220788043	0.221994536	0.223214286	0.224447514
8¼	0.224184783	0.225409836	0.226648352	0.227900552
8⅜	0.227581522	0.228825137	0.230082418	0.231353591
8½	0.230978261	0.232240437	0.233516484	0.234806630
8⅝	0.234375000	0.235655738	0.236950549	0.238259669
8¾	0.237771739	0.239071038	0.240384615	0.241712707
8⅞	0.241168478	0.242486339	0.243818681	0.245165746
9	0.244565217	0.245901639	0.247252747	0.248618785
9⅛	0.247961957	0.249316940	0.250686813	0.252071823
9¼	0.251358696	0.252732240	0.254120879	0.255524862
9⅜	0.254755435	0.256147541	0.257554945	0.258977901
9½	0.258152174	0.259562842	0.260989011	0.262430939
9⅝	0.261548913	0.262978142	0.264423077	0.265883978
9¾	0.264945652	0.266393443	0.267857143	0.269337017
9⅞	0.268342391	0.269808743	0.271291209	0.272790055
10	0.271739130	0.273224044	0.274725275	0.276243094
10⅛	0.275135870	0.276639344	0.278159341	0.279696133
10¼	0.278532609	0.280054645	0.281593407	0.283149171
10⅜	0.281929348	0.283469945	0.285027473	0.286602210
10½	0.285326087	0.286885246	0.288461538	0.290055249
10⅝	0.288722826	0.290300546	0.291895604	0.293508287
10¾	0.292119565	0.293715847	0.295329670	0.296961326
10⅞	0.295516304	0.297131148	0.298763736	0.300414365
11	0.298913043	0.300546448	0.302197802	0.303867403
11⅛	0.302309783	0.303961749	0.305631868	0.307320442
11¼	0.305706522	0.307377049	0.309065934	0.310773481
11⅜	0.309103261	0.310792350	0.312500000	0.314226519
11½	0.312500000	0.314207650	0.315934066	0.317679558
11⅝	0.315896739	0.317622951	0.319368132	0.321132597
11¾	0.319293478	0.321038251	0.322802198	0.324585635
11⅞	0.322690217	0.324453552	0.326236264	0.328038674
12	0.326086957	0.327868852	0.329670330	0.331491713
12⅛	0.329483696	0.331284153	0.333104396	0.334944751
12¼	0.332880435	0.334699454	0.336538462	0.338397790
12⅜	0.336277174	0.338114754	0.339972527	0.341850829
12½	0.339673913	0.341530055	0.343406593	0.345303867
12⅝	0.343070652	0.344945355	0.346840659	0.348756906
12¾	0.346467391	0.348360656	0.350274725	0.352209945
12⅞	0.349864130	0.351775956	0.353708791	0.355662983
13	0.353260870	0.355191257	0.357142857	0.359116022
13⅛	0.356657609	0.358606557	0.360576923	0.362569061
13¼	0.360054348	0.362021858	0.364010989	0.366022099
13⅜	0.363451087	0.365437158	0.367445055	0.369475138

TABLE 2—Continued

[Decimal for one day's interest on $1,000 at various rates of interest, payable semiannually or on a semiannual basis, in regular years of 365 days and in years of 366 days (to determine applicable number of days, see table 1.)]

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
13½	0.366847826	0.368852459	0.370879121	0.372928177
13⅝	0.370244565	0.372267760	0.374313187	0.376381215
13¾	0.373641304	0.375683060	0.377747253	0.379834254
13⅞	0.377038043	0.379098361	0.381181319	0.383287293
14	0.380434783	0.382513661	0.384615385	0.386740331
14⅛	0.383831522	0.385928962	0.388049451	0.390193370
14¼	0.387228261	0.389344262	0.391483516	0.393646409
14⅜	0.390625000	0.392759563	0.394917582	0.397099448
14½	0.394021739	0.396174863	0.398351648	0.400552486
14⅝	0.397418478	0.399590164	0.401785714	0.404005525
14¾	0.400815217	0.403005464	0.405219780	0.407458564
14⅞	0.404211957	0.406420765	0.408653846	0.410911602
15	0.407608696	0.409836066	0.412087912	0.414364641
15⅛	0.411005435	0.413251366	0.415521978	0.417817680
15¼	0.414402174	0.416666667	0.418956044	0.421270718
15⅜	0.417798913	0.420081967	0.422390110	0.424723757
15½	0.421195652	0.423497268	0.425824176	0.428176796
15⅝	0.424592391	0.426912568	0.429258242	0.431629834
15¾	0.427989130	0.430327869	0.432692308	0.435082873
15⅞	0.431385870	0.433743169	0.436126374	0.438535912
16	0.434782609	0.437158470	0.439560440	0.441988950
16⅛	0.438179348	0.440573770	0.442994505	0.445441989
16¼	0.441576087	0.443989071	0.446428571	0.448895028
16⅜	0.444972826	0.447404372	0.449862637	0.452348066
16½	0.448369565	0.450819672	0.453296703	0.455801105
16⅝	0.451766304	0.454234973	0.456730769	0.459254144
16¾	0.455163043	0.457650273	0.460164835	0.462707182
16⅞	0.458559783	0.461065574	0.463598901	0.466160221
17	0.461956522	0.464480874	0.467032967	0.469613260
17⅛	0.465353261	0.467896175	0.470467033	0.473066298
17¼	0.468750000	0.471311475	0.473901099	0.476519337
17⅜	0.472146739	0.474726776	0.477335165	0.479972376
17½	0.475543478	0.478142077	0.480769231	0.483425414
17⅝	0.478940217	0.481557377	0.484203297	0.486878453
17¾	0.482336957	0.484972678	0.487637363	0.490331492
17⅞	0.485733696	0.488387978	0.491071429	0.493784530
18	0.489130435	0.491803279	0.494505495	0.497237569
18⅛	0.492527174	0.495218579	0.497939560	0.500690608
18¼	0.495923913	0.498633880	0.501373626	0.504143646
18⅜	0.499320652	0.502049180	0.504807692	0.507596685
18½	0.502717391	0.505464481	0.508241758	0.511049724
18⅝	0.506114130	0.508879781	0.511675824	0.514502762
18¾	0.509510870	0.512295082	0.515109890	0.517955801
18⅞	0.512907609	0.515710383	0.518543956	0.521408840
19	0.516304348	0.519125683	0.521978022	0.524861878
19⅛	0.519701087	0.522540984	0.525412088	0.528314917
19¼	0.523097826	0.525956284	0.528846154	0.531767956
19⅜	0.526494565	0.529371585	0.532280220	0.535220994
19½	0.529891304	0.532786885	0.535714286	0.538674033
19⅝	0.533288043	0.536202186	0.539148352	0.542127072
19¾	0.536684783	0.539617486	0.542582418	0.545580110
19⅞	0.540081522	0.543032787	0.546016484	0.549033149
20	0.543478261	0.546448087	0.549450549	0.552486188

3. *Short First Payment Period.* In cases where the first interest payment period for a Treasury fixed-principal security covers less than a full half-year period (a ''short coupon''), we multiply the daily interest decimal by the number of days from, but not including, the issue date to, and including, the first interest payment date. This calculation results in the amount of the interest payable per $1,000 par amount. In cases where the par amount of securities is a multiple of $1,000, we multiply the appropriate multiple by the unrounded interest payment amount per $1,000 par amount.

Example

A 2-year note paying 8⅜% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. The number of days in the full half-year period of June 30 to December 31, 1990, was 184 (*See* Table 1.). The number of days for which interest actually accrued was 182 (not including July 2, but including December 31). The daily interest decimal, $0.227581522 (*See* Table 2, line for 8⅜%, under the column for half-year of 184 days.), was multiplied by 182, resulting in a payment of $41.419837004 per $1,000. For $20,000 of these notes, $41.419837004 would be multiplied by 20, resulting in a payment of $828.39674008 ($828.40).

4. *Long First Payment Period.* In cases where the first interest payment period for a bond or note covers more than a full half-year period (a ''long coupon''), we multiply the daily interest decimal by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the

interest payment date. We add that amount to the regular interest amount for the full half-year ending on the first interest payment date, resulting in the amount of interest payable for $1,000 par amount. In cases where the par amount of securities is a multiple of $1,000, the appropriate multiple should be applied to the unrounded interest payment amount per $1,000 par amount.

Example

A 5-year 2-month note paying 7⅞% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. Interest for the regular half-year portion of the payment was computed to be $39.375 per $1,000 par amount. The fractional portion of the payment, from December 3 to February 15, fell in a 184-day half-year (August 15, 1990, to February 15, 1991). Accordingly, the daily interest decimal for 7⅞% was $0.213994565. This decimal, multiplied by 74 (the number of days from but not including December 3, 1990, to and including February 15), resulted in interest for the fractional portion of $15.835597810. When added to $39.375 (the normal interest payment portion ending on August 15, 1991), this produced a first interest payment of $55.210597810, or $55.21 per $1,000 par amount. For $7,000 par amount of these notes, $55.210597810 would be multiplied by 7, resulting in an interest payment of $386.474184670 ($386.47).

B. Treasury Inflation-Protected Securities

1. *Indexing Process.* We pay interest on marketable Treasury inflation-protected securities on a semiannual basis. We issue inflation-protected securities with a stated rate of interest that remains constant until maturity. Interest payments are based on the security's inflation-adjusted principal at the time we pay interest. We make this adjustment by multiplying the par amount of the security by the applicable Index Ratio.

2. *Index Ratio.* The numerator of the Index Ratio, the Ref CPI_{Date}, is the index number applicable for a specific day. The denominator of the Index Ratio is the Ref CPI applicable for the original issue date. However, when the dated date is different from the original issue date, the denominator is the Ref CPI applicable for the dated date. The formula for calculating the Index Ratio is:

$$\text{Index Ratio}_{\text{Date}} = \frac{\text{Ref CPI}_{\text{Date}}}{\text{Ref CPI}_{\text{Issue Date}}}$$

Where Date = valuation date

3. *Reference CPI.* The Ref CPI for the first day of any calendar month is the CPI for the third preceding calendar month. For example, the Ref CPI applicable to April 1 in any year is the CPI for January, which is reported in February. We determine the Ref CPI for any other day of a month by a linear interpolation between the Ref CPI applicable to the first day of the month in which the day falls (in the example, January) and the Ref CPI applicable to the first day of the next month (in the example, February). For interpolation purposes, we truncate calculations with regard to the Ref CPI and the Index Ratio for a specific date to six decimal places, and round to five decimal places.

Therefore the Ref CPI and the Index Ratio for a particular date will be expressed to five decimal places.

(i) The formula for the Ref CPI for a specific date is:

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{\text{M}} + \frac{t-1}{D}\left[\text{Ref CPI}_{\text{M+1}} - \text{Ref CPI}_{\text{M}}\right]$$

Where Date = valuation date

D = the number of days in the month in which Date falls

t = the calendar day corresponding to Date

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = Ref CPI for the first day of the calendar month in which Date falls, *e.g.*, Ref CPI_{April1} is the $CPI_{January}$

Ref CPI_{M+1} = Ref CPI for the first day of the calendar month immediately following Date

(ii) For example, the Ref CPI for April 15, 1996 is calculated as follows:

$$\text{Ref CPI}_{\text{April 15, 1996}} = \text{Ref CPI}_{\text{April 1, 1996}} + \frac{14}{30}\left[\text{Ref CPI}_{\text{May 1, 1996}} - \text{Ref CPI}_{\text{April 1, 1996}}\right]$$

where D = 30, t = 15

Ref $CPI_{April\ 1,\ 1996}$ = 154.40, the non-seasonally adjusted CPI–U for January 1996.

Ref $CPI_{May\ 1,\ 1996}$ = 154.90, the non-seasonally adjusted CPI–U for February 1996.

(iii) Putting these values in the equation in paragraph (ii) above:

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.40 + \frac{14}{30}[154.90 - 154.40]$$

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.633333333$$

This value truncated to six decimals is 154.633333; rounded to five decimals it is 154.63333.

(iv) To calculate the Index Ratio for April 16, 1996, for an inflation-protected security issued on April 15, 1996, the Ref $CPI_{April\ 16,\ 1996}$ must first be calculated. Using the same values in the equation above except that t=16, the Ref $CPI_{April\ 16,\ 1996}$ is 154.65000.

The Index Ratio for April 16, 1996 is:

Index $Ratio_{April\ 16,\ 1996}$ = 154.65000/154.63333 = 1.000107803.

This value truncated to six decimals is 1.000107; rounded to five decimals it is 1.00011.

4. *Index Contingencies.*

(i) If a previously reported CPI is revised, we will continue to use the previously reported (unrevised) CPI in calculating the principal value and interest payments.

If the CPI is rebased to a different year, we will continue to use the CPI based on the base reference period in effect when the security was first issued, as long as that CPI continues to be published.

(ii) We will replace the CPI with an appropriate alternative index if, while an inflation-protected security is outstanding, the applicable CPI is:

- Discontinued,
- In the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or
- In the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security.

(iii) If we decide to substitute an alternative index we will consult with the Bureau of Labor Statistics or any successor agency. We will then notify the public of the substitute index and how we will apply it. Determinations of the Secretary in this regard will be final.

(iv) If the CPI for a particular month is not reported by the last day of the following month, we will announce an index number based on the last available twelve-month

change in the CPI. We will base our calculations of our payment obligations that rely on that month's CPI on the index number we announce.

(a) For example, if the CPI for month M is not reported timely, the formula for calculating the index number to be used is:

$$CPI_M = CPI_{M-1} \times \left[\frac{CPI_{M-1}}{CPI_{M-13}} \right]^{1/12}$$

(b) Generalizing for the last reported CPI issued N months prior to month M:

$$CPI_M = CPI_{M-N} \times \left[\frac{CPI_{M-N}}{CPI_{M-N-12}} \right]^{N/12}$$

(c) If it is necessary to use these formulas to calculate an index number, we will use that number for all subsequent calculations that rely on the month's index number. We will not replace it with the actual CPI when it is reported, except for use in the above formulas. If it becomes necessary to use the above formulas to derive an index number, we will use the last CPI that has been reported to calculate CPI numbers for months for which the CPI has not been reported timely.

5. *Computation of Interest for a Regular Half-Year Payment Period.* Interest on marketable Treasury inflation-protected securities is payable on a semiannual basis. The regular interest payment period is a full half-year or six calendar months. Examples of half-year periods are January 15 to July 15, and April 15 to October 15. An interest payment will be a fixed percentage of the value of the inflation-adjusted principal, in current dollars, for the date on which it is paid. We will calculate interest payments by multiplying one-half of the specified annual interest rate for the inflation-protected securities by the inflation-adjusted principal for the interest payment date.

Specifically, we compute a semiannual interest payment on the basis of one-half of one year's interest regardless of the actual number of days in the half-year.

Example

A 10-year inflation-protected note paying 3⅞% interest was issued on January 15, 1999, with the first interest payment on July 15, 1999. The Ref CPI on January 15, 1999 (Ref $CPI_{IssueDate}$) was 164, and the Ref CPI on July 15, 1999 (Ref CPI_{Date}) was 166.2. For a par amount of $100,000, the inflation-adjusted principal on July 15, 1999, was (166.2/164) × $100,000, or $101,341. This amount was multiplied by .03875/2, or .019375, resulting in a payment of $1,963.48.

C. Accrued Interest

1. You will have to pay accrued interest on a Treasury bond or note when interest accrues prior to the issue date of the security. Because you receive a full interest payment despite having held the security for only a portion of the interest payment period, you must compensate us through the payment of accrued interest at settlement.

2. For a Treasury fixed-principal security, if accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to use in computing the accrued interest. We multiply the decimal by the number of days for which interest has accrued.

3. If a reopened bond or note has a long first interest payment period (a ''long coupon''), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods. A separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued.

4. We round all accrued interest computations to five decimal places for a $1,000 par amount, using normal rounding procedures. We calculate accrued interest for a par amount of securities greater than $1,000 by applying the appropriate multiple to accrued interest payable for $1,000 par amount, rounded to five decimal places.

5. For an inflation-protected security, we calculate accrued interest as shown in section III, paragraphs A and B of this appendix.

Examples. (1) *Treasury Fixed-Principal Securities—(i) Involving One Half-Year:* A note paying interest at a rate of 6¾%, originally issued on May 15, 2000, as a 5-year note with a first interest payment date of November 15, 2000, was reopened as a 4-year 9-month note on August 15, 2000. Interest had accrued for 92 days, from May 15 to August 15. The regular interest period from May 15 to November 15, 2000, covered 184 days. Accordingly, the daily interest decimal, $0.183423913, multiplied by 92, resulted in accrued interest payable of $16.874999996, or $16.87500, for each $1,000 note purchased. If the notes have a par amount of $150,000, then 150 is multiplied by $16.87500, resulting in an amount payable of $2,531.25.

(2) *Involving Two Half-Years:*

A 10¾% bond, originally issued on July 2, 1985, as a 20-year 1-month bond, with a first interest payment date of February 15, 1986, was reopened as a 19-year 10-month bond on November 4, 1985. Interest had accrued for 44 days, from July 2 to August 15, 1985, during a 181-day half-year (February 15 to August 15); and for 81 days, from August 15 to November 4, during a 184-day half-year (August 15, 1985, to February 15, 1986). Accordingly, $0.296961326 was multiplied by 44, and $0.292119565 was multiplied by 81, resulting in products of $13.066298344 and $23.661684765 which, added together, resulted in accrued interest payable of $36.727983109, or $36.72798, for each $1,000 bond purchased. If the bonds have a par amount of $11,000, then 11 is multiplied by $36.72798, resulting in an amount payable of $404.00778 ($404.01).

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices

Definitions

P = price per 100 (dollars), rounded to three places, using normal rounding procedures

C = the regular annual interest per $100, payable semiannually, *e.g.*, 6.125 (the decimal equivalent of a 6–⅛% interest rate)

i = nominal annual rate of return or yield to maturity, based on semiannual interest payments and expressed in decimals, *e.g.*, .0719

n = number of full semiannual periods from the issue date to maturity, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining to maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on November 15, 2015, would have coupon frequency dates of May 15 and November 15.

r = (1) number of days from the issue date to the first interest payment (regular or short first payment period), or (2) number of days in fractional portion (or ''initial short period'') of long first payment period

s = (1) number of days in the full semiannual period ending on the first interest payment date (regular or short first payment period), or (2) number of days in the full semiannual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment

$v^n = 1/[1 + (i/2)]^n$ = present value of 1 due at the end of n periods

$a_{n\rceil} = (1 - v^n) / (i/2) = v + v^2 + v^3 + ... + v^n$ = present value of 1 per period for n periods

A = accrued interest

A. *For fixed-principal securities with a regular first interest payment period:*

Formula:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n$$

Example:

For an 8¾% 30-year bond issued May 15, 1990, due May 15, 2020, with interest payments on November 15 and May 15, solve for the price per 100 (P) at a yield of 8.84%.

Definitions:

C = 8.75

i = .0884

r = 184 (May 15 to November 15, 1990)

s = 184 (May 15 to November 15, 1990)

n = 59 (There are 60 full semiannual periods, but n is reduced by 1 because the issue date is a coupon frequency date.)

$v^n = 1/[(1 + .0884/2)]^{59}$, or .077940

$a_{n\rceil} = (1 - .077940)/.0442$, or 20.861086

Resolution:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n \text{ or}$$

$$P[1 + (184/184)(.0884/2)] = (8.75/2)(184/184) + (8.75/2)(20.861086) + 100(.077940)$$

(1) P[1 + .0442] = 4.375 + 91.267251 + 7.7940

(2) P[1.0442] = 103.436251

(3) P = 103.436251/1.0442

(4) P = 99.057892

(5) P = 99.058

B. *For fixed-principal securities with a short first interest payment period:*

Formula:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n$$

Example:

For an 8½% 2-year note issued April 2, 1990, due March 31, 1992, with interest payments on September 30 and March 31, solve for the price per 100 (P) at a yield of 8.59%.

Definitions:

C = 8.50
i = .0859
n = 3
r = 181 (April 2 to September 30, 1990)
s = 183 (March 31 to September 30, 1990)
v^n = 1 / [(1 + .0859/2)]^3, or .881474
$a_{n\rceil}$ = (1 − .881474)/.04295, or 2.759627

Resolution:

P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2) $a_{n\rceil}$ + 100 v^n or
P[1 + (181/183)(.0859/2)] = (8.50/2)(181/183) + (8.50/2)(2.759627) + 100(.881474)
(1) P[1 + .042481] = 4.203552 + 11.728415 + 88.1474
(2) P[1.042481] = 104.079367
(3) P = 104.079367 / 1.042481
(4) P = 99.838143
(5) P = 99.838

C. *For fixed-principal securities with a long first interest payment period:*

Formula:

P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2) $a_{n\rceil}$ + 100 v^n

Example:

For an 8½% 5-year 2-month note issued March 1, 1990, due May 15, 1995, with interest payments on November 15 and May 15 (first payment on November 15, 1990), solve for the price per 100 (P) at a yield of 8.53%.

Definitions:

C = 8.50
i = .0853
n = 10
r = 75 (March 1 to May 15, 1990, which is the fractional portion of the first interest payment)
s = 181 (November 15, 1989, to May 15, 1990)
v = 1/(1+.0853/2), or .959095
v^n = 1/(1+.0853/2)10, or .658589
$a_{n\rceil}$ = (1 − .658589)/.04265, or 8.004947

Resolution:

P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2) $a_{n\rceil}$ + 100 v^n or
P[1 + (75/181)(.0853/2)] = [(8.50/2)(75/181)].959095 + (8.50/2)(8.004947) + 100(.658589)
(1) P[1 + .017673] = 1.689014 + 34.021025 + 65.8589
(2) P[1.017673] = 101.568939
(3) P = 101.568939 / 1.017673
(4) P = 99.805084
(5) P = 99.805

D. (1) *For fixed-principal securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new fixed-principal securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Formula:

(P + A)[1 + (r/s)(i/2)] = C/2 + (C/2) $a_{n\rceil}$ + 100 v^n

Where: A = [(s-r)/s](C/2)

Example:

For a 9½% 10-year note with interest accruing from November 15, 1985, issued November 29, 1985, due November 15, 1995, and interest payments on May 15 and November 15, solve for the price per 100 (P) at a yield of 9.54%. Accrued interest is from November 15 to November 29 (14 days).

Definitions:

C = 9.50
i = .0954
n = 19
r = 167 (November 29, 1985, to May 15, 1986)
s = 181 (November 15, 1985, to May 15, 1986)
v^n = 1/[(1 + .0954/2)]^{19}, or .412570400
$a_{n\rceil}$ = (1 − .412570) / .0477, or 12.315094
A = [(181 − 167) / 181](9.50 / 2), or .367403

Resolution:

(P+A)[1 + (r/s)(i/2)] = [(C/2) + (C/2) $a_{n\rceil}$ + 100 v^n or
(P + .367403)[1 + (167/181)(.0954/2)] = (9.50/2)+(9.50/2) (12.315094)+100(.412570)
(1) (P + .367403)[1 + .044011] = 4.75 + 58.496697 + 41.2570
(2) (P + .367403)[1.044011] = 104.503697
(3) (P + .367403) = 104.503697 / 1.044011
(4) (P + .367403) = 100.098272
(5) P = 100.098272 − .367403
(6) P = 99.730869
(7) P = 99.731

E. *For fixed-principal securities reopened during the regular portion of a long first payment period:*

Formula:

(P + A)[1 + (r/s)(i/2)] = (r′/s″)(C/2) + C/2 + (C/2) $a_{n\rceil}$ + 100 v^n

Where:

A = AI′ + AI
AI′ = (r′/s″)(C/2)
AI = [(s − r)/s](C/2)

and

r = number of days from the reopening date to the first interest payment date
s = number of days in the semiannual period for the regular portion of the first interest payment period
r′ = number of days in the fractional portion (or ''initial short period'') of the first interest payment period
s″ = number of days in the semiannual period ending with thecommencement date of the regular portion of the first interest payment period

Example:

A 10¾% 19-year 9-month bond due August 15, 2005, is issued on July 2, 1985, and reopened on November 4, 1985, with interest payments on February 15 and August 15 (first payment on February 15, 1986), solve for the price per 100 (P) at a yield of 10.47%. Accrued interest is calculated from July 2 to November 4.

Definitions:

C = 10.75
i = .1047
n = 39
r = 103 (November 4, 1985, to February 15, 1986)
s = 184 (August 15, 1985, to February 15, 1986)
r′ = 44 (July 2 to August 15, 1985)
s″ = 181 (February 15 to August 15, 1985)
v^n = 1/[(1 + .1047/2)]^{39}, or .136695
$a_{n\rceil}$ = (1 − .136695)/.05235, or 16.491022
AI′ = (44/181)(10.75/2), or 1.306630
AI = [(184 − 103)/184](10.75/2), or 2.366168
A = AI′ + AI, or 3.672798

Resolution:

(P + A)[1 + (r/s)(i/2)] = (r′/s″)(C/2) + C/2 + (C/2) $a_{n\rceil}$ + 100 v^n or
(P + 3.672798)[1 + (103/184)(.1047/2)] = (44/181) (10.75/2) + 10.75/2 + (10.75/2)(16.491022) + 100 (.136695)
(1) (P + 3.672798)[1 + .029305] = 1.306630 + 5.375 + 88.639243 + 13.6695
(2) (P + 3.672798)[1.029305] = 108.990373
(3) (P + 3.672798) = 108.990373/1.029305
(4) (P + 3.672798) = 105.887344
(5) P = 105.887344 − 3.672798
(6) P = 102.214546
(7) P = 102.215

F. *For fixed-principal securities reopened during a short first payment period:*

Formula:

(P + A)[1 + (r/s)(i/2)] = (r′/s)(C/2) + (C/2) $a_{n\rceil}$ + 100 v^n

Where: A = [(r′ − r)/s](C/2)

and r′ = number of days from the original issue date to the first interest payment date

Example:

For a 10½% 8-year note due May 15, 1991, originally issued on May 16, 1983, and reopened on August 15, 1983, with interest payments on November 15 and May 15 (first payment on November 15, 1983), solve for the price per 100 (P) at a yield of 10.53%. Accrued interest is calculated from May 16 to August 15.

Definitions:

C = 10.50
i = .1053
n = 15
r = 92 (August 15, 1983, to November 15, 1983)
s = 184 (May 15, 1983, to November 15, 1983)
r′ = 183 (May 16, 1983, to November 15, 1983)
v^n = 1/[(1 + .1053/2)]^{15}, or .463170
$a_{n\rceil}$ = (1 − .463170)/.05265, or 10.196201
A = [(183 − 92)/184](10.50/2), or 2.596467

Resolution:

(P + A)[1 + (r/s)(i/2)] = (r′/s)(C/2) + (C/2) $a_{n\rceil}$ + 100 v^n or
(P + 2.596467)[1 + (92/184)(.1053/2)] = (183/184)(10.50/2) + (10.50/2)(10.196201) + 100 (.463170)
(1) (P + 2.596467)[1 + .026325] = 5.221467 + 53.530055 + 46.3170
(2) (P + 2.596467)[1.026325] = 105.068522
(3) (P + 2.596467) = 105.068522/1.026325
(4) (P + 2.596467) = 102.373539
(5) P = 102.373539 − 2.596467
(6) P = 99.777072
(7) P = 99.777

G. *For fixed-principal securities reopened during the fractional portion (initial short period) of a long first payment period:*

Formula:

(P + A)[1 + (r/s)(i/2)] = [(r′/s)(C/2)]v + (C/2) $a_{n\rceil}$ + 100 v^n

Where: A = [(r′ − r)/s](C/2)

and

r = number of days from the reopening date to the end of the short period
r′ = number of days in the short period
s = number of days in the semiannual period ending with the end of the short period

Example:

For a 9¾% 6-year 2-month note due December 15, 1994, originally issued on October 15, 1988, and reopened on November 15, 1988, with interest payments on June 15 and December 15 (first payment on June 15, 1989), solve for the price per 100 (P) at a yield of 9.79%. Accrued interest is calculated from October 15 to November 15.

Definitions:

C = 9.75
i = .0979
n = 12
r = 30 (November 15, 1988, to December 15, 1988)
s = 183 (June 15, 1988, to December 15, 1988)
r′ = 61 (October 15, 1988, to December 15, 1988)
v = 1/(1 + .0979/2), or .953334
$v^n = [1/(1 + .0979/2)]^{12}$, or .563563
$a_{n\rceil} = (1 - .563563)/.04895$, or 8.915975
A = [(61 − 30)/183](9.75/2), or .825820

Resolution:

(P + A)[1 + (r/s)(i/2)] = [(r′/s)(C/2)]v + (C/2) $a_{n\rceil}$ + 100 v^n or
(P + .825820)[1 + (30/183)(.0979/2)] = [(61/183)(9.75/2)](.953334) + (9.75/2)(8.915975) + 100(.563563)
(1) (P + .825820)[1+ .008025] = 1.549168 + 43.465378 + 56.3563
(2) (P + .825820)[1.008025] = 101.370846
(3) (P + .825820) = 101.370846/1.008025
(4) (P + .825820) = 100.563821
(5) P = 100.563821 − .825820
(6) P = 99.738001
(7) P = 99.738

III. Formulas for Conversion of Inflation-Protected Security Yields to Equivalent Prices

Definitions:

P = unadjusted or real price per 100 (dollars)
P_{adj} = inflation adjusted price; P x Index $Ratio_{Date}$
A = unadjusted accrued interest per $100 original principal
A_{adj} = inflation adjusted accrued interest; A x Index $Ratio_{Date}$
SA = settlement amount including accrued interest in current dollars per $100 original principal; $P_{adj} + A_{adj}$
r = days from settlement date to next coupon date
s = days in current semiannual period
i = real yield, expressed in decimals (*e.g.*, 0.0325)
C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security
n = number of full semiannual periods from issue date to maturity date, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining until maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on July 15, 2026 would have coupon frequency dates of January 15 and July 15.
$v^n = 1/(1 + i/2)^n$ = present value of 1 due at the end of n periods
$a_{n\rceil} = (1 - v^n)/(i/2) = v + v^2 + v^3 + ... + v^n$ = present value of 1 per period for n periods
Date = valuation date
D = the number of days in the month in which Date falls
t = calendar day corresponding to Date
CPI = Consumer Price Index number
CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics
Ref CPI_M = reference CPI for the first day of the calendar month in which Date falls, *e.g.*, Ref CPI_{April} is the $CPI_{January}$
Ref CPI_{M+1} = reference CPI for the first day of the calendar month immediately following Date
Ref CPI_{Date} = Ref CPI_M + [(t − 1)/D][Ref CPI_{M+1} − Ref CPI_M]
Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{IssueDate}$

A. *For inflation-protected securities with a regular first interest payment period:*

Formulas:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$A = [(s - r)/s] \times (C/2)$$

$$A_{adj} = A \times \text{Index Ratio}_{Date}$$

$$SA = P_{adj} + P_{adj}$$

$$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date} / \text{Ref CPI}_{Issue\ Date}$$

Example:

We issued a 10-year inflation-protected note on January 15, 1999. The note was issued at a discount to yield of 3.898% (real). The note bears a 3–7/8% real coupon, payable on July 15 and January 15 of each year. The base CPI index applicable to this note is 164. (We normally derive this number using the interpolative process described in Appendix B, section I, paragraph B.)

Definitions:

C = 3.875
i = 0.03898
n = 19 (There are 20 full semiannual periods but n is reduced by 1 because the issue date is a coupon frequency date.)
r = 181 (January 15, 1999 to July 15, 1999)
s = 181 (January 15, 1999 to July 15, 1999)
Ref CPI_{Date} = 164
Ref $CPI_{IssueDate}$ = 164

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{IssueDate}$ = 164/164 = 1
A = [(181 − 181)/181] ×3.875/2 = 0
$A_{adj} = 0 \times 1 = 0$
$v^n = 1/(1 + i/2)^n = 1/(1 + .03898/2)^{19}$ = 0.69298457
$a_{n\rceil}$ = (1 − v^n)/(i/2) = (1–0.69298457)/(.03898/2) = 15.75245911

Formula:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3.875/2) + (3.875/2)(15.75245921) + 100(0.69298457)}{1 + (181/181)(0.03898/2)} - [(181 - 181)/181](3.875/2)$$

$$P = \frac{1.9375 + 30.52038953 + 69.298457}{1.01949000} - 0$$

$$P = \frac{101.75634672}{1.01949000}$$

$$P = 99.811030$$

$$P = 99.811$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$P_{adj} = 99.811 \times 1 = 99.811$$

$$SA = P_{adj} + A_{adj}$$

$$SA = 99.811 + 0 = 99.811$$

Note: For the real price (P), we have rounded to three places. These amounts are based on 100 par value.

B. (1) *For inflation-protected securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new inflation-protected securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Bidding: The dollar amount of each bid is in terms of the par amount. For example, if the Ref CPI applicable to the issue date of the note is 120, and the reference CPI applicable to the reopening issue date is 132, a bid of $10,000 will in effect be a bid of $10,000 × (130/120), or $11,000.

Formulas:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$A = [(s - r)/s] \times (C/2)$$

$$A_{adj} = A \times \text{Index Ratio}_{Date}$$

$$SA = P_{adj} + A_{adj}$$

$$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{Issue\ Date}$$

Example:

We issued a 3⅝% 10-year inflation-protected note on January 15, 1998, with interest payments on July 15 and January 15. For a reopening on October 15, 1998, with inflation compensation accruing from January 15, 1998 to October 15, 1998, and accrued interest accruing from July 15, 1998 to October 15, 1998 (92 days), solve for the price per 100 (P) at a real yield, as determined in the reopening auction, of 3.65%. The base index applicable to the issue date of this note is 161.55484 and the reference CPI applicable to October 15, 1998, is 163.29032.

Definitions:

C = 3.625
i = 0.0365
n = 18
r = 92 (October 15, 1998 to January 15, 1999)
s = 184 (July 15, 1998 to January 15, 1999)
Ref CPI_{Date} = 163.29032
$\text{Ref CPI}_{IssueDate}$ = 161.55484

Resolution:

$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{IssueDate}$ = 163.29032/161.55484 = 1.01074
$v^n = 1/(1 + i/2)^n = 1/(1 + .0365/2)^{18}$ = 0.72213844
$a_{\overline{n}|} = (1\text{-}v^n)/(i/2) = (1\text{–}0.72213844)/(.0365/2)$ = 15.22529106

Formula:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|}}{1 + (r/s)(i/2)} + 100v^{n} - [(s - r)/s](C/2)$$

$$P = \frac{(3.625/2) + (3.625/2)(15.22529106) + 100(0.72213844)}{1 + (92/184)(0.0365/2)} - [(184 - 92)/184](3.625/2)$$

$$P = \frac{1.8125 + 27.59584005 + 72.213844}{1.009125} - (92/184)(1.8125)$$

$$P = \frac{101.62218405}{1.009125} - 0.906250$$

$$P = 100.703267 - 0.906250$$

$$P = 99.797017$$

$$P = 99.797$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$P_{adj} = 99.797 \times 1.01074 = 100.8688$$

$$P_{adj} = 100.869$$

$$A = [(184 - 92)/184] \times 3.625/2 = 0.906250$$

$$A_{adj} = A \times \text{Index Ratio}_{Date}$$

$$A_{adj} = 0.906250 \times 1.01074 = 0.915983$$

$$SA = P_{adj} + A_{adj} = 100.869 + 0.915983$$

$$SA = 101.784983$$

Note: For the real price (P), and the inflation-adjusted price (P_{adj}), we have rounded to three places. For accrued interest (A) and the adjusted accrued interest (A_{adj}), we have rounded to six places. These amounts are based on 100 par value.

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Protected Interest Components

Note: Valuing an interest component stripped from an inflation-protected security at its adjusted value enables this interest component to be interchangeable (fungible) with other interest components that have the same maturity date, regardless of the underlying inflation-protected security from which the interest components were stripped. The adjusted value provides for fungibility of these various interest components when buying, selling, or transferring them or when reconstituting an inflation-protected security.

Definitions:

c = C/100 = the regular annual interest rate, payable semiannually, *e.g.,* .03625 (the decimal equivalent of a 3⅝% interest rate)

Par = par amount of the security to be stripped

Ref $CPI_{IssueDate}$ = reference CPI for the original issue date (or dated date, when the dated date is different from the original issue date) of the underlying (unstripped) security

Ref CPI_{Date} = reference CPI for the maturity date of the interest component

AV = adjusted value of the interest component

PA = payment amount at maturity by Treasury

Formulas:

AV = Par(C/2)(100/Ref $CPI_{IssueDate}$) (rounded to 2 decimals with no intermediate rounding)

PA = AV(Ref CPI_{Date}/100) (rounded to 2 decimals with no intermediate rounding)

Example:

A 10-year inflation-protected note paying 3⅞% interest was issued on January 15, 1999, with the second interest payment on January 15, 2000. The Ref CPI of January 15, 1999 (Ref $CPI_{IssueDate}$) was 164.00000, and the Ref CPI on January 15, 2000 (Ref CPI_{Date}) was 168.24516. Calculate the adjusted value and the payment amount at maturity of the interest component.

Definitions:

c = .03875

Par = $1,000,000

Ref $CPI_{IssueDate}$ = 164.00000

Ref CPI_{Date} = 168.24516

Resolution:

For a par amount of $1 million, the adjusted value of each stripped interest component was $1,000,000(.03875/2)(100/164.00000), or $11,814.02 (no intermediate rounding).

For an interest component that matured on January 15, 2000, the payment amount was $11,814.02 (168.24516/100), or $19,876.52 (no intermediate rounding).

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills

A. *Conversion of the discount rate to a purchase price for Treasury bills of all maturities:*

Formula:

P = 100 (1 − dr/360)

Where:

d = discount rate, in decimals

r = number of days remaining to maturity

P = price per 100 (dollars)

Example:

For a bill issued November 24, 1989, due February 22, 1990, at a discount rate of 7.61%, solve for price per 100 (P).

Definitions:

d = .0761

r = 90 (November 24, 1989 to February 22, 1990)

Resolution:

P = 100 (1 − dr/360)

(1) P = 100 [1 − (.0761)(90)/360]

(2) P = 100 (1 − .019025)

(3) P = 100 (.980975)

(4) P = 98.0975

(5) P = 98.098

Note: Purchase prices per $100 are rounded to three decimal places, using normal rounding procedures.

B. *Computation of purchase prices and discount amounts based on price per $100, for Treasury bills of all maturities:*

1. To determine the purchase price of any bill, divide the par amount by 100 and multiply the resulting quotient by the price per $100.

Example:

To compute the purchase price of a $10,000 13-week bill sold at a price of $98.098 per $100, divide the par amount ($10,000) by 100 to obtain the multiple (100). That multiple times 98.098 results in a purchase price of $9,809.80.

2. To determine the discount amount for any bill, subtract the purchase price from the par amount of the bill.

Example:

For a $10,000 bill with a purchase price of $9,809.80, the discount amount would be $190.20, or $10,000–$9,809.80.

C. *Conversion of prices to discount rates for Treasury bills of all maturities:*

Formula:

$$d = \left[\frac{100 - P}{100} \times \frac{360}{r}\right]$$

Where:

P = price per 100 (dollars)
d = discount rate
r = number of days remaining to maturity

Example:

For a 26-week bill issued December 30, 1982, due June 30, 1983, with a price of $95.930, solve for the discount rate (d).

Definitions:

P = 95.930
r = 182 (December 30, 1982, to June 30, 1983)

Resolution:

$$d = \left[\frac{100 - P}{100} \times \frac{360}{r}\right]$$

$$(1)\ d = \left[\frac{100 - 95.930}{100} \times \frac{360}{182}\right]$$

$$(2)\ d = [.0407 \times 1.978022]$$

$$(3)\ d = .080506$$

$$(4)\ d = 8.051\%$$

Note: Prior to April 18, 1983, we sold all bills in price-basis auctions, in which discount rates calculated from prices were rounded to three places, using normal rounding procedures. Since that time, we have sold bills only on a discount rate basis. For regular Treasury bills—13-, 26-, and 52-week bills—discount rates bid were submitted with two decimals in increments of .01 percent, *e.g.*, 5.32, until 1997, when we instituted a change to three-decimal bidding in increments of .005 percent, *e.g.*, 5.320 or 5.325.

D. *Calculation of investment rate (coupon-equivalent yield) for Treasury bills:*

1. *For bills of not more than one half-year to maturity:*

Formula:

$$i = \left[\frac{100 - P}{P} \times \frac{y}{r}\right]$$

Where:

i = investment rate, in decimals
P = price per 100 (dollars)
r = number of days remaining to maturity
y = number of days in year following the issue date; normally 365 but, if the year following the issue date includes February 29, then y is 366.

Example:

For a cash management bill issued June 1, 1990, due June 21, 1990, with a price of $99.559 (computed from a discount rate of 7.93%), solve for the investment rate (i).

Definitions:

P = 99.559
r = 20 (June 1, 1990, to June 21, 1990)
y = 365

Resolution:

$$i = \left[\frac{100 - P}{P} \times \frac{y}{r}\right]$$

$$(1)\ i = \left[\frac{100 - 99.559}{99.559} \times \frac{365}{20}\right]$$

$$(2)\ i = [.004430 \times 18.25]$$

$$(3)\ i = .080848$$

$$(4)\ i = 8.085\%$$

2. For bills of more than one half-year to maturity:

Formula:

$P[1 + (r - y/2)(i/y)]\ (1 + i/2) = 100$

This formula must be solved by using the quadratic equation, which is:

$ax^2 + bx + c = 0$

Therefore, rewriting the bill formula in the quadratic equation form gives:

$$\left[\frac{r}{2y} - .25\right] i^2 + \left(\frac{r}{y}\right) i + \left(\frac{P - 100}{P}\right) = 0$$

and solving for ''i'' produces:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

Where:

i = investment rate in decimals
b = r/y
a = (r/2y) − .25
c = (P–100)/P
P = price per 100 (dollars)
r = number of days remaining to maturity
y = number of days in year following the issue date; normally 365, but if the year following the issue date includes February 29, then y is 366.

Example:

For a 52-week bill issued June 7, 1990, due June 6, 1991, with a price of $92.265 (computed from a discount rate of 7.65%), solve for the investment rate (i).

Definitions:

r = 364 (June 7, 1990, to June 6, 1991)
y = 365
P = 92.265
b = 364/365, or .997260
a = (364/730) − .25, or .24863
c = (92.265 − 100)/92.265, or − .083835

Resolution: i =

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

$$(1)\ i = \frac{-.997260 + \sqrt{(.997260)^2 - 4[(.24863)(-.083835)]}}{2(.248630)}$$

$$(2)\ i = \frac{-.997260 + \sqrt{(.994528) + .083376}}{.497260}$$

$$(3)\ i = (-.997260 + 1.038222)/.497260$$

$$(4)\ i = .040962/.497260$$

$$(5)\ i = .082375 \text{ or}$$

$$(6)\ i = 8.238\%$$

Appendix C to Part 356—Investment Considerations

I. Inflation-Protected Securities

A. Principal and Interest Variability

An investment in securities with principal or interest determined by reference to an inflation index involves factors not associated with an investment in a fixed-principal security. Such factors include the possibility that:

- The inflation index may be subject to significant changes,
- changes in the index may or may not correlate to changes in interest rates generally or with changes in other indices,
- the resulting interest may be greater or less than that payable on other securities of similar maturities, and
- in the event of sustained deflation, the amount of the semiannual interest payments, the inflation-adjusted principal of the security, and the value of stripped components will decrease. However, if at maturity the inflation-adjusted principal is less than a security's par amount, we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount. Regardless of whether

or not we pay such an additional amount, we will always base interest payments on the inflation-adjusted principal as of the interest payment date. If a security has been stripped, we will pay any such additional amount at maturity to holders of principal components only. (*See* § 356.30.)

B. Trading in the Secondary Market

The Treasury securities market is the largest and most liquid securities market in the world. The market for Treasury inflation-protected securities, however, may not be as active or liquid as the market for Treasury fixed-principal securities. In addition, Treasury inflation-protected securities may not be as widely traded or as well understood as Treasury fixed-principal securities. Lesser liquidity and fewer market participants may result in larger spreads between bid and asked prices for inflation-protected securities than the bid-asked spreads for fixed-principal securities with the same time to maturity. Larger bid-asked spreads normally result in higher transaction costs and/or lower overall returns. The liquidity of an inflation-protected security may be enhanced over time as we issue additional amounts or more entities participate in the market.

C. Tax Considerations

Treasury inflation-protected securities and the stripped interest and principal components of these securities are subject to specific tax rules provided by Treasury regulations issued under sections 1275(d) and 1286 of the Internal Revenue Code of 1986, as amended.

D. Indexing Issues

While the Consumer Price Index (''CPI'') measures changes in prices for goods and services, movements in the CPI that have occurred in the past do not necessarily indicate changes that may occur in the future.

The calculation of the index ratio incorporates an approximate three-month lag, which may have an impact on the trading price of the securities, particularly during periods of significant, rapid changes in the index.

The CPI is reported by the Bureau of Labor Statistics, a bureau within the Department of Labor. The Bureau of Labor Statistics operates independently of Treasury and, therefore, we have no control over the determination, calculation, or publication of the index. For a discussion of how we will apply the CPI in various situations, see Appendix B, Section I, Paragraph B of this part. In addition, for a discussion of actions that we would take in the event the CPI is: discontinued; in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security; or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, see Appendix B, Section I, Paragraph B.4 of this part.

Appendix D to Part 356—Description of the Consumer Price Index

The Consumer Price Index (''CPI'') for purposes of inflation-protected securities is the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers. It is published monthly by the Bureau of Labor Statistics (BLS), a bureau within the Department of Labor. The CPI is a measure of the average change in consumer prices over time in a fixed market basket of goods and services. This market basket includes food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs.

In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The BLS periodically updates the contents of the market basket of goods and services, and the weights assigned to the various items, to take into account changes in consumer expenditure patterns.

The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100. For example, if the CPI for the 1982–84 reference period is 100.0, an increase of 16.5 percent from that period would be shown as 116.5. The CPI for a particular month is released and published during the following month. From time to time, the CPI is rebased to a more recent base reference period. We provide the base reference period for a particular inflation-protected security on the auction announcement for that security.

Further details about the CPI may be obtained by contacting the BLS.

Dated: July 20, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

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41179–41374 8
41375–41748 9
41749–41900 12
41901–42086 13
42087–42328 14
42329–42548 15
42549–42848 16
42849–43282 19
43283–43510 20
43511–43728 21
43729–43890 22
43891–44456 23
44457–44574 26
44575–44892 27
44893–45224 28

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7800 40299
7801 41179
7802 43727

Executive Orders:
11269 (See EO 13345) 41901
12163 (Amended by EO 13346) 41905
12757 (Revoked by EO 13345) 41901
12823 (Revoked by EO 13345) 41901
13028 (Revoked by EO 13345) 41901
13131 (Revoked by EO 13345) 41901
13226 (Amended by 13349) 44891
13227 (Amended by EO 13346) 41905
13261 (Amended by EO 13344) 41747
13344 41747
13345 41901
13346 41905
13348 44885
13349 44891

Administrative Orders:
Memorandums:
Memorandum of June 29, 2004 40531
Memorandum of July 5, 2004 42087
Memorandum of July 2, 2004 43723
Memorandum of July 8, 2004 43725
Presidential Determinations:
No. 2004–38 of June 24, 2004 40305
No. 2004–39 of June 25, 2004 40761

5 CFR

2634 44893

7 CFR

16 41375
301 ..... 40533, 41181, 42849, 43511, 43891
457 44575
762 44576
916 ..... 41120, 44457
917 ..... 41120, 44457
930 41383
958 42850
981 ..... 40534, 41907
983 44460
989 41385
1435 39811
1739 44896

Proposed Rules:
39 40819
920 44975
924 42899
1030 43538
3402 41763

8 CFR

103 39814
212 43729
214 ..... 39814, 41388, 43729
299 39814
1001 44903
1003 44903
1103 44903
1287 44903

Proposed Rules:
236 42901
241 42901
1236 42901
1240 42901
1241 42901

9 CFR

1 42089
2 42089
51 41909
78 40763
93 43283
94 41915

Proposed Rules:
2 43538
3 43538
50 42288
51 ..... 41909, 42288
52 42288
53 42288
54 42288
55 42288
56 42288
57 42288
58 42288
59 42288
60 42288
61 42288
62 42288
63 42288
64 42288
65 42288
66 42288
67 42288
68 42288
69 42288
70 42288
71 42288
72 42288
73 42288
74 42288
75 42288
76 42288
77 ..... 40329, 42288

78.....40556, 42288
79.....42288
80.....42288
81.....42288
82.....42288
83.....42288
84.....42288
85.....42288
309.....42288
310.....42288
311.....42288
318.....42288
319.....42288

10 CFR

2.....41749

12 CFR

3.....44908
25.....41181
201.....41388
208.....44908
225.....44908
228.....41181
325.....44908
345.....41181
563e.....41181
567.....44908
609.....42852
611.....42852
612.....42852
613.....43511
614 .....42852, 42853, 43511, 44925
615.....42852, 44925
617.....42852
618.....43511
703.....39827
704.....39827

Proposed Rules:

Ch. I.....43347
41.....42502
Ch. II.....43347
222.....42502
Ch. III.....43347
303.....43060
325.....43060
327.....43060
334.....42502
347.....43060
Ch. V.....43347
571.....42502
Ch. VII.....41202
701.....39871
717.....42502
723.....39873
1412.....41606

13 CFR

121.....44461

Proposed Rules:

121.....39874

14 CFR

1.....44772
21.....44772
25 .....40307, 40520, 40537, 42329
36.....41573
39 .....39833, 39834, 39835, 40309, 40539, 40541, 40764, 41189, 41389, 41391, 41394, 41396, 41398, 41401, 41403, 41405, 41407, 41410, 41411, 41413, 41414, 41417, 41418, 41419, 41421, 41920, 41923, 41925, 41926, 41928, 41930, 42549, 42855, 42858, 42860, 42861, 43732, 44580, 44586, 44587, 44589, 44591, 44592, 44594, 44925
43.....44772
45.....44772
61.....44772
65.....44772
71 .....39837, 40310, 40542, 41189, 42331
91.....44772
97.....41934, 44595
383.....41423
1260.....41935
1274.....41935
1275.....42102

Proposed Rules:

39 .....39875, 39877, 40819, 40821, 40823, 41204, 41207, 41209, 41211, 41213, 41985, 41987, 41990, 41992, 41994, 41997, 42356, 42358, 42360, 42363, 42365, 42368, 41612, 42912, 43775, 43777, 43779, 43783, 44474
71 .....40330, 40331, 41215, 41216, 41218
73.....43539
121.....42324
125.....42324
135.....42324
243.....43540

15 CFR

736.....42332
738.....41879
742.....42862
744.....42332
748.....42862
770.....42862
774.....42862

16 CFR

305.....42107
315.....40482
456.....40482

Proposed Rules:

680.....43546
682.....41219
698.....41616

17 CFR

1.....41424
4.....41424
31.....41424
36.....43285
140.....41424
145.....41424
190.....41424
200.....41060, 41936
230.....43295
240.....41060
249.....41060
270.....41696
275.....41696
279.....41696

Proposed Rules:

1.....39880
38.....39880
40.....44981
41.....44981
145.....44981
240.....44988
242.....44988
247.....42302
275.....45172
279.....45172

18 CFR

388.....41190

Proposed Rules:

5.....40332
16.....40332
35.....43929
131.....43929
154.....43929
156.....40332
157.....40332, 43929
250.....43929
281.....43929
284.....43929
300.....43929
341.....43929
344.....43929
346.....43929
347.....43929
348.....43929
375.....43929
385.....40332, 43929

19 CFR

101.....41749

20 CFR

656.....43716
667.....41882
670.....41882

Proposed Rules:

404.....40338
416.....40338
667.....41769
1001.....40724

21 CFR

17.....43299
74.....44927
110.....40312
172.....40765
189.....42256
510.....40765, 41427
520.....41427, 43735
522.....40765, 43891
524.....40766, 41427
556.....43891
700.....42256

Proposed Rules:

56.....40556
189.....42275
312.....43351
314.....43351
589.....42288
600.....43351
601.....43351
700.....42275

22 CFR

41.....43515
121.....40313
123.....40313

Proposed Rules:

22.....42913

24 CFR

5.....41712
25.....43504
35.....40474
203.....43504
570.....41712

Proposed Rules:

81.....39886
570.....41434
583.....43488

25 CFR

170.....43090

Proposed Rules:

Ch. 1.....39887, 43546
30.....43547, 44476
36.....41770
37.....43547, 44476
39.....43547, 44476
42.....43547, 44476
44.....43547, 44476
47.....43547, 44476
48.....41770

26 CFR

1 .....41192, 42551, 42559, 43302, 43304, 43735, 44596, 44597, 44930
31.....41938
157.....41192
301.....41938, 43317
602 .....41192, 41938, 43735

Proposed Rules:

1 .....42370, 42919, 43366, 43367, 43786, 44988
25.....44476
26.....42000
49.....40345
301.....43369

27 CFR

9.....41750

28 CFR

25.....43892
302.....41943
506.....40315
540.....40315

Proposed Rules:

550.....39887

29 CFR

2.....41882
37.....41882, 41894
4022.....42333
4044.....42333

Proposed Rules:

37.....41769
101.....44612
102.....44612
1910.....41221
1915.....41221
1917.....41221
1918.....41221
1926.....41221, 42379

30 CFR

3.....42112
913.....42870

Proposed Rules:

18.....42812
48.....42842
75.....42812, 44480
206.....43944
902.....42920
914 .....42927, 42931, 42937
917.....42939
920.....42943
943.....42948

31 CFR

50.....44932
356.....45202

32 CFR

61 43318
199 44942
260 42114
Proposed Rules:
21 44990
22 44990
25 44990
32 44990
33 44990
34 44990
37 44990
578 45114
635 41626

33 CFR

100 ..... 41196, 42870, 43516, 43741, 43743, 44597
107 41367
110 42335
117 ..... 41196, 41944, 42872, 42874, 42876, 43901, 43903, 43904
151 ..... 40767, 44952
161 39837
165 ..... 40319, 40542, 40768, 41196, 41367, 41944, 42115, 42335, 42876, 43745, 43746, 43748, 43904, 43906, 43908, 43911, 43913, 44597
Proposed Rules:
165 ..... 40345, 42950
334 44613

34 CFR

75 41200

36 CFR

228 41428
242 40174
251 41946
261 41946
295 41946
701 39837
702 39837
704 39837
705 39837
800 40544
1190 44084
1191 44084
Proposed Rules:
7 40562
212 42381
251 42381
261 42381
294 41636
295 42381

37 CFR

1 43751
2 43751
Proposed Rules:
202 42004
211 42004
212 42004
270 42007

38 CFR

1 39844
3 42879
17 39845
Proposed Rules:
3 44614
5 44614

39 CFR

3 42340
255 44962
265 39851
Proposed Rules:
20 45002

40 CFR

9 41576
51 ..... 40274, 40278, 42560
52 ..... 39854, 39856, 39858, 39860, 40274, 40278, 40321, 40324, 41336, 41431, 42340, 42560, 42880, 43319, 43518, 43520, 43522, 43752, 43916, 44461, 44599, 44601, 44965, 44967
60 ..... 40770, 41346, 42117
61 43322
62 42117
63 ..... 39862, 41757, 42885
81 ..... 39860, 41336, 43522, 44601
93 ..... 40004, 43325
122 41576
123 41576
124 41576
125 41576
147 42341
152 39862
154 39862
158 39862
159 39862
168 39862
178 39862
180 ..... 40774, 40781, 42560, 43525, 43918
194 42571
239 42583
257 42583
271 44463
300 ..... 43755, 44467
710 40787
Proposed Rules:
51 41225
52 ..... 39892, 40824, 41344, 41441, 43370, 43371, 43956, 44631, 44632, 45003, 45112
60 ..... 40824, 40829, 42123, 43371
62 ..... 42123, 41641
63 ..... 41779, 42954
81 ..... 41344, 44632
131 41720
180 ..... 40831, 41442, 43548
239 41644
257 41644
261 42395
271 ..... 40568, 44481
300 44482

42 CFR

414 40288
Proposed Rules:
402 43956

43 CFR

3830 40294
3834 40294
Proposed Rules:
1600 43378

44 CFR

64 ..... 40324, 42584
Proposed Rules:
67 ..... 40836, 40837, 44632

45 CFR

74 42586
87 42586
92 42586
96 42586
146 ..... 43924, 43926
Proposed Rules:
30 42010
33 42022
46 40584

46 CFR

296 43328

47 CFR

0 41130
1 ..... 39864, 40326, 41028, 41130
27 39864
32 44607
51 43762
54 43771
64 ..... 40325, 44970
73 ..... 39868, 39869, 40791, 41432, 42345, 42897, 43533, 43534, 43771, 43772, 44470
74 43772
80 44471
90 39864
95 39864
101 ..... 43772, 44608
Proposed Rules:
54 40839
64 42125
73 ..... 39893, 41444, 42956, 42957, 43552, 43553, 43786, 44482
76 43786
101 40843

48 CFR

Proposed Rules:
2 43712
7 43712
11 43712
16 ..... 40514, 43712
37 43712
39 ..... 40514, 43712
45 42544
52 42544
533 40730
552 40730
1842 44609
1843 44609
1844 44609
1845 44609
1846 44609
1847 44609
1848 44609
1849 44609
1850 44609
1851 44609
1852 44610

49 CFR

1 44971
37 40794
172 41967
193 41761
544 41974
571 42595
572 42595
Proposed Rules:
571 ..... 42126, 43787

50 CFR

17 ..... 40084, 40796, 44736
100 40174
216 41976
223 40734
229 ..... 43338, 43772
622 41433
635 ..... 40734, 43535
648 ..... 40850, 41980, 43535, 43928
660 ..... 40805, 40817, 42345, 43345
679 ..... 41984, 42122, 42345, 43536, 43537, 44472, 44473, 44973
Proposed Rules:
17 ..... 41445, 43058, 43554, 43664
20 43694
32 ..... 42127, 43964
224 41446
300 41447
402 40346
648 41026
660 ..... 40851, 43383, 43789
679 ..... 41447, 42128, 44634

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 28, 2004

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Classical swine fever; disease status change—

Chile; published 7-13-04

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:

Broadband Grant Program; eligibility and application requirements, review and approval process, and administration procedures; published 7-28-04

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Definitions; fees; powers and authority of Department of Homeland Security officers and employees in removal proceedings; published 7-28-04

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Instrumented internal inspection devices; passage; published 6-28-04

TREASURY DEPARTMENT

Fiscal Service

Marketable book-entry Treasury bills, notes, and bonds:

Plain Language Uniform Offering Circular; sale and issue; published 7-28-04

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Charitable contributions; allocation and apportionment of deductions; published 7-28-04

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID programs; religious organizations participation; comments due by 8-6-04; published 6-7-04 [FR 04-12654]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fresh prunes grown in—

Oregon and Washington; comments due by 8-3-04; published 7-19-04 [FR 04-16272]

Shell egg voluntary grading; comments due by 8-2-04; published 6-2-04 [FR 04-12201]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Birds, rats, and mice; regulations and standards; comment request; comments due by 8-3-04; published 6-4-04 [FR 04-12692]

Plant-related quarantine, domestic:

Gypsy moth; comments due by 8-6-04; published 6-7-04 [FR 04-12757]

Plant related quarantine; domestic:

Pine shoot beetle; comments due by 8-6-04; published 6-7-04 [FR 04-12758]

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:

BE-22; annual survey of selected services transactions with unaffiliated foreign persons; comments due by 8-6-04; published 6-7-04 [FR 04-12788]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Right whale ship strike reduction; comments due by 8-2-04; published 6-1-04 [FR 04-12356]

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic sea scallop; comments due by 8-6-04; published 7-7-04 [FR 04-15396]

West Coast States and Western Pacific fisheries—

Coastal pelagic species; comments due by 8-4-04; published 7-20-04 [FR 04-16471]

Pacific Coast groundfish; comments due by 8-2-04; published 7-7-04 [FR 04-15379]

Pacific Fishery Management Council; environmental impact statement; scoping meetings; comments due by 8-2-04; published 5-24-04 [FR 04-11663]

West Coast salmon; comments due by 8-4-04; published 7-20-04 [FR 04-16356]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Government Paperwork Elimination Act; implementation:

Commission issuances; electronic notification; comments due by 8-2-04; published 7-2-04 [FR 04-14893]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Industrial-commercial-institutional steam generating units; comments due by 8-6-04; published 7-7-04 [FR 04-15205]

Air programs; State authority delegations:

Alabama; comments due by 8-2-04; published 7-12-04 [FR 04-15722]

Air quality implementation plans; approval and promulgation; various States:

North Dakota; comments due by 8-6-04; published 7-7-04 [FR 04-15341]

Pennsylvania; comments due by 8-2-04; published 7-1-04 [FR 04-14823]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

Connecticut; comments due by 8-5-04; published 7-6-04 [FR 04-15102]

Pesticides; emergency exemptions, etc.:

Streptomyces lydicus WYEC 108; comments due by 8-2-04; published 6-3-04 [FR 04-12558]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Novaluron; comments due by 8-2-04; published 6-2-04 [FR 04-12316]

Toxic substances:

Inventory update rule; corrections; comments due by 8-6-04; published 7-7-04 [FR 04-15353]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

FARM CREDIT ADMINISTRATION

Farm credit system:

Preferred stock; organization, standards of conduct, loan policies and operations, fiscal affairs and operations funding, and disclosure to shareholders; comments due by 8-3-04; published 6-4-04 [FR 04-12514]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Eligible telecommunication carriers designation

process; comments due by 8-6-04; published 7-7-04 [FR 04-15240]
Radio services; special:
Fixed microwave services—
Rechannelization of the 17.7 - 19.7 GHz frequency band; comments due by 8-6-04; published 7-7-04 [FR 04-15237]
Radio stations; table of assignments:
Alabama and Florida; comments due by 8-2-04; published 6-25-04 [FR 04-14485]
Arizona and Nevada; comments due by 8-2-04; published 6-25-04 [FR 04-14481]
Georgia and North Carolina; comments due by 8-2-04; published 6-25-04 [FR 04-14486]
New Mexico; comments due by 8-2-04; published 6-25-04 [FR 04-14487]
Various States; comments due by 8-2-04; published 6-25-04 [FR 04-14488]

FEDERAL RESERVE SYSTEM

Truth in savings (Regulation DD):
Bounced-check or courtesy overdraft protection; comments due by 8-6-04; published 6-7-04 [FR 04-12521]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Home health prospective payment system; 2005 CY rates update; comments due by 8-2-04; published 6-2-04 [FR 04-12314]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

INTERIOR DEPARTMENT

Indian Affairs Bureau

No Child Left Behind Act; implementation:
No Child Left Behind Negotiated Rulemaking Committee—
Bureau-funded school system; comments due by 8-2-04; published 7-21-04 [FR 04-16658]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
Fish slough milk-vetch; comments due by 8-3-04; published 6-4-04 [FR 04-12658]
Munz's onion; comments due by 8-3-04; published 6-4-04 [FR 04-12657]
Marine mammals:
Native exemptions; authentic native articles of handicrafts and clothing; definition; comments due by 8-3-04; published 6-4-04 [FR 04-12139]
Migratory bird permits:
Take of migratory birds by the Department of Defense; comments due by 8-2-04; published 6-2-04 [FR 04-11411]

INTERIOR DEPARTMENT

National Park Service

Special regulations:
Delaware Water Gap National Recreation Area, PA and NJ; U.S. Route 209 commercial vehicle fees; comments due by 8-5-04; published 7-6-04 [FR 04-14114]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:
Two option limitation modified and coverage continuation for annuitants whose plan terminates an option; comments due by 8-6-04; published 6-7-04 [FR 04-12799]

SECURITIES AND EXCHANGE COMMISSION

Securities:
Self-regulatory organizations; fees calculation, payment and collection; comments due by 8-6-04; published 7-7-04 [FR 04-15081]
Trust and fiduciary activities exception; exemptions and defined terms (Regulation B); comments due by 8-2-04; published 6-30-04 [FR 04-14138]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 8-2-04; published 6-2-04 [FR 04-11957]
Eurocopter Deutschland; comments due by 8-2-04; published 6-2-04 [FR 04-12443]
Airworthiness standards:
Special conditions—
Boeing Model 767-2AX airplane; comments due by 8-2-04; published 6-16-04 [FR 04-13580]
Dassault Mystere Falcon Model 20-C5, -D5, -E5, -F5 and Fanjet Falcon Model C, D, E, F series airplanes; comments due by 8-2-04; published 7-2-04 [FR 04-15036]
Learjet Model 35, 35A, 36, 36A series airplanes; comments due by 8-5-04; published 7-6-04 [FR 04-15037]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Occupant crash protection—
Seat belt assemblies; comments due by 8-2-04; published 6-3-04 [FR 04-12410]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Disallowance of interest expense deductions; special consolidated return rules; comments due by 8-5-04; published 5-7-04 [FR 04-10477]
Multi-party financing arrangements; comments due by 8-5-04; published 5-7-04 [FR 04-10476]
Stock or securities in exchange for, or with respect to, stock or securities in certain transactions; determination of basis; comments due by 8-2-04; published 5-3-04 [FR 04-10009]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3846/P.L. 108–278
Tribal Forest Protection Act of 2004 (July 22, 2004; 118 Stat. 868)

S. 1167/P.L. 108–279
To resolve boundary conflicts in Barry and Stone Counties in the State of Missouri. (July 22, 2004; 118 Stat. 872)

Last List July 23, 2004<FNP≤

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