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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–129–4]

Mexican Fruit Fly; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing a portion of San Diego County, CA, from the list of regulated areas and by removing restrictions on the interstate movement of regulated articles from this area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. We have determined that the Mexican fruit fly has been eradicated from this part of San Diego County, CA, and that the quarantine and restrictions are no longer necessary. This part of San Diego County, CA, was the only area in California quarantined for the Mexican fruit fly.

DATES: This interim rule was effective October 22, 2003. We will consider all comments that we receive on or before December 29, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–129–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–129–4. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–129–4'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on January 15, 2003, and published in the **Federal Register** on January 21, 2003 (68 FR 2679–2680, Docket No. 02–129–1), we amended the regulations by adding a portion of San Diego County, CA, as a regulated area and restricted the interstate movement of regulated articles from that area. In a second interim rule effective on March 4, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11311–11313, Docket No. 02–129–3), we amended the regulations by adding an additional portion of San Diego County, CA, to the list of regulated areas.

Based on trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the regulated area. The last finding of Mexican fruit fly in the San Diego County, CA, regulated area was May 20, 2003.

Since then, no evidence of Mexican fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Mexican fruit fly no longer exists in San Diego County, CA. Therefore, we are removing the county from the list of regulated areas in § 301.64–3. With the removal of San Diego County, CA, from that list, there are no longer any areas in the State of California quarantined for the Mexican fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of San Diego County, CA, was quarantined due to the possibility that the Mexican fruit fly could spread from those areas to noninfested areas of the United States. Since we have concluded that the Mexican fruit fly no longer exists in that portion of San Diego County, CA, immediate action is warranted to remove the area from the list of regulated areas and to relieve the restrictions on the interstate movement of regulated articles from that area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Mexican fruit fly regulations by removing a portion of San Diego County, CA, from the list of regulated areas.

We expect that the effect of this interim rule will be minimal. Small entities located within the regulated area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the interim rules establishing the regulated area in San Diego County, CA, had little effect on the small growers in the area, the lifting of the quarantine in the current interim rule will also have little effect.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.64–3 [Amended]

■ 2. In § 301.64–3, paragraph (c) is amended by removing the entry for ''California''.

Done in Washington, DC, this 22nd day of October, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–27149 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1411, 1439, 1447, 1464, 1469, 1476, 1477, 1478 and 1479

Farm Service Agency

7 CFR Parts 759, 777, and 783

RIN 0560–AH04

Removal of Obsolete Regulations

AGENCY: Commodity Credit Corporation; Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action removes regulations rendered obsolete by expiration of their statutory authority and the ending of their respective programs. There are no impacts on past or current program operations.

EFFECTIVE DATE: October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Director, Regulatory Review Group, Farm Service Agency, USDA, STOP 0540, 1400 Independence Avenue, SW., Washington, DC 20250–0540; Telephone: (202) 205–5851; e-mail: *tom.witzig@usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

This rule removes regulations rendered obsolete by expiration of their statutory authority and the ending of their respective programs. Removal of the regulations will not impact any remaining disputes, issues or other matters regarding those programs, and the removed regulations remain in effect for such matters. The regulations being removed are:

7 CFR Part 759—Small Hog Operation Program

The Small Hog Operation Program was established to provide benefits to hog producers under clause (3) of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). The program was implemented during calendar year 1998 for small hog producers who marketed hogs during the period July 1, 1998, through December 31, 1998.

7 CFR Part 777—Disaster Payment Program for 1990-Crop Sugarcane, Sugar Beets, Soybeans and Peanuts

The Disaster Payment Program for 1990-Crop Sugarcane, Sugar Beets, Soybeans and Peanuts was authorized by section 201(k) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446), and the Dire Emergency Supplemental Appropriations Act for Fiscal Year 1990 (Pub. L. 101–302; 104 Stat. 213). The program provided assistance to producers who suffered a loss of production of their 1990 crop as a result of a natural disaster in 1989.

7 CFR Part 783–1997 Tree Assistance Program

The Tree Assistance Program was authorized by the Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the Fiscal Year Ending September 30, 1997 (Pub. L 105–18; 111 Stat. 158). The program provided assistance to owners of trees damaged by natural disasters occurring from October 1, 1996, through September 30, 1997.

7 CFR Part 1411—Oilseeds Program

The Oilseeds Program was authorized by section 202 of the Agricultural Risk Protection Act of 2000 (Public Law 106–224; 114 Stat. 358). The program made payments to producers who planted eligible oilseeds in 2000.

7 CFR Part 1439—Livestock Assistance, Subpart C—Livestock Indemnity Program; Subpart E—Livestock Indemnity Program for Contract Growers; and Subpart I—American Indian Livestock Feed Program

Subpart C—Livestock Indemnity Program

The Livestock Indemnity Program for 2000 was authorized by sections 802, 806 and 813 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387, 114 Stat. 1549). The program provided assistance to producers for livestock losses occurring in the period beginning on January 1, 2000, and ending on December 31, 2000.

Subpart E—Livestock Indemnity Program for Contract Growers

The Livestock Indemnity Program for Contract Growers was authorized by title I of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501), which provided an additional $10 million for the livestock assistance authorized by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Pub. L. 106–78, 113 Stat. 1135), and specified that it could be used to provide assistance to contract growers for losses in 1999. Section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387; 114 Stat. 1549) amended Pub. L. 106–78 to extend the program to cover losses that occurred during the period January 1, 1999 through February 7, 2000.

Subpart I—American Indian Livestock Feed Program

The American Indian Livestock Feed Program operated under the authority of section 813(d)(1)(C) of the Agricultural Act of 1970 (7 U.S.C. 1427a), which gave the Secretary of Agriculture the authority to provide assistance to relieve distress caused by a natural disaster. Beginning in 1997, the program provided assistance to Federally-recognized Indian tribes to purchase livestock feed when a livestock feed emergency existed on tribal land. The program was allocated a budget of $12.5 million and operated until the funds were exhausted.

Subparts C, E and I will be removed and reserved to maintain the subpart structure for other provisions in the part.

7 CFR Part 1447—2000 Peanut Marketing Assistance Program

The 2000 Peanut Marketing Assistance Program was authorized by section 204(a) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; 114 Stat. 358). The program made payments to producers of 2000-crop quota and additional peanuts.

7 CFR Part 1464—Tobacco, Subpart C—Tobacco Loss Assistance Program 1999; Subpart D—Tobacco Disaster Assistance Program; Subpart E—Tobacco Loss Assistance Program 2000; Subpart F—Tobacco Loss Assistance Program 2001

Subpart C—Tobacco Loss Assistance Program 1999

The Tobacco Loss Assistance Program 1999 was authorized by section 803 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2000 (Pub. L. 106–78, 113 Stat. 1135), which provided that $328 million of CCC funds were to be used to make payments to States on behalf of persons whose 1999 quota or acreage allotment for tobacco was reduced from the 1998 crop year level due to a drop in the national marketing quota or poundage quota for a kind of tobacco.

Subpart D—Tobacco Disaster Assistance Program

The Tobacco Disaster Assistance Program was authorized by the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501), which appropriated an additional $2.8 million for the Tobacco Loss Assistance Program of 1999 authorized by section 803 of the FY 2000 Agriculture Appropriations Act (Pub. L. 106–78, 113 Stat. 1135), provided that producers who suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold would also be eligible.

Subpart E—Tobacco Loss Assistance Program 2000

The Tobacco Loss Assistance Program 2000 was authorized by section 204(b) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; 114 Stat. 358), which provided that $340 million of CCC funds was to be made available to make direct payments to eligible persons on a farm for which the quantity of quota of eligible tobacco allotted to the farm was reduced from the 1999 crop year to the 2000 crop year.

Subpart F—Tobacco Loss Assistance Program 2001

The Tobacco Loss Assistance Program 2001 was authorized by section 774 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76). The program made payments to persons who owned, controlled or grew tobacco on a farm for which a basic quota or allotment for eligible tobacco was established for the 2001 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*).

7 CFR Part 1469—Wool and Mohair Price Support Program

Subpart A—Recourse Loan Regulations for Mohair

The Mohair Recourse Loan Program was authorized by section 1126 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277) and section 801 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Pub. L. 106–78, 113 Stat. 1135). The program issued recourse loans for mohair that was produced during or before FY 1999 or 2000.

Subpart B—Wool and Mohair Market Loss Assistance Program

The Wool and Mohair Market Loss Assistance Program was authorized by section 204(d) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; 114 Stat. 358). The program made payments to producers of wool and mohair for the 1999 marketing year.

Subpart C—Wool and Mohair Market Loss Assistance Program II

The Wool and Mohair Market Loss Assistance Program II was authorized by section 814 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387, 114 Stat. 1549A–55). The program made payments to producers of wool and mohair for the 2000 marketing year.

7 CFR Part 1476—Cranberry Market Loss Assistance Payment Program

The Cranberry Market Loss Assistance Payment Program was authorized by section 816 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387, 114 Stat. 1549). The program made payments to cranberry growers for the 1999 crop.

7 CFR Part 1477—1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

The 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program was authorized by Sec. 1101 and 1102 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681). The program made payments to producers who incurred losses in quantity or quality of their crops due to disasters for losses to 1998 crops, or losses occurring in at least 3 years for which payments were received for the period 1994 through 1998.

7 CFR Part 1478—1999 Crop Disaster Program

The 1999 Crop Disaster Program was authorized by section 801 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (Pub. L. 106–78, 113 Stat. 1135) and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501). The program made payments to producers who incurred losses in quantity or quality of 1999 crops due to disasters.

7 CFR Part 1479—Harney County Flood Assistance

The Harney County Flood Assistance program was authorized by section 207 of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501). The program made payments to producers in Harney County, Oregon who suffered flood-related production losses during calendar year 1999.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not affect any information collections.

List of Subjects

7 CFR Part 759

Direct payments to small hog operations, Reporting and recordkeeping requirements.

7 CFR Part 777

Disaster payments 1990 crops, Peanuts, Soybeans, Sugar beets, Sugarcane.

7 CFR Part 783

Disaster assistance, Grant programs—agriculture.

7 CFR Part 1411

Oilseeds, Production flexibility fontracts.

7 CFR Part 1439

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

7 CFR Part 1447

Disaster assistance, Emergency assistance, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1464

Imports, Importer assessments, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1469

Loan programs—agriculture, Mohair, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1476

Cranberries, Loan programs—Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1477

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

7 CFR Part 1478

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

7 CFR Part 1479

Crop insurance, Disaster assistance, Floods, Reporting and recordkeeping requirements.

■ Accordingly, under the authorities cited in the preamble, 7 CFR chapters VII and XIV are amended as set forth below:

PARTS 759, 777, 783, 1411, 1447, 1469, 1476, 1477, 1478 and 1479—[REMOVED]

■ 1. Remove parts 759, 777, 783, 1411, 1447, 1469, 1476, 1477, 1478 and 1479.

PART 1439—[AMENDED]

■ 2. Remove and reserve part 1439, subparts C, E and I.

PART 1464—[AMENDED]

■ 3. Remove part 1464, subparts C, D, E and F.

Signed at Washington, DC, on October 8, 2003.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–27086 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. Currently, reinspections and appeal inspections for grade must include a redetermination (*i.e.*, a complete review or examination) of all official factors that may determine the grade, are reported on the original certificate, or are required to be shown. Requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be costly. Furthermore, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. This action will allow interested parties to specify which official factor(s) should be redetermined during the reinspection or appeal inspection service.

EFFECTIVE DATE: November 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Giler, Chief, Policies and Procedures Branch, Field Management Division, at his e-mail address: *John.C.Giler@usda.gov,* or telephone him at (202) 720–1748.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be nonsignificant for purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act

(RFA) (5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 57 export elevators in the United States that could receive official inspection services by GIPSA, delegated States, or designated agencies. Official inspection services are provided by 11 GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 7 delegated States, and 49 designated agencies. Board appeal inspection services are provided by the Board of Appeals and Review. Under provisions of the Act, it is not mandatory for non-export grain to be officially inspected. Further, most users of the official inspection services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule relieves regulatory requirements and improves the efficiency of official inspection services. No additional cost is expected to result from this action.

Requiring all reinspections and appeal inspections for grade to include a complete review of all official factors is not needed by applicants or other parties to transactions, or by official inspection personnel. Furthermore, this requirement often reduces the efficiency of providing official inspection services and may cause unnecessary delays in elevator operations. Allowing applicants to specify which official factor(s) are to be redetermined during the reinspection or appeal inspection service will improve the efficiency of the inspection service due to the time required to analyze all official quality factors.

Prior to developing this rule change, GIPSA considered restricting the action to either appeal inspections or to reinspections. Our analysis was as follows:

1. *Restrict Action to Appeal Inspections.* GIPSA inspectors, who are assigned to specific GIPSA field offices, are the only ones who can perform appeal inspections. During the period of the analysis, GIPSA had fourteen field offices and less than 200 full-time GIPSA inspectors nationwide. Most domestic inspection services are provided by official agencies and not by GIPSA field offices. Therefore, applicants for service usually opt for a reinspection, rather than requesting an appeal inspection. (See Table 1.) The only applicants for service that would benefit from this alternative are those located at the few export ports where GIPSA does onsite original inspection services. GIPSA believes that restricting the action to only appeal inspections would adversely impact the cost benefits and the flexibility associated with the rule. Table 1 illustrates this point.

TABLE 1.—FULL-GRADE INSPECTION SUMMARY, FY 1994–2001

Year	Original inspections			Reinspections			Appeals GIPSA [2]
	OAs[1]	GIPSA [2]	Total	OAs[1]	GIPSA [2]	Total	
FY 1997	1,828,519	119.907	1,948,426	36,698	4,844	41,542	3,140
FY 1998	1,861,718	117,267	1,918,985	29,012	5,058	34,078	3,443
FY 1999	1,750,211	117,916	1,868,127	26,046	4,529	30,575	3,103
FY 2000	1,717,625	110,114	1,827,739	19,778	4,515	24,293	3,103
FY 2001	1,706,817	102,295	1,809,112	22,073	4,797	26,870	3,105

[1] Total performed by all state and private official agencies.
[2] Total performed by all GIPSA field offices.

2. *Restrict Action to Reinspections.* Licensed inspectors employed by State or private official agencies perform most reinspections. GIPSA only performs reinspections at certain export port locations. GIPSA believes that if the action were limited to reinspections, more applicants for service could potentially benefit than limiting the action to appeal inspections. Some applicants, however, might be placed at a competitive disadvantage because their sales contracts require them to request appeal inspections on some or all original inspection services. Additionally, about ten percent of all reinspections are appealed. If the grading procedures for appeals are different from the preceding reinspection, the review inspection process is not similar for all levels of the review inspection process.

The review inspection process should provide all applicants the same opportunity for inspection services. Reinspection services and appeal inspection services should be similar in scope and effect. For this reason, GIPSA decided to make the regulatory change that would favorably affect both the reinspection process and the appeal inspection process.

The cost savings of the proposed action on the grain industry could be very positive. Although it is impossible to estimate an exact dollar savings, the time spent waiting for inspection results could be reduced by at least 50 percent and could, in certain circumstances, exceed 90 percent. Since grain elevators often ''idle'' their load-out operations until the results of a reinspection or appeal are known, domestic shippers could save several hundred dollars in operation and demurrage costs on an average 100-car unit train. The savings for exporters could reach $10,000 for some vessels. For example: If elevator X has a fixed operating cost of $500 an hour and it takes an average of 30 minutes to perform a reinspection or appeal inspection, then each reinspection or appeal will cost the elevator an additional $250 in down time. If the time required to perform the reinspection or appeal is reduced to 15 minutes, the elevator saves $125 per inspection due to the more efficient inspection service. These savings could be multiplied if the time saved on performing the reinspections or appeals allows the elevator to avoid or limit demurrage (*i.e.*, a fee assessed to the elevator for failing to complete the loading of a unit train or ship within a specified period). Currently, the demurrage for railcars can range up to $50 per day per car. The demurrage on export vessels can reach $10,000 a day.

The potential revenue impact of the action on GIPSA and official agencies should not be significant. In the long run, this proposed rule may encourage slightly more reinspection and appeal inspection services because of the increased efficiencies associated with the proposal. However, GIPSA does not believe that its net revenue will

significantly change. GIPSA routinely review the agency's revenue and cost of service as part of its ongoing fee review process. If inspection services and revenue from those services change significantly, GIPSA may determine a change in fees is needed and would do so as part of a fee proposal.

Executive Order 12988 and 12898

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administration procedures that must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,'' GIPSA has considered potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The final rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. This rule will have no effect on protected populations.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in part 800 have been previously approved by OMB and assigned OMB No. 0580–0013.

Background

On August 21, 2002, GIPSA proposed in the **Federal Register** (67 FR 54133) to revise the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. This proposal required comments to be received on or before October 21, 2002. On October 23, 2002, GIPSA published in the **Federal Register** (67 FR 65048) a notice to extend the comment period to November 21, 2002.

GIPSA had proposed this action because requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be costly. Further, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. GIPSA proposed that applicants for service should be allowed to specify the factor(s) that are to be redetermined as part of a reinspection or an appeal inspection service because it provides a more effective and more efficient inspection service and better meets the industry's needs. However, reinspections for grade, appeal and Board appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. This would assure the issuance of an accurate grade. GIPSA also solicited comments regarding the need to show a statement on the certificate that would identify which factors were determined during the review inspection(s) and which were determined on a preceding inspection. GIPSA did not propose to include a required statement as part of the proposal.

Comment Review

GIPSA received 7 comments regarding the proposed action. All comments supported the action. Two comments were from associations involved with graded commodities inspected under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Although their comments supported the proposed change; they asked that GIPSA extend this action to include their graded products (rice and pulses). Rice and pulse inspection is provided under the provisions of the regulations contained in 7 CFR part 868. Since the proposed action involved a change to 7 CFR part 800 and did not address the regulatory provisions of part 868, GIPSA cannot effect a change as part of this action. However, GIPSA will consider such action as part of a separate rulemaking, if deemed appropriate.

GIPSA also received a combined comment from two trade associations that generally supported the proposed revisions with an exception. Their comment expressed a concern that there were no clarifying guidelines published to implement this change which may result in differing interpretations and applications among official agencies and GIPSA field offices. They urged GIPSA to simultaneously publish with the final rule clarifying instructions to official personnel specifying the conditions under which a review of other pertinent factors (factors not requested by the applicant for service), as deemed necessary by official personnel.

In discussing the merits of the proposed rulemaking action, GIPSA noted that while various industry groups had indicated that requiring all factors to be completely reviewed on reinspections and appeal inspections is usually unnecessary and costly, others indicated that the regulation must not allow official personnel to overlook questionable factor results just because the applicant for inspection did not request that certain factors be redetermined during the course of a review inspection. We noted that both of the views had merit and that all official inspections must be accurate. We pointed out that reinspections for grade, appeal and Board appeal inspections for grade could include a review of any pertinent factor(s), as deemed necessary by official personnel. If there was an indication that a factor or factors may have been misgraded or overlooked, then the factors in question would be redetermined. The current policy for review inspections addresses this issue. GIPSA will distribute a program notice to announce the final action and reaffirm the policy.

GIPSA received only one comment regarding the proposal not to use a statement on an official inspection certificate that identifies which factors were reinspected. The comment supported GIPSA's view to not include this type of statement on the inspection certificate.

Final Action

Accordingly, GIPSA is revising the regulatory text in 7 CFR 800.125 to allow requests for reinspections to be limited to one or more grade or condition factors, and is revising the regulatory text in 7 CFR 800.135 to allow requests for appeal inspections to be limited to one or more grade or condition factors.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

PART 800—GENERAL PROVISIONS

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

■ 2. Section 800.125 (b) is revised to read as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

* * * * *

(b) *Kind and scope of request.* A reinspection or review of weighing service is limited to the kind and scope of the original service. If the request

specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request a reinspection of a specific factor(s), official grade and factors, or official criteria. In addition, reinspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013.)

■ 3. Section 800.135 (b) is revised to read as follows:

§ 800.135 Who may request appeal inspection services.

* * * * *

(b) *Kind and scope of request.* An appeal inspection service is limited to the kind and scope of the original or reinspection service; or, in the case of a Board Appeal inspection service, the kind and scope of the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request an appeal or Board Appeal inspection of a specific factor(s), official grade and factors, or official criteria. In addition, appeal and Board Appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013.)

Donna Reifschneider,

Administrator.

[FR Doc. 03–27147 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1902, 1930, 1942, 1944, 1948, 1951, 1955, 1956, 1962, 1965, 1980, and 2045

Loan Payments and Collections

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agencies are revising their internal loan payment and collections regulations to replace the current regulations. This action is necessary since existing regulations are obsolete and do not accurately reflect the current payment and collections methodologies employed by the Agencies. The intended effect is to simplify and update the regulations; update internal control procedures for safeguarding collections; remove references to the Concentration Banking System (CBS) procedures which were eliminated in November 1997; and to add procedures for new electronic payment methods that are currently in use by the Agencies (Preauthorized Debits, FedWire, Customer Initiated Payments, etc.). These amended regulations are to ensure the Agencies' field offices have current guidance on the payment and collection methods available and how to use them.

EFFECTIVE DATE: October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Huntley, Accountant, Office of the Deputy Chief Financial Officer, Policy and Internal Review Division, U.S. Department of Agriculture, STOP 33, PO Box 200011, St. Louis, MO 63120, telephone: (314) 539–6063.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The catalog of Federal Domestic Assistance programs impacted by this action are as follows:

10.404—Emergency Loans
10.405—Farm Labor Housing Loans and Grants
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Very Low to Moderate Income Housing Loans
10.411—Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415—Rural Rental Housing Loans
10.417—Very Low-Income Housing Repair Loans and Grants
10.420—Rural Self-Help Housing Technical Assistance
10.421—Indian Tribes and Tribal Corporation Loans
10.427—Rural Rental Assistance Payments
10.760—Water and Waste Disposal Systems for Rural Communities
10.766—Community Facilities Loans and Grants
10.767—Intermediary Relending Program
10.768—Business and Industry Loans
10.770—Water and Waste Disposal Loans and Grants (Section 306C)
10.854—Rural Economic Development Loans and Grants

Intergovernmental Consultation

Programs with Catalog of Federal Domestic Assistance numbers 10.405, 10.407, 10.411, 10.415, 10.420, 10.421, 10.427, 10.760, 10.766, 10.767, 10.768, 10.770, and 10.854 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs with Catalog of Federal Domestic Assistance numbers 10.404, 10.406, 10.410, and 10.417 are excluded from the scope of Executive Order 12372.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative

proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0184 in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not impose any new information collection requirements from those approved by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agencies have determined that this final action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this 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 rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Discussion of Final Rule

In November 1997 Rural Development discontinued using the Concentration Banking System (CBS). CBS was a collection system in which Rural Development field offices would deposit loan payments and collections they received in Treasury Limited Accounts (TLA's) at local banks. Daily, the concentrator bank (Mercantile Bank in St. Louis, MO) would sweep all local bank TLA's and deposit the funds with Treasury. Rural Development field offices would send the detailed loan payment information to the Rural Development Finance Office (FO) in St. Louis, MO. The FO would reconcile the detailed loan payment data with the deposit information and credit the borrower accounts for the payment.

In September 1997, Rural Development implemented the Rural Housing Service wholesale lockbox system. The wholesale lockbox significantly reduced collections received in field offices and it was determined that CBS was no longer cost effective to continue operating. In addition, since 1997, Rural Development has expanded its use of electronic collection methods (*e.g.*, Preauthorized Debits, Customer Initiated Payments, FedWire, *etc.*).

The Farm Service Agency (FSA) payment collection policies are established in internal agency handbooks. While collections under some FSA programs were processed according to 7 CFR 1951, subpart B, prior to the USDA Reorganization Act, FSA no longer utilizes this subpart.

List of Subjects

7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, Transportation

7 CFR Part 1951

Accounting, Account servicing, Credit, Financial institutions, Foreclosure, Government acquired property, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Reporting requirements, Rural areas, Sale of government acquired property, Surplus government property.

7 CFR Part 1955

Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure.

7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

7 CFR Part 2045

Personnel, volunteers.

■ For the reasons set forth in the preamble, chapter XVIII, title 7, Code of

Federal Regulations is amended as follows:

PART 1902—SUPERVISED BANK ACCOUNTS

■ 1. The authority citation for part 1902 revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, *et seq.*; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—Disbursement of Loan, Grant, and Other Funds

§ 1902.8 [Removed and Reserved]

■ 2. Section 1902.8 is removed and reserved.

Subpart C—[Removed and Reserved]

■ 3. Subpart C of part 1902 consisting of §§ 1902.101 through 1902.150 is removed and reserved.

PART 1930—GENERAL

■ 4. The authority citation for part 1930 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

■ 5. In exhibit H the introductory text of paragraph IX is revised to read as follows:

Exhibit H to Subpart C of Part 1930—Interest Credits on Insured Rural Rental Housing and Rural Cooperative Housing Loans

* * * * *

IX *Project Payments:* With each payment made, the borrower will complete Form RD 1944–29. The agency representative will transmit the payments to the Finance Office.

* * * * *

PART 1942—ASSOCIATIONS

■ 6. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932; 7 U.S.C. 1989; and 16 U.S.C. 1005.

Subpart A—Community Facility Loans

■ 7. Section 1942.7(d) is revised to read as follows:

§ 1942.7 Loan closing.

* * * * *

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with § 1942.17(p)(6) of this subpart.

* * * * *

§ 1942.19 [Amended]

■ 8. Paragraph (h)(6) of section 1942.19 is removed and reserved.

PART 1944—HOUSING

■ 9. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.175 [Amended]

■ 10. Paragraph (e) of section 1944.175 is removed and reserved.

§ 1944.181 [Amended]

■ 11. Paragraph (b)(3)(ii) of section 1944.181 is removed and reserved.

Subpart I—Self Help Technical Assistance Grants

■ 12. Section 1944.426(a)(1) is revised to read as follows:

§ 1944.426 Grant closeout.

(a) * * *

(1) The grantee will immediately refund to Rural Development any balance of grant funds that are not committed for the payment of authorized expenses.

* * * * *

PART 1948—RURAL DEVELOPMENT

■ 13. The authority citation for part 1948 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 note.

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

■ 14. Section 1948.90(b)(4) is revised to read as follows:

§ 1948.90 Land transfers.

* * * * *

(b) * * *

(4) Proceeds derived from the sale of land acquired or developed through the use of a grant provided under this subpart must be divided between the grantee and Rural Development on a pro rata basis. A grantee may not recover its cost from sale proceeds to the exclusion of Rural Development. The amount to be returned to Rural Development is to be computed by applying the percentage of the Rural Development grant participation in the total cost of the project to the proceeds from the sale.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

■ 15. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart A—Account Servicing Policies

§ 1951.6 [Removed and Reserved]

■ 16. Section 1951.6 is removed and reserved.

Subpart B—[Removed and Reserved]

■ 17. Subpart B consisting of §§ 1951.51 through 1951.55 is removed and reserved.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

■ 18. The introductory text of section 1951.221 is revised to read as follows:

§ 1951.221 Collections, payments and refunds.

Payments and refunds are handled in accordance with the following:

* * * * *

Subpart J—Management and Collection of Nonprogram (NP) Loans

■ 19. The first sentence of section 1951.455(e) is revised to read as follows:

§ 1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

* * * * *

(e) *Downpayment.* A downpayment must be collected at closing. * * *

* * * * *

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.506 [Amended]

■ 20. Paragraphs (b) and (c) of section 1951.506 are removed and reserved.

PART 1955—PROPERTY MANAGEMENT

■ 21. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Management of Property

■ 22. Section 1955.55(e) is revised to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

* * * * *

(e) *Income and costs.* Income received from the property will be applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost.

* * * * *

■ 23. In section 1955.62 the introductory text of paragraph (b)(1) is revised to read as follows:

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

* * * * *

(b) * * *

(1) If a reasonable amount can likely be realized by the agency from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholders less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted and applied in the following order:

* * * * *

■ 24. In section 1955.66 the introductory text of paragraph (l) is revised to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(l) *Lease income.* Lease proceeds will be applied as follows:

* * * * *

Subpart C—Disposal of Inventory Property

■ 25. Section 1955.109(c) is revised to read as follows:

§ 1955.109 Processing and closing (CONACT).

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to the Agency.

* * * * *

■ 26. Section 1955.117(d) is revised to read as follows:

§ 1955.117 Processing credit sales on program terms (housing).

* * * * *

(d) *Downpayment.* When a downpayment is made, it will be collected at closing.

* * * * *

■ 27. In section 1955.118 paragraphs (a) and (b)(4) are revised to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales.* Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser.

(b) * * *

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing.

* * * * *

§ 1955.120 [Amended]

■ 28. The last sentence in section 1955.120 is removed.

■ 29. Section 1955.122(e) is revised to read as follows:

§ 1955.122 Method of sale (chattel).

* * * * *

(e) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented.

* * * * *

■ 30. Section 1955.123(b) is revised to read as follows:

§ 1955.123 Sale procedures (chattel).

* * * * *

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order or personal check (not in excess of $500) made payable to the agency. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form RD 1955–45 or Form RD 1955–46 where the chattel is sold jointly with real estate by regular sale.

* * * * *

■ 31. Section 1955.130(e)(2) is revised to read as follows:

§ 1955.130 Real estate brokers.

* * * * *

(e) * * *

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by the agency as full liquidated damages.

* * * * *

§ 1955.139 [Amended]

■ 32. In section 1955.139 the last sentence in paragraph (a)(2) and the second sentence in paragraph (a)(3)(iv) are removed.

■ 33. The first sentence of Section 1955.147(e) is revised to read as follows:

§ 1955.147 Sealed bid sales.

* * * * *

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages.

* * *

* * * * *

§ 1955.148 [Amended]

■ 34. In Section 1955.148 the last three sentences are removed.

PART 1956—DEBT SETTLEMENT

■ 35. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement-Farm Loan Programs and Multi-Family Housing

§ 1956.85 [Amended]

■ 36. Paragraph (a)(2) of section 1956.85 is removed and reserved.

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.139 [Amended]

■ 37. Paragraph (b) of section 1956.139 is removed and reserved:

§ 1956.143 [Amended]

■ 38. Paragraph (g)(2) of section 1956.143 is removed and reserved.

PART 1962—PERSONAL PROPERTY

■ 39. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.49 [Amended]

■ 40. Paragraph (e)(3)(ii) of section 1962.49 is removed and reserved.

PART 1965—REAL PROPERTY

■ 41. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Security Servicing for Multiple Housing Loans

■ 42. Section 1965.61(a) is revised to read as follows:

§ 1965.61 General loan servicing requirements.

(a) *Payments.* Payments will be handled in accordance with subpart A of part 1951 of this chapter, and subparts D and E of part 1944 of this chapter.

* * * * *

PART 1980—GENERAL

■ 43. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989.

Subpart E—Business and Industrial Loan Program

§ 1980.461 [Removed and Reserved]

■ 44. Section 1980.461 is removed and reserved.

PART 2045—GENERAL

■ 45. The authority citation for part 2045 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart JJ—Rural Development—Utilization of Gratuitous Services

■ 46. The last sentence of section 2045.1754(c) is revised to read as follows:

§ 2045.1754 Scope of gratuitous services performed.

* * * * *

(c) * * * Such persons, except Construction Inspectors may, when under direct supervision of County Supervisors, act as Collection Officers and be allowed to use receipt books.

Dated: October 16, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

Dated: October 10, 2003.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Service.

[FR Doc. 03–27046 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 316

[CIS No. 2131–03]

RIN 1615–AA72

Adding and Removing Institutions to and From the List of Recognized American Institutions of Research

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Section 316 of the Immigration and Nationality Act (Act) generally requires that in order for lawful permanent resident aliens to be eligible for naturalization, they must reside continuously within the United States for at least 5 years immediately preceding their application for naturalization. However, under certain circumstances resident aliens and their dependents who expect to be continuously absent from the United States for one year or more because of work at one of the American institutions of research recognized as such under the provisions of the Act may be given permission to be absent without interrupting the continuous residence requirement for naturalization. This rule amends the Department of Homeland Security regulations by adding Rutgers University, Indiana University, and Harvard University to the list of American institutions of research, recognized for the purpose of preserving residence in the United States for naturalization eligibility. This rule also removes the dissolved Harvard Institute for International Development from the same list.

DATES: This final rule is effective October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Adjudications Officer, Business Process and Reengineering Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Washington, DC 20536; telephone (202) 514–0788.

SUPPLEMENTARY INFORMATION: Prior to the transfer of the functions of the former Immigration and Naturalization Service (Service) to the Department of Homeland Security in March 2003, district directors and regional commissioners of the Service made decisions on requests for recognition as an American Institution of Research. (1) Based on the findings of the former Newark District Director, the Acting Regional Director of the Eastern Region determined and ordered on September 30, 1999, that Rutgers University, the State University of New Jersey, is an American institution of research for the purpose of preserving residence in the United States for naturalization. (2) Based on the findings of the former Chicago District Director, the Regional Director of the Central Region determined and ordered on January 4, 2001, that Indiana University is an American institution of research for the purpose of preserving residence in the United States for naturalization. (3) Based on the findings of the former Boston District Director, the Regional Director of the Eastern Region determined and ordered on March 1, 2001, that Harvard University is an American institution of research for the purpose of preserving residence in the United States for naturalization.

Accordingly, the regulations are amended by adding those institutions to the list of recognized American institutions of research, thus making their qualified employees eligible to apply for the continuity of residence exemption benefits of section 316(b) of the Act.

In addition, based on the findings of the former Boston District Director, the Regional Director of the Eastern Region determined and ordered on March 1, 2001, that the Harvard Institute for International Development (HIID) is no longer an American institution of research for the purpose of preserving residence in the United States for naturalization, since Harvard University had dissolved the HIID on June 30th, 2000. Employees who had been conducting research under the HIID were absorbed into other programs within Harvard University. Accordingly, the regulations are amended by removing this institution from the list of recognized American institutions of research.

Good Cause Exception

This rule is being promulgated as a final rule. The Department has determined that good cause exists under 5 U.S.C. 553(b)(B) to make this rule effective on the date of publication in the **Federal Register** because prior notice and comment in this case is unnecessary and contrary to the public interest. The Department believes it is unnecessary because this rule consists of an update of an existing list in 8 CFR 316.20 of organizations that have already been designated by agency determinations made pursuant to the Immigration and Nationality Act. The updating of the list is a purely technical publication action that does not fundamentally impact any public right. Previous updates of this list have not elicited public comment, nor would any comment, if submitted, affect the composition of the list. For that reason updates of the list in 8 CFR 316.20 have always been and should continue to be published as a final rule.

To delay publication of the list as a final rule would be contrary to the public interest. Prospective applicants for naturalization whose eligibility depends on an up-to-date listing of recognized American institutions of research are in urgent need of relief

because of long delays in consequence of the agency's transition from the Department of Justice to the Department of Homeland Security. Their access to the benefits of these agency designations is adversely impacted by any delay in publication of the updated list of recognized institutions. For these reasons, the Department finds that there is good cause to adopt this rule without the prior notice and comment period ordinarily required under 5 U.S.C. 553(b).

Pursuant to 5 U.S.C 553(d)(3), the Department is making this rule final and effective upon publication because of the same good cause exception described above.

Regulatory Flexibility Act

I have reviewed this regulation in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), and by approving it, I certify that the rule will not have an effect on small entities as that term is defined in 5 U.S.C. 601(6). This rule relates to agency management and merely updates the existing institutional listings currently contained in Title 8 of the Code of Federal Regulations.

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

Executive Order 12866

This rule is not considered by the Department of Homeland Security, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule does not need to be submitted to the Office of Management and Budget for review in accordance with this Executive Order.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

List of Subjects in 8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

■ Accordingly, part 316 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

■ 1. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1427, 1443, 1447; 8 CFR part 2.

§ 316.20 [Amended]

■ 2. In § 316.20, paragraph (a) is amended by:

■ a. Adding the American institution of research ''Harvard University (research and educational programs only)'' immediately after ''Graduate Faculty of Political and Social Science Division of the New School for Social Research, New York, N.Y.'';

■ b. Removing the ''Harvard Institute for International Development.''

■ c. Adding the American institution of research ''Indiana University at Bloomington, Indianapolis, South Bend, Northwest, Kokomo, Southeast, East, and Fort Wayne'' immediately after ''Humboldt State University, School of Natural Resources, Wildlife Management Department'; and

■ d. Adding the American institution of research ''Rutgers University, the State University of New Jersey'' immediately after ''Rockefeller Foundation'.

Dated: October 21, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–27151 Filed 10–27–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–44–AD; Amendment 39–13348; AD 2003–22–01]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Aerostar Aircraft Corporation (Aerostar) Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes that incorporate supplemental type certificate (STC) SA1608NM (Machen Inc. Kit No. 76–1 Auxiliary Fuel Tank). This AD requires you to repetitively inspect all auxiliary fuel transfer pumps for leaks, seeping, or any sign of staining. This AD also requires you to replace any pump found with leaks, seeping, and any sign of staining. This AD is the result of reports of fuel leaking from the fuel transfer pumps installed below the auxiliary fuel tank. We are issuing this AD to detect and correct leaks in the auxiliary fuel transfer pumps, which could result in fire or explosion in the cargo/passenger compartment. Such a condition could result in loss of the airplane.

DATES: This AD becomes effective on November 17, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 17, 2003.

We must receive any comments on this AD by December 23, 2003.

ADDRESSES: Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No.

2003–CE–44–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Machen Inc., 10555 Airport Drive, Hayden Lake, Idaho 83835; telephone: (208) 762–7814; facsimile: (208) 762–8349.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? We have received reports of fuel leaks in the fuel transfer pumps on the auxiliary fuel tank installed in the baggage compartment per STC SA1608NM on Aerostar Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes. The leaks were discovered through normal maintenance.

The problem is the result of fuel seeping through the wire insulation on the auxiliary fuel tank transfer pump and running out through the knife splice connection.

What are the consequences if the condition is not corrected? This condition, if not detected and corrected, could result in fire or explosion in the cargo/passenger compartment. Such a condition could result of loss of the airplane.

Is there service information that applies to this subject? Machen Inc. has issued Service Bulletin SB76–009, dated August 1, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—Repetitively inspecting the auxiliary fuel tank transfer pumps for leaks, seeping, and any sign of staining; and

—Replacing any pump found with leaks, seeping, and any sign of staining.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Aerostar Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes of the same type design with STC SA1608NM installed, this AD is being issued to detect and correct leaks in the auxiliary fuel transfer pumps, which could result in fire or explosion in the cargo/passenger compartment. Such a condition could result of loss of the airplane.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment prior to the issuance of the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–44–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 the 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–CE–44–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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–22–01 Aerostar Aircraft Corporation: Amendment 39–13348; Docket No. 2003–CE–44–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 17, 2003.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models that are:

(1) Modified to incorporate supplemental type certificate (STC) SA1608NM (Machen Inc. Kit No. 76–1, Auxiliary Fuel Tank); and

(2) certificated in any category.

Model	Serial Nos.
PA–60–600	All.
PA–60–601	All.
PA–60–601P	All.
PA–60–602P	All.
PA–60–700P	All.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of fuel leaking from the fuel transfer pumps. We are issuing this AD to detect and correct leaks in the auxiliary fuel transfer pumps, which could result in fire or explosion in the cargo/passenger compartment. Such a condition could result of loss of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect all auxiliary fuel tank transfer pumps for leaking, seeping, and any signs of staining.	Within the next 10 hours time-in-service (TIS) after November 17, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 50 hours TIS.	In accordance with Machen Inc. Service Bulletin SB 76–009, dated August 1, 2003.
(2) Replace any auxiliary fuel transfer pump that is leaking, seeping, or has any signs of staining.	Prior to further flight after any inspection required in paragraph (e)(1) of this AD in which leaking, seeping, or any signs of staining is found.	In accordance with Machen Inc. Service Bulletin SB 76–009, dated August 1, 2003.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Seattle ACO, FAA. For information on any already approved alternative methods of compliance, contact Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW, Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.

Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Machen Inc. Service Bulletin SB 76–009, dated August 1, 2003. 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 may get a copy from Machen Inc., 10555 Airport Drive, Hayden Lake, Idaho 83835; telephone: (208) 762–7814; facsimile: (208) 762–8349. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Issued in Kansas City, Missouri, on October 17, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26833 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–33–AD; Amendment 39–13351; AD 2003–22–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524 series turbofan engines with certain part number (PN) and serial number (SN) low pressure (LP) compressor fan blades installed. This AD requires inspection of certain LP compressor fan blade roots and replacement or repair of blades if damage is not within acceptable limits. This AD is prompted by the discovery of damaged LP compressor fan blade roots resulting from entrapment of ceramic polishing media between the blade roots and the masking boot during blade root repair. We are issuing this AD to prevent possible uncontained multiple LP compressor fan blade release, and damage to the airplane.

DATES: Effective November 12, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 12, 2003.

We must receive any comments on this AD by December 29, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *By mail:* The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9–ane–adcomment@faa.gov*

You can get the service information referenced in this AD from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on certain RR RB211–524 series turbofan engines. The CAA received

reports of LP compressor fan blade root damage due to entrapment of ceramic polishing media between the blade roots and masking boots while doing RR Repair Scheme FRS5712, subtask 72–31–11–380–119.

Relevant Service Information

We have reviewed and approved the technical contents of Rolls-Royce plc Mandatory Service Bulletin (MSB) No. RB.211–72–D184, Revision 3, dated December 20, 2002, that provides procedures for inspection of blade roots of LP compressor fan blades that were repaired using RR Repair Scheme FRS5712, subtask 72–31–11–380–119, and replacement or repair of blades if damage is not within acceptable limits. The CAA classified this service bulletin as mandatory and issued AD 005–04–2001 in order to ensure the airworthiness of these Rolls-Royce plc engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these RR RB211–524 series turbofan engines, the possibility exists that these engine models could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other engines of the same type design. We are issuing this AD to prevent possible uncontained multiple LP compressor fan blade release, and damage to the airplane. This AD requires inspection of blade roots of LP compressor fan blades that were repaired using RR Repair Scheme FRS5712, subtask 72–31–11–380–119, and replacement or repair of blades if damage is not within acceptable limits. The inspections are to be performed by following a compliance schedule based on engine model and cycles accumulated.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–33–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

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 the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. 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–33–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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–22–04 Rolls-Royce plc: Amendment 39–13351. Docket No. 2003–NE–33–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 12, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–524G2–19,–524G2–T–19, –524G3–19, –524G3–T–19, –524H2–19, –524H2–T–19, –524H–36, and ''524–H–T–36 turbofan engines with low pressure (LP) compressor fan blades part numbers (PNs) and serial numbers (SNs) as listed in Table 1 of RR Mandatory Service Bulletin (MSB) No. RB.211–72–D184, Revision 3, dated December 20, 2002, installed. These engines are installed on, but not limited to, Boeing 747 and 767 series airplanes.

Unsafe Condition

(d) This AD was prompted by the discovery of damaged LP compressor blade roots resulting from entrapment of ceramic polishing media between the blade roots and the masking boot during blade root repair. We are issuing this AD to prevent possible uncontained multiple LP compressor fan blade release, and damage to the airplane.

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.

Reworked LP Compressor Fan Blades Not Affected

(f) LP compressor fan blades listed in Table 1 of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002, that have been reworked using Service Bulletin (SB) No. RB.211–72–D051, dated August 23, 2000, or SB No. RB.211–72–D020, dated April 19, 2000, are considered to have had all damage addressed during rework and are not affected by this AD.

Removal and Inspection of LP Compressor Fan Blades

(g) Using the compliance thresholds in Table 1 of this AD, remove LP compressor fan blades and inspect the blade roots of all LP compressor fan blades listed by PN and SN in Table 1 of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002. Follow the inspection criteria in paragraph 3.B. of the Accomplishment Instructions of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002.

TABLE 1.—LP COMPRESSOR FAN BLADE INSPECTION COMPLIANCE THRESHOLDS

Engine models	Compliance thresholds
(1) RB211–524G2–19, –524G2–T–19, –524G3–19, –524G3–T–19, –524H–36, –524H–T–36.	(i) For blades exceeding 2,000 cycles-since-incorporation of RR Repair Scheme FRS5712, subtask 72–31–11–380–119, before further flight. (ii) For blades with fewer than 2,000 cycles-since-incorporation of RR Repair Scheme FRS5712, subtask 72–31–11–380–119, before accumulating 2,000 cycles-since-incorporation of the Repair Scheme.
(2) RB211–524H–36 and RB211–524–H–T–36 Engines on Short Haul Operation Airplanes.	Before further flight.
(3) RB211–524H2–19 and –524H2–T–19	Before accumulating 800 cycles-since-incorporation of RR Repair Scheme FRS5712, subtask 72–31–11–380–119, or before December 2005, whichever occurs sooner.
(4) RB211–524H–36 and RB211–524–H–T–36 Engines On Long Haul Operation Airplanes.	Before accumulating 870 cycles-since-incorporation of RR Repair Scheme FRS5712, subtask 72–31–11–380–119, or before December 2005, whichever occurs sooner.

Removal From Service or Repair of LP Compressor Fan Blades That Do Not Pass Inspection

(h) Remove from service LP compressor fan blades that do not pass the inspection criteria in paragraph 3.B. of the Accomplishment Instructions of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002, or repair blades. Follow paragraph 3.B.(3)(b) of the Accomplishment Instructions of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002 to repair blades.

Prohibition of LP Compressor Fan Blades Not Inspected or Repaired

(i) After the effective date of this AD, do not install any blade that was removed as specified in paragraph (g) of this AD, unless the blade has passed inspection or has been repaired using paragraph 3.B. of the Accomplishment Instructions of RR MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002.

Definition

(j) For the purpose of this AD, a Long Haul Operation is defined as an operation with an average stage length of more than five hours.

Alternative Methods of Compliance

(k) 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

(l) You must use Rolls-Royce MSB No. RB.211–72–D184, Revision 3, dated December 20, 2002, to perform the blade inspection and repair 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; telephone: International Access Code 011, Country Code 44, 1332–249428; fax International Access Code 011, Country Code 44, 1332–249223. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Related Information

(m) CAA airworthiness directive 005–04–2001, dated April 20, 2001, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 20, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–26916 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15887 Airspace Docket No. 03–AWP–11]

Establishment of Class D Airspace; Ramona, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action establishes a Class D surface area at Ramona, CA, within a 4-mile radius of the airport from the surface up to, but not including, 3,800 feet mean sea level (MSL). The construction of a non-federal contact tower at Ramona airport has made this action necessary. This action also corrects the coordinates for Ramona airport.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, August 26, 2003, the FAA proposed to amend 14 CFR part 71 to establish Class D airspace at Ramona, CA. (68 FR 51205). The proposal was to establish a Class D surface area within a 4-mile radius of the airport from the surface up to, but not including, 3,800 feet mean sea level (MSL). This action was due to the construction of a non-federal contract tower and to accommodate aircraft executing instrument flight procedures into and out of Ramona Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1 The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Ramona, CA, to accommodate aircraft executing instrument flight procedures into and out of Ramona Airport. The area will be depicted on appropriate aeronautical charts. This action also corrects the coordinates for Ramona published in the Notice of Proposed Rulemaking (68 FR 51205).

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Ramona, CA [New]

Ramona, CA

(Lat. 33°02′21″ N., long. 116°54′55″ W.)

That airspace extending upward from the surface to but not including 3,800 feet MSL within a 4-mile radius of the Ramona Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on October 8, 2003.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–27175 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 031016260–3260–01; I.D. 091603A]

15 CFR Part 902

RIN 0648–AR71

NOAA Information Collection Requirements; Update and Correction

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

ACTION: Final rule; technical amendment.

SUMMARY: This final rule, technical amendment, updates and corrects Office of Management and Budget (OMB) control numbers and related regulatory citations for NMFS information collection requirements. Under the Paperwork Reduction Act (PRA), agencies are required to display a current control number assigned by the Director of OMB for each agency information requirement. The intent of this action is to update and correct the NOAA inventory of control numbers so that the inventory reflects the valid OMB control number with its associated regulatory citation for each NMFS information collection requirement.

DATES: This regulation is effective October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, Fishery Management Specialist, (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act, Part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. Portions of 15 CFR 902.1(b) reflect expired or incorrect OMB control numbers. In some cases, the regulations cited have previously been removed from the CFR and, therefore, there are no approved OMB control numbers for those regulations. In addition, the OMB control numbers for some requirements have changed but the obsolete numbers are still reflected in the inventory. Also, when new collection-of-information requirements were previously approved, the final rule implementing the collection-of-information requirement did not update 15 CFR part 902.

Therefore, through this final rule, technical amendment, the inventory of OMB approved control numbers is corrected and updated to reflect the currently valid control numbers. All of the collection-of-information requirements displayed in § 902.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of title 50. Therefore, this final rule, technical amendment does not involve any new reporting or recordkeeping requirements.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and

Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the AA waives prior notice and opportunity for public comment because this action is a rule of agency organization, procedure or practice. Because this rule makes only minor, non-substantive changes and does not change operating practices in any fishery, it is unnecessary to provide for prior notice and opportunity for public comment. Because this final rule, technical amendment does not constitute a substantive rule, pursuant to 5 U.S.C. 553(d), this final rule is not subject to the 30–day delay in effectiveness. This final rule, technical amendment makes no substantive changes to existing regulations, but rather updates OMB control numbers associated with NMFS information collections, all of which OMB has previously approved during implementation of regulations appearing in the individual parts of title 50 of the Code of Federal Regulations.

Because prior notice and opportunity for public comment are not required 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. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule is exempt from review under Executive Order 12866.

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 subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: October 21, 2003.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR chapter IX is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows: Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. Removing the following CFR parts or sections in the left hand column and their related current OMB control number(s) in the corresponding positions in the right hand column, for: 50 CFR 216.24(d), 216.24(e), 216.114, 216.155, 222.201(c) and (d), 222.202, 222.204 (f) and (g), 229.7, 663.6, 679.4, 679.4(b)(5)(vi), 679.4(k)(6)(iii), 679.4(k)(6)(iv), 679.4(k)(7)(iii), 679.5, 679.5(n)(2)(iii), 679.24, 679.28, 679.28(f)(3)(i), 679.28(f)(3)(ii), 679.28(f)(3)(iii), 679.28(f)(4), (f)(5), and (f)(6), and 679.32;

■ b. Adding the CFR part or sections in numerical order in the left hand column and its related OMB control number(s) in the corresponding right hand column in numerical order: 50 CFR 216.26, 223.203(b), 229.4, 260.15, 260.36, 260.37, 260.96, 260.97, 300.107, 600.745, 679.4(b), (f), (h), and (i), 679.4(d) and (e), 679.4(l), 679.5(a), 679.5(b), (c), (d), (g), (h), (i), (j), (k), and (m), 679.5(e), (f), and (o), 679.5(l)(1), (l)(2), (l)(3), (l)(4), and (l)(5), 679.5(l)(7), 679.5(n), 679.5(p), 679.24(a), 679.24(e), 679.28(b) and (d), 679.32(c), 679.32(d), 679.32(f), 679.45, 679.61(c) and (f), 679.61(d) and (e), 679.62(b)(3) and (c) and 679.63(a)(2); and,

■ c. Revising the control number entries in the right hand column for the following parts or section identified in the left hand column: 50 CFR 229.5, 300.34, 300.35, 300.108(a), 300.108(c), 300.125, 622.4, 622.18, 635.5(c), 640.6, 648.8, 648.9, 648.10, 648.58, 648.80, 648.84, 654.6, 660.16, 660.24, 660.25, 660.305, 660.322, 679.4(g), 679.40, 679.43, and 679.50 to read as follows:

(b) *Display*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
216.26	–0084
* * * *	*
223.203(b)	–0399
* * * *	*
229.4	–0293
229.5	–0292
* * * *	*
260.15	–0266
260.36	–0266
260.37	–0266
260.96	–0266
260.97	–0266
* * * *	*
300.34	–0218
300.35	–0361
* * * *	*
300.107	–0194
300.108(a)	–0368
300.108(c)	–0367
* * * *	*
300.125	–0358
* * * *	*
600.745	–0309
* * * *	*
622.4	–0205
* * * *	*
622.18	–0205
* * * *	*
635.5(c)	–0328
* * * *	*

[FR Doc. 03–27181 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 20

[Docket Nos. 2002N–0276 and 2002N–0278]

Interim Final Regulations Implementing Title III, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—Section 305: Registration of Food Facilities and Section 307: Prior Notice of Imported Food Shipments; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Public meetings on interim final rules.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of domestic meetings to discuss

the interim final regulations, issued on October 10, 2003, to implement two sections of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) regarding the registration of food facilities and prior notice of imported food shipments. The purpose of these meetings is to provide information on the rules to the public and to provide the public an opportunity to ask questions of clarification.

DATES: See table 1 of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: See table 1 of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marion V. Allen, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: *CFSAN-FSS@cfsan.fda.gov* for general questions about the meeting.

SUPPLEMENTARY INFORMATION:

I. Background

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act (Public Law 107–188), which was signed into law on June 12, 2002. On October 10, 2003, FDA published in the **Federal Register** two interim final rules to implement sections 305 (Registration of Food Facilities) and 307 (Prior Notice of Imported Food Shipments) of the Bioterrorism Act. During the public meetings, FDA will explain the interim final rules on the registration of food facilities and prior notice of imported food shipments, and the agency will answer questions of clarification.

Information about the public meetings, contact information, and the provisions of the Bioterrorism Act under FDA's jurisdiction can be accessed at *http://www.fda.gov/oc/bioterrorism/bioact.html.*

II. Interim Final Rules

The interim final rules that will be discussed at the public meetings announced in this document concern the following provisions of the Bioterrorism Act:

Section 305: Registration of Food Facilities—The Bioterrorism Act requires the owner, operator, or agent in charge of domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA no later than December 12, 2003. Farms, restaurants, retail food establishments, nonprofit food establishments that prepare or serve food directly to the consumer, and fishing vessels not engaged in processing, as defined in 21 CFR 123.3(k), are exempt from this requirement. Also exempt are foreign facilities if the food from the facility undergoes further processing or packaging by another facility outside of the United States and such processing is of more than a de minimis nature.

Section 307: Prior Notice of Imported Food Shipments—The Bioterrorism Act specifies that beginning on December 12, 2003, FDA must receive prior notice of each article of food imported or offered for import into the United States.

III. Registration for the Meetings

All attendees are asked to register for these meetings by submitting registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) at least 2 workdays before the particular meeting date. You may register online at *http://www.cfsan.fda.gov/dms/fsbtac15.html* or by fax at 202–479–6801. Space is limited, and registration will be closed at a site when maximum seating capacity for that site is reached (between 100 and 200 persons per site).

If you need special accommodations due to a disability, please notify the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

IV. Dates, Times, and Addresses of Public Meetings

A list of dates, times, and addresses for the domestic meeting is provided in table 1:

TABLE1.—NOVEMBER 2003, DOMESTIC OUTREACH MEETINGS—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS

Meeting Address	Date and Local Time	FDA Contact Person
DETROIT: Marriott Detroit Metro Airport, 30559 Flynn Rd., Romulus, MI 48174	Wednesday, November 12, 2003, 9 a.m. to 12 noon	Marion Allen
LOS ANGELES: Hilton-Los Angeles Airport, 5711 West Century Blvd., Los Angeles, CA	Friday, November 14, 2003, 9 a.m. to 12 noon	Do.
JAMAICA QUEENS: La Guardia Airport Marriott Hotel, Ditmars Blvd., East Elmhurst, NY 11369	Monday, November 17, 2003, 9 a.m. to 12 noon	Do.
SAN ANTONIO: Westin Riverwalk, 420 West Market St., San Antonio, TX 78205	Tuesday, November 18, 2003, 9 a.m. to 12 noon	Do.
MIAMI: Marriott Miami Airport, 1201 NW LeJeune Rd. Miami, FL	Thursday, November 20, 2003, 9 a.m. to 12 noon	Do.
BALTIMORE: Hyatt Regency, 300 Light St., Baltimore, MD	Friday, November 21, 2003, 9 a.m. to 12 noon	Do.

Dated: October 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27182 Filed 10–23–03; 3:49 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket Nos. 1994N–0418 and 1996P–0276]

Medical Devices: Cardiovascular Devices: Reclassification of the Arrhythmia Detector and Alarm

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying arrhythmia detector and alarm devices from class III to class II (special controls). This device is used to monitor an electrocardiogram (ECG) and to produce a visible or audible signal or alarm when an atrial or ventricular arrhythmia occurs. An atrial or ventricular arrhythmia occurs during a premature contraction or ventricular fibrillation. FDA is reclassifying this device based on new information contained in reclassification petitions regarding the device submitted by the Health Industry Manufacturers Association (HIMA) (now known as Advamed), Quinton Instrument Co., and Zymed Medical Instrumentation. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for this device. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (the FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

DATES: This rule is effective November 28, 2003.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 177.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et. seq.*) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360(e)) established three categories (classes) of devices as a function of the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as ''preamendments devices.'' FDA classifies these devices after the agency initiates the following procedures: (1) Receives a recommendation from a device classification panel (an FDA advisory committee), (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device, and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as ''postamendments devices.'' These devices are classified automatically by statute (section 513(f)) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless FDA initiates the following procedures: (1) Reclassifies the device into class I or II, (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, or (3) issues, under section 513(i) of the act, an order finding the device as substantially equivalent to a predicate device that does not require premarket approval. As delineated in section 510(k) of the act (21 U.S.C. 360(k)) and under part 870 of the regulations (21 CFR part 870), FDA determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures. Through premarket notification procedures, a person may, without submission of a premarket approval application (PMA), market a preamendments device that has been classified into class III until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(e) of the act governs reclassification of classified preamendments devices. This section provides that FDA may, by rulemaking, reclassify a device based on ''new information.'' Under section 513(e) of the act, FDA can initiate a reclassification or an interested person can petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the act, includes information developed after the date of the device's original classification. This information could include a reevaluation of the original data or information from the time of the original classification that was not presented, available, or deemed applicable. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v.*Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously used by FDA is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, *supra*, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–391 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, *supra*, 422 F.2d at 951.) Whether data before the FDA are past or new data, the ''new information'' to support reclassification under section 513(e) of the act must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and § 860.7(c)(2) (21 CFR 860.7(c)(2)) (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. When reclassifying a device, FDA can only consider valid scientific evidence that is publicly available. Publicly available information excludes trade secret and confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).) Section 520(h)(4) of the act provides that 6 years after the date FDA has approved an application FDA may, for reclassification of a device, use certain information contained in a PMA. Useable information includes data from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device. This information does not include descriptions of methods of manufacture, product composition, and other trade secrets.

II. Regulatory History of the Device

In the **Federal Register** of December 13, 2002 (67 FR 76706), FDA proposed to reclassify arrhythmia detector and alarm devices from class III to class II (special controls). These devices are used to monitor an electrocardiogram and to produce a visible or audible signal or alarm when an atrial or ventricular arrhythmia occurs. Concurrently, FDA proposed to separate the identification of arrhythmia detectors and alarms from automated external defibrillators (AEDs). FDA decided to address, at a later date, the possible reclassification of AEDs, devices primarily designed for a different intended use (i.e., to correct an arrhythmia) than the arrhythmia detector and alarm. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of intent to reclassify AEDs.

Also in the **Federal Register** of December 13, 2002 (67 FR 76749), FDA announced the availability of a guidance document that FDA intended would serve as the special control for arrhythmia detector and alarm devices, if FDA reclassified them. FDA gave interested persons until March 13, 2002, to comment on the proposed regulation and guidance document. FDA did not receive any comments on the proposed regulation, but did receive one comment on the guidance document.

III. Summary of Final Rule

In accordance with § 860.84(g)(2) (21 CFR 860.84(g)(2)) of the regulations, FDA is reclassifying arrhythmia detector and alarm devices into class II. To ensure clarity, FDA is revising the classification of arrhythmia detector and alarm devices by separating these devices from AEDs and establishing a separate classification regulation for AEDs (§ 870.5310). The guidance document entitled ''Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm'' will serve as the special control for arrhythmia detector and alarm devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance document. Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for the device will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA believes that review of performance characteristics and labeling can ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission before marketing the device.

IV. Analysis of Comments and FDA's Response

FDA received no comments on the proposed rule. Therefore, FDA is codifying the reclassification and special controls guidance by amending § 870.1025. FDA is also adding a separate regulation for AEDs (§ 870.5310). For the convenience of the reader, FDA is also adding § 870.1 to inform the reader where to find guidance documents referenced in part 870.

V. Environmental Impact

FDA has determined under 21 CFR 25.34(b) that this reclassification action does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives. If regulation is necessary, a regulatory agency must plot a course that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes that the final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Additionally, as defined by the Executive order, the final rule does not constitute a significant regulatory action. As a result, the final rule is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Manufacturers of class III arrhythmia detectors and alarms currently are required to submit premarket notifications. The guidance document reflects existing FDA practice in the review of these premarket notifications. FDA expects that manufacturers of cleared arrhythmia detectors and alarms will not have to take any additional action in response to this rule. This rule will help expedite the review process for any new manufacturers of these devices. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order. As a result, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that the final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget, according to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 870

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2.Section 870.1 is amended by adding paragraph (e) to read as follows:

§ 870.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html.*

■ 3. Section 870.1025 is revised to read as follows:

§ 870.1025 Arrhythmia detector and alarm (including ST-segment measurement and alarm).

(a) *Identification.* The arrhythmia detector and alarm device monitors an electrocardiogram and is designed to produce a visible or audible signal or alarm when atrial or ventricular arrhythmia, such as premature contraction or ventricular fibrillation, occurs.

(b) *Classification.* Class II (special controls). The guidance document entitled ''Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm'' will serve as the special control. See § 870.1 for the availability of this guidance document.

■ 4. Section 870.5310 is added to subpart F to read as follows:

§ 870.5310 Automated external defibrillator.

(a) *Identification.* An automated external defibrillator (AED) is a low-energy device with a rhythm recognition detection system that delivers into a 50 ohm test load an electrical shock of a maximum of 360 joules of energy used for defibrillating (restoring normal hearth rhythm) the atria or ventricles of the heart. An AED analyzes the patient's electrocardiogram, interprets the cardiac rhythm, and automatically delivers an electrical shock (fully automated AED), or advises the user to deliver the shock (semi-automated or shock advisory AED) to treat ventricular fibrillation or pulseless ventricular tachycardia.

(b) *Classification.* Class III (premarket approval)

(c) *Date PMA or notice of PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

Dated: October 2, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27115 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907

RIN 1212–AA89

Rules on Filings, Issuances, Computation of Time, and Electronic Means of Record Retention

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Consistent with the Government Paperwork Elimination Act, we are removing requirements from our regulations that might limit electronic filing with us or electronic issuances to others. These rules give us flexibility to keep pace with ever-changing technology. In addition, they simplify and consolidate our rules on what methods you may use to send us a filing or provide an issuance to someone other than us, on how to determine the date we treat you as having made your filing or provided your issuance, and on how to compute various periods of time (including those for filings with us and for issuances to third parties). Finally, they provide rules for maintaining records by electronic means.

DATES: This final rule is effective November 28, 2003.

Applicability date: See ''Applicability of New Rules in Determining Your Filing or Issuance Date'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On February 14, 2003, we published a proposed rule on filings, issuances, computation of time, and electronic means of record retention (65 FR 7454). We received no comments on the proposal and are now issuing it in final form with only minor editorial modifications.

These final rules are part of our ongoing implementation of the Government Paperwork Elimination Act (GPEA) and are consistent with the Office of Management and Budget directive to remove regulatory impediments to electronic transactions. They address electronic means for filings with us, issuances to third parties, and recordkeeping. They build in the flexibility needed to allow us to continue to expand the availability of electronic options as technology advances. Under these rules, much of the detailed information on permitted electronic means will be on our Web site, *http://www.pbgc.gov,* which will be updated from time to time.

The final rules make it easier for you to make a filing or provide an issuance on time by treating most types of submissions as filed or issued on the date sent (provided you meet certain requirements) rather than on the date received. In addition, the rules are easier to use—they are simpler, more uniform, and appear together in a single part of the regulations. The final rules make similar simplifying changes to the rules for computing periods of time.

Under this final rule, our filing, issuance, computation-of-time, and electronic record-retention rules are consolidated in new subparts A through E of part 4000.

- New subpart A tells you what methods you may use for sending a filing to us. These new rules apply to any filing with us under our regulations where the particular regulation calls for their application. For these purposes, we treat any payment to us under our regulations as a filing.
- New subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. These new rules apply to any issuance (except a payment) under our regulations where the particular regulation calls for their application.
- New subpart C tells you how we determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These new rules apply to any filing or issuance under our regulations where the particular regulation calls for their application.
- New subpart D tells you how to compute time periods. These new rules apply to any time period under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application.
- New subpart E tells you how to comply with any recordkeeping requirement under our regulations using electronic means.

Existing Part 4000's distribution and derivation tables, which show the changes that occurred as a result of the PBGC's July 1, 1996, reorganization and renumbering of its regulations (61 FR

32574), are removed from the PBGC's regulations but are available on the PBGC's Web site at *http://www.pbgc.gov,* along with similar tables showing the changes that occurred as a result of the PBGC's June 29, 1981, reorganization and renumbering of its regulations (46 FR 32574). A note at the beginning of the PBGC's regulations refers users to the PBGC's Web site for the tables.

Applicability of New Rules in Determining Your Filing or Issuance Date

This final rule becomes effective on November 28, 2003. When we determine your filing or issuance date:

- If you have a filing or issuance date under the old rules that is before November 28, 2003, you will keep that date, *i.e.*, the new rules will not apply in determining your filing or issuance date.
- If your filing or issuance date under the old rules would be on or after November 28, 2003, we will (except as provided in the special transition rule for certain premium filings) use the new rules in determining your filing or issuance date. Note that your filing or issuance date under the new rules may turn out to be earlier than November 28, 2003.
- Under the special transition rule for certain premium filings, we will use the old rules (which are set forth in our regulations in effect before November 28, 2003, and also in the 2003 Premium Payment Package) to determine the date you filed your Form 1–ES, Form 1, Form 1–EZ, and any related premium payments for the 2003 premium payment year, provided that your filing was timely under the old rules.

Method of Filing

We are trying to provide as much flexibility as possible in filing methods. These rules allow you to file any submission with us by hand, mail, or commercial delivery service, and refer you to our Web site, *http://www.pbgc.gov,* for current information on electronic filing, including permitted methods, fax numbers, and e-mail addresses. The instruction booklets and forms used for certain filings with us also describe electronic and other filing methods, as appropriate, and are available on our Web site.

Where To File

Under these rules, we are removing the filing addresses from our regulations and putting them on our Web site, *http://www.pbgc.gov,* and in the instructions to our forms; addresses are also available through our Customer Service Center, 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

Method of Issuance

These rules on methods of issuance permit you to use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part. (However, for certain issuances, posting is specifically permitted by the regulation governing the particular issuance.)

These rules include a safe-harbor method for providing an issuance by electronic media. The safe-harbor method generally tracks the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) concerning disclosure of certain employee benefit plan information through electronic media, as set out at 29 CFR 2520.104b–1. Our safe-harbor method is available to any person using electronic media to satisfy issuance obligations under our regulations.

These rules on methods of issuance do not address compliance with the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (2000) (codified at 15 U.S.C. 7001–7006) (''E–SIGN'').

Date of Filing or Issuance

These rules tell you how we determine the date you file your submission with us and the date you provide your issuance to someone other than us (such as a participant). In some cases, other PBGC rules relating to issuances to third parties refer to when an issuance is *received.* (For instance, when there is a request for abatement (29 CFR 4207.3), interest is credited to the employer if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application action.) These rules do not affect those other receipt rules for issuances to third parties. Similarly, these rules do not affect any receipt rule for filings with the PBGC, except to the extent these rules describe how to determine when a document is received (for instance, filings received by the PBGC after 5 p.m. on a business day are treated as received on the next business day).

Under these rules, we treat most types of submissions as filed on the date you send the submission to us if you comply with certain requirements. The requirements vary depending on the method of filing you use. We may ask you for evidence of when you sent a submission to us.

There are a few types of submissions to us that we always treat as filed when received (not when sent), no matter what method you use: (1) An application for benefits and related submissions (unless the instructions for the applicable forms provide for an earlier date), (2) an advance notice of reportable event (under subpart C of part 4043), (3) a notice of missed contributions exceeding $1 million (under subpart D of part 4043), and (4) a request for approval of a multiemployer plan amendment. The ''filed-when-received'' rule is necessary for these submissions because we may need to act quickly to provide benefit payments, to protect participants or premium payers, or to act within a statutory time frame.

In these cases, as well as cases where you do not meet the requirements for your filing date to be the date you send your submission, your filing date is the date we receive your submission. However, if we receive your submission after 5 p.m. (our time) on a business day, or anytime on a weekend or Federal holiday, we treat it as received on the next business day.

Under these rules, we treat most types of issuances to third parties as provided on the date you send the issuance if you comply with certain requirements. The requirements vary depending on the method of issuance you use. The rules for determining the date of an issuance generally track the rules for determining the date of a filing; however, there are some differences for issuances using electronic means. An electronic issuance meeting the safe harbor has the benefit of the ''send-date'' rule. An electronic issuance that meets the general standard for issuances (*i.e.*, using measures reasonably calculated to ensure actual receipt), but not the safe harbor, is deemed issued on the date received by the intended recipient. (For a detailed discussion of how the method of delivery affects the date of a filing or issuance, see the preamble to our proposed rule (68 FR 7454).)

Computation of Time

These computation-of-time rules tell you how to compute time periods under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application. Some of our regulations contain specific exceptions or modifications to these rules. (For a detailed discussion of how the computation-of-time rules work, see the preamble to our proposed rule (68 FR 7454).)

Electronic Means of Record Retention

These rules provide guidance on record maintenance and retention using electronic means. These rules generally track the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) for retaining records by electronic means, set out at 29 CFR 2520.107–1.

You remain responsible for following our electronic recordkeeping rules, even if you rely on others for help. For example, if a service provider to a plan administrator creates, maintains, retains, prepares, or keeps physical custody of the plan's records, the plan administrator must ensure that the service provider complies with these rules.

The recordkeeping requirements are consistent with the goals of E-SIGN and are designed to facilitate voluntary use of electronic records while ensuring continued accuracy, integrity and accessibility of records required to be kept under our regulations. The requirements are justified by the importance of the records involved, are substantially equivalent to the requirements imposed on records that are not electronic records, will not impose unreasonable costs on the acceptance and use of electronic records, and do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records.

Paperwork Reduction Act

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. This final rule contains information collection requirements. The Office of Management and Budget has approved this information collection under the Paperwork Reduction Act of 1995 OMB Control Number 1212–0059; Expire 10–31–06.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is not a ''significant regulatory action'' under Executive Order 12866.

We certify under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not affect the underlying requirements (*e.g.*, to file a submission with us, provide an issuance to a third party, or retain records) to which the rule applies. Nor does this final rule require any plan or other entity to make use of electronic media for either disclosure or recordkeeping purposes or to change the method it currently uses. Entities may avoid both any marginal cost and any beneficial impacts by simply retaining their existing paper-based or electronic methods of compliance with disclosure requirements or existing paper-based methods of compliance with recordkeeping requirements. (For those entities that already use electronic media for recordkeeping purposes, any expense associated with conforming their procedures to the minimum standards in this final rule will be marginal.) We do not expect the economic impact (if any) associated with the changes to be significant for entities of any size, and therefore certify that this final rule does not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4003

Administrative practice and procedure; Pension insurance

29 CFR Part 4007

Employee benefit plans; Penalties; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4010

Employee benefit plans; Penalties; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4011

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4022

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4041

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4041A

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4043

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4050

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4062

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4203

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4204

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4207

Employee benefit plans; Pension insurance

29 CFR Part 4208

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4211

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4219

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4220

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4221

Employee benefit plans; Pension insurance

29 CFR Part 4231

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4245

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4281

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements

29 CFR Part 4901

Freedom of information

29 CFR Part 4902

Privacy

29 CFR Part 4903

Claims; Government employees; Income taxes

29 CFR Part 4907

Administrative practice and procedure; Civil rights; Equal employment opportunity; Federal buildings and facilities; Individuals with disabilities.

■ For the reasons set forth above, the PBGC amends Title 29, CFR parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907 of 29 CFR chapter XL as follows:

■ 1. Add the following note above the heading for Subchapter A of Chapter XL:

Note: PBGC's regulations were substantially reorganized and renumbered effective June 29, 1981 (at 46 FR 32574) and July 1, 1996 (at 61 FR 34002). Distribution and derivation tables showing the changes that occurred as a result of these amendments are available on the PBGC's Web site at *http://www.pbgc.gov.*

■ 2. Revise part 4000 to read as follows:

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

Subpart A—Filing Rules

Sec.

4000.1 What are these filing rules about?
4000.2 What definitions do I need to know for these rules?
4000.3 What methods of filing may I use?
4000.4 Where do I file my submission?
4000.5 Does the PBGC have discretion to waive these filing requirements?

Subpart B—Issuance Rules

4000.11 What are these issuance rules about?
4000.12 What definitions do I need to know for these rules?
4000.13 What methods of issuance may I use?
4000.14 What is the safe-harbor method for providing an issuance by electronic media?
4000.15 Does the PBGC have discretion to waive these issuance requirements?

Subpart C—Determining Filing and Issuance Dates

4000.21 What are these rules for determining the filing or issuance date about?
4000.22 What definitions do I need to know for these rules?
4000.23 When is my submission or issuance treated as filed or issued?
4000.24 What if I mail my submission or issuance using the U.S. Postal Service?
4000.25 What if I use the postal service of a foreign country?
4000.26 What if I use a commercial delivery service?
4000.27 What if I hand deliver my submission or issuance?
4000.28 What if I send a computer disk?
4000.29 What if I use electronic delivery?
4000.30 What if I need to resend my filing or issuance for technical reasons?
4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?
4000.32 Does the PBGC have discretion to waive any requirements under this part?

Subpart D—Computation of Time

4000.41 What are these computation-of-time rules about?
4000.42 What definitions do I need to know for these rules?
4000.43 How do I compute a time period?

Subpart E—Electronic Means of Record Retention

4000.51 What are these record retention rules about?
4000.52 What definitions do I need to know for these rules?
4000.53 May I use electronic media to satisfy PBGC's record retention requirements?
4000.54 May I dispose of original paper records if I keep electronic copies?

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

Subpart A—Filing Rules

§ 4000.1 What are these filing rules about?

Where a particular regulation calls for their application, the rules in this subpart A of part 4000 tell you what filing methods you may use for any submission (including a payment) to us. They do not cover an issuance from you to anyone other than the PBGC, such as a notice to participants. Also, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. (Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.2 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person filing with us.

§ 4000.3 What methods of filing may I use?

(a) *Paper filings.* You may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

(1) On our Web site, *http://www.pbgc.gov;*

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC 20005–4026; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.)

§ 4000.4 Where do I file my submission?

To find out where to send your submission, visit our Web site at *http://www.pbgc.gov,* see the instructions to our forms, or call our Customer Service Center (1–800–400–7242 for participants, or 1–800–736–2444 for practitioners; TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a specified bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

§ 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart B—Issuance Rules

§ 4000.11 What are these issuance rules about?

Where a particular regulation calls for their application, the rules in this subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (*e.g.*, a participant or beneficiary). They do *not* cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.12 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person providing the issuance to a third party.

§ 4000.13 What methods of issuance may I use?

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.* Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

§ 4000.14 What is the safe-harbor method for providing an issuance by electronic media?

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (*e.g.*, using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (*e.g.*, incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (*e.g.*, ''The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation.''); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart C—Determining Filing and Issuance Dates

§ 4000.21 What are these rules for determining the filing or issuance date about?

Where the particular regulation calls for their application, the rules in this subpart C of part 4000 tell you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These rules do *not* cover payments to third parties. In addition, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable rules under those requirements for determining the filing and issuance date. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.22 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday. *We* means the PBGC.

You means the person filing with us or the person providing the issuance to a third party.

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) *Filed or issued when sent.* Generally, we treat your submission as filed, or your issuance as provided, on the date you send it, if you meet certain requirements. The requirements depend upon the method you use to send your submission or issuance (see §§ 4000.24 through 4000.29). (Certain filings are always treated as filed when received, as explained in paragraph (b)(2) of this section.)

(b) *Filed or issued when received.*—(1) *In general.* If you do not meet the requirements for your submission or issuance to be treated as filed or issued when sent (see §§ 4000.24 through 4000.32), we treat it as filed or issued on the date received in a permitted format at the proper address.

(2) *Certain filings always treated as filed when received.* We treat the following submissions as filed on the date we receive your submission, no matter what method you use:

(i) *Applications for benefits.* An application for benefits or related submission (unless the instructions for the applicable forms provide for an earlier date);

(ii) *Advance notice of reportable events.* Information required under subpart C of part 4043 of this chapter, dealing with advance notice of reportable events;

(iii) *Form 200 filings.* Information required under subpart D of part 4043 of this chapter, dealing with notice of certain missed minimum funding contributions; and

(iv) *Requests for approval of multiemployer plan amendments.* A request for approval of an amendment filed with the PBGC pursuant to part 4220 of this chapter.

(3) *Determining our receipt date for your filing.* If we receive your submission at the correct address by 5 p.m. (our time) on a business day, we treat it as received on that date. If we receive your submission at the correct address after 5 p.m. on a business day, or anytime on a weekend or Federal holiday, we treat it as received on the next business day. For example, if you send your fax or e-mail of a Form 200 filing to us in Washington, DC, on Friday, March 15, from California at 3 p.m. (Pacific standard time), and we receive it immediately at 6 p.m. (our time), we treat it as received on Monday, March 18.

§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?

(a) *In general.* Your filing or issuance date is the date you mail your submission or issuance using the U.S. Postal Service if you meet the requirements of paragraph (b) of this section, and you mail it by the last scheduled collection of the day. If you mail it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address.

(b) *Requirements for ''send date.''* Your submission or issuance must meet the applicable postal requirements, be properly addressed, and you must use First-Class Mail (or a U.S. Postal Service mail class that is at least the equivalent of First-Class Mail, such as Priority Mail or Express Mail). However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(c) *Presumptions.* We make the following presumptions—

(1) *U.S. Postal Service postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible U.S. Postal Service postmark, we presume that the postmark date is the filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(2) *Private meter postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, we presume that the metered postmark date is your filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(d) *Examples.* (1) You mail your issuance using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your issuance in a mailbox at 4 p.m. on Friday, March 15 and the next scheduled collection at that mailbox is 5 p.m. that day. Your issuance date is March 15. If on the other hand you deposit it at 6 p.m. and the next collection at that mailbox is not until Monday, March 18, your issuance date is March 18.

(2) You mail your submission using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your submission in the mailbox at 4 p.m. on Friday, March 15, and the next scheduled collection at that mailbox is 5 p.m. that day. If your submission does not show a March 15 postmark, then you may prove to us that you mailed your submission by the last scheduled collection on March 15.

§ 4000.25 What if I use the postal service of a foreign country?

If you send your submission or issuance using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

§ 4000.26 What if I use a commercial delivery service?

(a) *In general.* Your filing or issuance date is the date you deposit your submission or issuance with the commercial delivery service if you meet the requirements of paragraph (b) of this section, and you deposit it by the last

scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery). If you deposit it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address. However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(b) *Requirements for ''send date.''* Your submission or issuance must meet the applicable requirements of the commercial delivery service, be properly addressed, and—

(1) *Delivery within two days.* It must be reasonable to expect your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the next scheduled collection; or

(2) *Designated delivery service.* You must use a ''designated delivery service'' under section 7502(f) of the Internal Revenue Code (Title 26, USC). Our Web site, *http://www.pbgc.gov,* lists those designated delivery services. You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

(c) *Example.* You send your submission by commercial delivery service using two-day delivery. In addition, you meet the requirements of paragraph (b) of this section. Suppose that the deadline for two-day delivery at the place you make your deposit is 8 p.m. on Friday, March 15. If you deposit your submission by that the deadline, your filing date is March 15. If, instead, you deposit it after the 8 p.m. deadline and the next collection at that site for two-day delivery is on Monday, March 18, your filing date is March 18.

§ 4000.27 What if I hand deliver my submission or issuance?

Your filing or issuance date is the date of receipt of your hand-delivered submission or issuance at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox. Our Web site, *http://www.pbgc.gov,* and the instructions to our forms, identify the proper addresses for filings with us.

§ 4000.28 What if I send a computer disk?

(a) *In general.* We determine your filing or issuance date for a computer disk as if you had sent a paper version of your submission or issuances if you meet the requirements of paragraph (b) of this section.

(1) *Filings.* For computer-disk filings, we may treat your submission as invalid if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

(2) *Issuances.* For computer-disk issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (''using measures reasonably calculated to ensure actual receipt'') of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirements of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic disk must comply with any technical requirements for that type of submission (our Web site, *http://www.pbgc.gov,* identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk.

§ 4000.29 What if I use electronic delivery?

(a) *In general.* Your filing or issuance date is the date you electronically transmit your submission or issuance to the proper address if you meet the requirements of paragraph (b) of this section. Note that we always treat an advance notice of reportable event and a Form 200 (notice of certain missed contributions) as filed when received.

(1) *Filings.* For electronic filings, if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section, we may treat your submission as invalid.

(2) *Issuances.* For electronic issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (''using measures reasonably calculated to ensure actual receipt'') of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirement of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic submission must comply with any technical requirements for that type of submission (our Web site, *http://www.pbgc.gov,* identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For an e-mail submission or issuance with an attachment, you must include, in the body of your e-mail, the name and telephone number of the person to contact if we or the intended recipient needs you to resubmit your filing or issuance.

(c) *Failure to meet address requirement.* If you send your electronic submission or issuance to the wrong address (but you meet the requirements of paragraph (b) of this section), your filing or issuance date is the date of receipt at the proper address.

§ 4000.30 What if I need to resend my filing or issuance for technical reasons?

(a) *Request to resubmit*—(1) *Filing.* We may ask you to resubmit all or a portion of your filing for technical reasons (for example, because we are unable to open an attachment to your e-mail). In that case, your submission (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (*e.g.*, by providing advice that allows us to open the attachment to your e-mail) by the date we specify, your filing date for the submission (or portion) that we asked you to resubmit is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (*e.g.*, by providing advice that the recipient uses to open the attachment to your e-mail), within a

reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable), or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

§ 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a de minimis percentage of intended recipients; and

(c) You resend the issuance to the intended recipient promptly after discovering the error.

§ 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart D—Computation of Time

§ 4000.41 What are these computation-of-time rules about?

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and § 4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.42 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

§ 4000.43 How do I compute a time period?

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as ''the last day'' of a plan year or ''the fifteenth day'' of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special ''last-day'' rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples*—(1) *Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

Subpart E—Electronic Means of Record Retention

§ 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may

use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

§ 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

We means the PBGC.

You means the person subject to the record retention requirement.

§ 4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

General requirements. You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term ''legibility'' means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term ''readability'' means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

§ 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

(Approved by the Office of Management and Budget under control number 1212–0059)

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 3. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 4. Revise § 4003.9 to read as follows:

§ 4003.9 Method and date of filing.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

■ 5. Revise § 4003.10 to read as follows:

§ 4003.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4003.33 [Amended]

■ 6. Amend § 4003.33 to add the sentence ''See § 4000.4 of this chapter for information on where to file.'' to the end of the paragraph.

§ 4003.53 [Amended]

■ 7. Amend § 4003.53 to add the sentence ''See § 4000.4 of this chapter for additional information on where to file.'' to the end of the paragraph.

PART 4007—PAYMENT OF PREMIUMS

■ 8. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 9. Revise § 4007.3 to read as follows:

§ 4007.3 Filing requirements; method of filing.

(a) *Filing requirements.* The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC annual Premium Payment Package. The plan administrator of each covered plan shall file the prescribed form or forms, and any premium payments due, no later than the applicable due date specified in § 4007.11.

(b) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

■ 10. Revise § 4007.5 to read as follows:

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

■ 11. Revise § 4007.6 to read as follows:

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

■ 12. Revise paragraphs (a) and (c)(1) of § 4007.10 to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based.

(2) *Electronic recordkeeping.* The plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

* * * * *

(c) *Providing record information*—(1) *In general.* The plan administrator shall make the records retained pursuant to paragraph (a) of this section available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and shall submit information in such records to the PBGC within 45 days of the date of the PBGC's written request therefor, or by a different time specified therein.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 13. Revise the authority citation for part 4010 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

■ 14. Revise paragraphs (c), (d) and (e) of § 4010.10 to read as follows:

§ 4010.10 Due date and filing with the PBGC.

* * * * *

(c) *How and where to file.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4011—DISCLOSURE TO PARTICIPANTS

■ 15. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

■ 16. Revise § 4011.9 to read as follows:

§ 4011.9 Method and date of issuance of notice; computation of time.

(a) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the Participant Notice. The Participant Notice may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

(b) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date the Participant Notice was issued.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances under this part.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 17. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 18. Amend § 4022.9 by adding paragraph (d) to read as follows:

§ 4022.9 Time of payment; benefit applications.

* * * * *

(d) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 19. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 20. Amend § 4041.3 as follows:
■ a. Revise paragraphs (a), (b), (c) introductory text, and (c)(1) to read as set forth below;
■ b. Remove paragraph (c)(2);
■ c. Add the word ''or'' to the end of paragraph (c)(3)(i);
■ d. Remove paragraph (c)(3)(ii); and redesignate paragraph (c)(3)(iii) as paragraph (c)(3)(ii);
■ e. Redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5).

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. A proposed termination date may be any day, including a weekend or Federal holiday.

(b) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Issuance to third parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of § 4041.23(c) or § 4041.24(f) is treated as an affected party.

(1) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

* * * * *

■ 21. Revise § 4041.5 to read as follows:

§ 4041.5 Record retention and availability.

(a) *Retention requirement*—(1) *Persons subject to requirement; records to be retained.* Each contributing sponsor and the plan administrator of a plan terminating in a standard

termination, or in a distress termination that closes out in accordance with § 4041.50, must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and this part. If a contributing sponsor or the plan administrator maintains information in accordance with this section, the other(s) need not maintain that information.

(2) *Retention period.* The records described in paragraph (a)(1) of this section must be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(3) *Electronic recordkeeping.* The contributing sponsor or plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(b) *Availability of records.* The contributing sponsor or plan administrator must make all records needed to determine compliance with section 4041 of ERISA and this part available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and must submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein.

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

■ 22. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

■ 23. Revise § 4041A.3 to read as follows:

§ 4041A.3 Method and date of filing; where to file; computation of time; issuances to third parties.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

(d) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

■ 24. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1443.

■ 25. Revise § 4043.5 to read as follows:

§ 4043.5 How and where to file.

The PBGC applies the rules in subpart A of part 4000 of this chapter and the instructions to the applicable PBGC reporting form to determine permissible methods of filing with the PBGC under this part. See § 4000.4 of this chapter for information on where to file.

■ 26. Amend § 4043.6 by removing paragraph (d) and revising paragraphs (a) and (b) and the paragraph heading of paragraph (c) to read as follows:

§ 4043.6 Date of filing.

(a) *Post-Event notice filings.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with the PBGC.

(b) *Advance notice and Form 200 Filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(c) *Partial electronic filing; deemed filing date.* * * *

* * * * *

■ 27. Revise § 4043.7 to read as follows:

§ 4043.7 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4050—MISSING PARTICIPANTS

■ 28. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

■ 29. Amend § 4050.6 by revising paragraph (d) to read as follows:

§ 4050.6 Payment and required documentation.

* * * * *

(d) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part. However, for purposes of determining the amount of an interest charge under § 4050.6(b) or § 4050.12(c)(2)(iii), the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

■ 30. The authority citation for part 4062 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

■ 31. Revise § 4062.9 to read as follows:

§ 4062.9 Method and date of filing; where to file.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Payment of liability must be clearly designated as such and include the name of the plan.

(b) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

■ 32. Revise § 4062.10 to read as follows:

§ 4062.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of an interest charge under § 4062.7, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

■ 33. The authority citation for part 4203 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 34. Amend § 4203.4 by revising paragraphs (a) and (c) to read as follows:

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request*—(1) *In general.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4204—VARIANCES FOR SALE OF ASSETS

■ 35. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

■ 36. Amend § 4204.11 as follows:

■ a. In the first sentence of paragraph (b), remove the word ''filed'' and add in its place the word ''submitted'.

■ b. Add new paragraph (e) to read as follows:

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

* * * * *

(e) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided.

■ 37. Amend § 4204.21 by revising paragraphs (a) and (c) to read as follows:

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *Filing of request*—(1) *In general.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1)(B) and (C) of ERISA.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

■ 38. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

■ 39. Amend § 4207.10 by revising paragraph (c) of this chapter to read as follows:

§ 4207.10 Plan rules for abatement.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

■ 40. Add § 4207.11 to read as follows:

§ 4207.11 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

■ 41. Revise the authority citation for part 4208 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

■ 42. Amend § 4208.9 by revising paragraph (c) to read as follows:

§ 4208.9 Plan adoption of additional abatement conditions.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

■ 43. Add § 4208.10 to read as follows:

§ 4208.10 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

■ 44. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

■ 45. Amend § 4211.22 by revising paragraphs (a) and (c) to read as follows:

§ 4211.22 Requests for PBGC approval.

(a) *Filing of request*—(1) *In general.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to submit.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4219—NOTICE, COLLECTION AND REDETERMINATION OF WITHDRAWAL LIABILITY

■ 46. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

■ 47. Amend § 4219.17 by revising paragraphs (a), (d) and (e) to read as follows:

§ 4219.17 Filings with PBGC.

(a) *Filing requirements*—(1) *In general.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine

permissible methods of filing with the PBGC under this subpart.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this subpart for filing with the PBGC.

* * * * *

(d) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(e) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this subpart was filed with the PBGC.

* * * * *

§ 4219.19 [Redesignated as § 4219.20]

■ 48. Redesignate § 4219.19 as § 4219.20.

■ 49. Add § 4219.19 to read as follows:

§ 4219.19 Method and date of issuance; computation of time.

The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided. The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances to third parties under this subpart.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

■ 50. The authority citation for part 4220 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

■ 51. Amend § 4220.3 by revising paragraphs (a) and (c) and adding paragraph (f) to read as follows:

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request*—(1) *In general.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is treated as filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

■ 52. The authority citation for part 4221 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1401.

■ 53. Amend paragraph (c) of § 4221.4 by revising the second sentence to read as follows:

§ 4221.4 Appointment of the arbitrator.

* * * * *

(c) *Challenge and withdrawal.* * * * The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail (or by any other method that includes verification or acknowledgment of receipt and meets (if applicable) the requirements of § 4000.14 of this chapter) and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. * * *

* * * * *

■ 54. Amend § 4221.6 by revising paragraph (b) to read as follows:

§ 4221.6 Hearing.

* * * * *

(b) *Notice.* After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand, by certified or registered mail, or by any other method that includes verification or acknowledgment of receipt and meets (if applicable) the requirements of § 4000.14 of this chapter.

* * * * *

■ 55. Revise § 4221.12 to read as follows:

§ 4221.12 Calculation of periods of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

■ 56. Revise § 4221.13 to read as follows:

§ 4221.13 Filing and issuance rules.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

§ 4221.14 [Amended]

■ 57. Revise the third sentence of paragraph (c) of § 4221.14 to read as follows: ''The application shall include:''

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

■ 58. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

■ 59. Amend § 4231.8 by revising paragraphs (a), (c), and (d) to read as follows:

§ 4231.8 Notice of merger or transfer.

(a) *Filing of request.*— (1) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(i) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(ii) The date on which one plan transfers assets to another plan involved in the transaction.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. For purposes of paragraph (a) of this section, the notice is not considered filed until all of the

information required by paragraph (e) of this section has been submitted.

* * * * *

PART 4245—NOTICE OF INSOLVENCY

■ 60. The authority citation for part 4245 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

■ 61. Amend § 4245.3 as follows:

■ a. In the first sentence of paragraph (a), remove the words ''interested parties, as defined in paragraph (d) of this section'' and add in their place the words ''interested parties, as defined in paragraph (e) of this section''.

■ b. Redesignate paragraph (d) as paragraph (e).

■ c. Revise paragraph (c) and add paragraph (d) to read as follows:

§ 4245.3 Notice of insolvency.

* * * * *

(c) *Delivery to PBGC*—(1) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing the notice of insolvency with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a notice of insolvency under this part was filed with the PBGC.

(d) *Delivery to interested parties*—(1) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency was issued.

* * * * *

§ 4245.4 [Amended]

■ 62. Amend the introductory language of paragraph (b) by removing the words ''an interested party, as defined in § 4245.3(d)'' and adding in their place the words ''interested parties, as defined in § 4245.3(e)''.

§ 4245.5 [Amended]

■ 63. Amend § 4245.5 as follows:

■ a. In the first sentence of paragraph (a), remove the words ''interested parties, as defined in § 4245.3(d)'' and add in their place the words ''interested parties, as defined in § 4245.3(e)''.

■ b. Revise paragraph (d) and add paragraph (e) to read as follows:

§ 4245.5 Notice of insolvency benefit level.

* * * * *

(d) *Delivery to PBGC*—(1) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing a notice of insolvency benefit level with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a notice of insolvency benefit level under this part was filed with the PBGC.

(e) *Delivery to interested parties*—(1) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency benefit levels to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency benefit levels was issued.

§ 4245.6 [Amended]

■ 64. In § 4245.6, amend the introductory language of paragraph (b) by removing the words ''interested parties, as defined in § 4245.3(d)'' and adding in their place the words ''interested parties, as defined in § 4245.3(e)'.

■ 65. Revise § 4245.7 to read as follows:

§ 4245.7 PBGC address.

See § 4000.4 of this chapter for information on where to file.

■ 66. Add § 4245.8 to read as follows:

§ 4245.8 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

■ 67. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

■ 68. Revise § 4281.3 to read as follows:

§ 4281.3 Filing and issuance rules.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* See § 4281.32(c) for notices of benefit reductions, § 4281.43(e) for notices of insolvency, and § 4281.45(c) for notices of insolvency benefit level.

(c) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

■ 69. Revise paragraph (c) of § 4281.32 to read as follows:

§ 4281.32 Notices of benefit reductions.

* * * * *

(c) *Method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of benefit reduction to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed

notice to that participant's beneficiary or beneficiaries.

* * * * *

■ 70. Revise paragraphs (e) and (f) of § 4281.43 to read as follows:

§ 4281.43 Notices of insolvency and annual updates.

* * * * *

(e) *Notices of insolvency—method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the annual update to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

■ 71. Revise paragraph (c) of § 4281.45 to read as follows:

§ 4281.45 Notices of insolvency benefit level.

* * * * *

(c) *Method of issuance.* The notices of insolvency benefit level shall be delivered to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency benefit levels to interested parties.

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

■ 72. Revise the authority citation for part 4901 to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), EO 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 73. Add § 4901.6 to Subpart A to read as follows:

§ 4901.6 Filing rules; computation of time.

(a) *Filing rules*—(1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

■ 74. Revise § 4901.11 to read as follows:

§ 4901.11 Submittal of requests for access to records.

A request to inspect or copy any record subject to this subpart shall be submitted to the Disclosure Officer, Pension Benefit Guaranty Corporation. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005–4026. To expedite processing, the request should be prominently identified as a ''FOIA request.''

■ 75. Revise paragraph (a) of § 4901.15 to read as follows:

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation. See § 4000.4 of this chapter for information on where to file. To expedite processing, the words ''FOIA appeal'' should appear prominently on the request.

* * * * *

■ 76. Revise paragraph (c) of § 4901.33 to read as follows:

§ 4901.33 Payment of fees.

* * * * *

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

■ 77. The authority citation for part 4902 continues to read as follows:

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

■ 78. Revise paragraphs (a) and (b) of § 4902.3 to read as follows:

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the purpose of learning whether a system of records maintained by the PBGC contains any record pertaining to the requestor or obtaining access to such a record. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005–4026.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall prominently state the words, ''Privacy Act Request.'' If this information is insufficient to enable the PBGC to identify the record in question, or to determine the identity of the requester (to ensure the privacy of the subject of the record), the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record or to determine the identity of the requester.

* * * * *

■ 79. Revise paragraph (c) of § 4902.5 to read as follows:

§ 4902.5 Procedures for requesting amendment of a record.

* * * * *

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to such request as promptly as possible.

■ 80. Revise paragraph (c) of § 4902.6 to read as follows:

§ 4902.6 Action on request for amendment of a record.

* * * * *

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

■ 81. Revise paragraph (a) of § 4902.7 to read as follows:

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit Guaranty Corporation, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Deputy Executive Director, Pension Benefit Guaranty Corporation. The appeal shall state in detail the basis on which it is made and shall clearly state ''Privacy Act Request'' on the first page. In addition, the submission shall clearly state ''Privacy Act Request'' on the envelope (for mail, hand delivery, or commercial delivery), in the subject line (for e-mail), or on the cover sheet (for fax).

* * * * *

■ 82. Add § 4902.10 to read as follows:

§ 4902.10 Filing rules; computation of time.

(a) *Filing rules*—(1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4903—DEBT COLLECTION

■ 83. The authority citation for part 4903 continues to read as follows:

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

■ 84. Amend § 4903.2 by adding paragraphs (c) and (d) to read as follows:

§ 4903.2 General.

* * * * *

(c) The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. See § 4000.4 of this chapter for information on where to file.

(d) The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

■ 85. Revise paragraph (b)(2) of § 4903.24 to read as follows:

§ 4903.24 Request for offset from other agencies.

* * * * *

(b) * * *

(2) All such requests should be directed to the Director, Financial Operations Department. See § 4000.4 of this chapter for additional information on where to file.

* * * * *

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

■ 86. The authority citation for part 4907 continues to read as follows:

Authority: 29 U.S.C. 794, 1302(b)(3).

■ 87. Revise paragraph (c) of § 4907.170 to read as follows:

§ 4907.170 Compliance procedures.

* * * * *

(c) The Equal Opportunity Manager shall be responsible for coordinating implementation of this section.

(1) *Where to file.* See § 4000.4 of this chapter for information on where to file complaints under this part.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(4) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

* * * * *

Issued in Washington, DC, this 23rd day of October, 2003.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 03–27163 Filed 10–27–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 575, 597, and 598

Reporting, Procedures and Penalties Regulations; Iraqi Sanctions Regulations; Foreign Terrorist Organizations Sanctions Regulations; Foreign Narcotics Kingpin Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is issuing a final rule to amend the Reporting, Procedures and Penalties Regulations, Iraqi Sanctions Regulations, Foreign Terrorist Organizations Sanctions Regulations, and Foreign Narcotics Kingpin Sanctions Regulations (collectively, the ''Regulations'') to implement the requirement of the Federal Civil Penalties Inflation Adjustment Act of 1990 to adjust for inflation the maximum amounts of the civil monetary penalties that may be assessed under the Regulations.

EFFECTIVE DATE: October 23, 2003.

FOR FURTHER INFORMATION CONTACT: Chief, Civil Penalties Division, tel. 202/622–6140, or Chief Counsel, tel. 202/

622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov.* It may also be accessed by modem dialup at 202/512–1387 followed by typing ''/GO/FAC.'' Paper copies of this document can be obtained by calling the Government Printing Office at 202–512–1530. Additional information concerning the programs of the Office of Foreign Assets Control is available for download from the Office's Internet Home Page at: *http://www.treas.gov/ofac* or via FTP at *ofacftp.treas.gov.* Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, a fax modem, or (within the United States) a touch-tone telephone.

Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIA Act'') (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (''DCIA'') (Pub. L. 104–134, 110 Stat. 1321–373; 31 U.S.C. 3701 note)), requires each Federal agency with statutory authority to assess civil monetary penalties (''CMPs'') to adjust those CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments. The DCIA amended the FCPIA Act to require that each agency, to the extent necessary, issue regulations at least every four years to adjust its CMPs for inflation.

Section 5 of the FCPIA Act requires that each CMP having a specified or maximum monetary amount provided for by Federal law be increased by the percentage by which the Consumer Price Index for all urban consumers (''CPI''), published by the Department of Labor, for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. The statute includes a mechanism for rounding penalty increases and limits the first inflation adjustment of a CMP to 10 percent of such penalty.

With regard to rounding, the FCPIA Act sets out penalty ranges, from amounts less than or equal to $100 to amounts greater than $200,000, and provides different dollar multiples for rounding the increase in each penalty range. Specifically, section 5(a) of the FCPIA Act requires that any increase in a CMP be rounded to the nearest multiple of:

1. $10 in the case of penalties less than or equal to $100;
2. $100 in the case of penalties greater than $100 but less than or equal to $1,000;
3. $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
4. $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
5. $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
6. $25,000 in the case of penalties greater than $200,000.

OFAC currently is authorized to impose CMPs pursuant to five statutes: The Trading with the Enemy Act (''TWEA'') (50 U.S.C. App. 16); the International Emergency Economics Powers Act (''IEEPA'') (50 U.S.C. 1705); the Iraq Sanctions Act of 1990 (''ISA'') (Pub. L. 101–513, 104 Stat. 2049; 50 U.S.C. 1701 note); the Antiterrorism and Effective Death Penalty Act of 1996 (''AEDPA'') (18 U.S.C. 2339B); and the Foreign Narcotics Kingpin Designation Act (''FNKDA'') (21 U.S.C. 1906). The current maximum CMP for each of the first four statutes was last adjusted or set by statute in 1996. The current maximum CMP under the FNKDA was set when the statute was enacted in 1999 and has not yet been adjusted for inflation.

With regard to those CMPs last adjusted or set by statute in 1996, the CPI value increased from 156.7 for June 1996 to 179.9 for June 2002, resulting in an inflation factor of 1.148 (*i.e.*, a 14.8 percent increase). The CMP inflation factor for the FNKDA is 1.082 (*i.e.*, an 8.2 percent increase), calculated using the CPI values of 166.2 for June 1999 and 179.9 for June 2002.

The original maximum CMP of $50,000 under TWEA was adjusted for inflation to $55,000 in 1996. Multiplying the current penalty of $55,000 by the factor of 1.148 results in $63,140, an increase of $8,140. When that number is rounded to the nearest multiple of $5,000, as required by the FCPIA Act, the maximum TWEA-based CMP per violation is increased to the inflation-adjusted amount of $65,000.

The original maximum CMP of $10,000 under IEEPA was adjusted for inflation to $11,000 in 1996. Multiplying the current penalty of $11,000 by the factor of 1.148 results in $12,628, an increase of $1,628. When that number is rounded to the nearest multiple of $5,000, as required by the FCPIA Act, the maximum IEEPA-based CMP per violation remains $11,000.

The original maximum CMP of $250,000 under ISA was adjusted for inflation to $275,000 in 1996. Multiplying the current penalty of $275,000 by the factor of 1.148 results in $315,700, an increase of $40,700. When that number is rounded to the nearest multiple of $25,000, as required by the FCPIA Act, the maximum ISA-based CMP per violation is increased to the inflation-adjusted amount of $325,000.

The maximum CMP of $50,000 under AEDPA was set by statute in 1996 and has not previously been adjusted for inflation. Multiplying the current penalty of $50,000 by the factor of 1.148 results in $57,400, an increase of $7,400. When that number is rounded to the nearest multiple of $5,000, as required by the FCPIA Act, the maximum AEDPA-based CMP per violation is increased to the inflation-adjusted amount of $55,000.

The maximum CMP of $1,000,000 under FNKDA was set by statute in 1999 and has not previously been adjusted for inflation. Multiplying the current penalty of $1,000,000 by the factor of 1.082 results in $1,082,000, an increase of $82,000. When that number is rounded to the nearest multiple of $25,000, as required by the FCPIA Act, the maximum FNKDA-based CMP per violation is increased to the inflation-adjusted amount of $1,075,000.

Executive Order 12866, Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

Because the regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Additionally, advance notice, public comment, and delayed effectiveness are unnecessary because the regulations merely reflect adjustments in penalty rates required by law and do not substantively alter the existing regulatory framework or in any way affect the terms under which civil penalties are assessed by OFAC. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

31 CFR Part 501

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Licensing, Penalties, Reporting and recordkeeping requirements, Sanctions.

31 CFR Part 575

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iran, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Sanctions, Specially designated nationals, Terrorism, Travel restrictions.

31 CFR Part 597

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign terrorist organizations, Penalties, Reporting and recordkeeping requirements, Sanctions, Terrorism, Transfer of Assets.

31 CFR Part 598

Administrative practice and procedure, Banks, Banking, Blocking of assets, Narcotics trafficking, Penalties, Reporting and recordkeeping requirements, Sanctions, Significant foreign narcotics traffickers, Specially designated narcotics trafficker, Transfer of Assets.

■ For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 18 U.S.C. 2332d; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a); 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

■ 2. Section 501.701 is amended by revising paragraph (a)(3) to read as follows:

§ 501.701 Penalties

(a) * * *

(3) The Secretary of the Treasury may impose a civil penalty of not more than $65,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

Note to paragraph (a)(3). The current $65,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

* * * * *

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317; E.O. 13290, 68 FR 14307, March 20, 2003.

Subpart G—Penalties

■ 2. Section 575.701 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 575.701 Penalties.

(a) Section 586E of the Iraq Sanctions Act of 1990 (Public Law 101–513, 104 Stat. 2049; 50 U.S.C. 1701 note), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that, notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)):

(1) A civil penalty of not to exceed $325,000 per violation may be imposed on any person who, after the enactment of this Act, violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, or 12725, or any license, order, or regulation issued under any such Executive Order;

Note to paragraph (a)(1). The current $325,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

* * * * *

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 1. The authority citation for part 597 is revised to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart G—Penalties

■ 2. Section 597.701 is amended by revising paragraph (b) to read as follows:

§ 597.701 Penalties.

* * * * *

(b) Attention is directed to 18 U.S.C. 2339B(b), as added by Public Law 104–132, 110 Stat. 1250–1253, section 303, which, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that, except as authorized by the Secretary of the Treasury, any financial institution that knowingly fails to retain possession of or maintain control over funds in which a foreign terrorist organization or its agent has an interest, or to report the existence of such funds in accordance with these regulations, shall be subject to a civil penalty in an amount that is the greater of $55,000 per violation, or twice the amount of which the financial institution was required to retain possession or control.

Note to paragraph (b). The current $55,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

* * * * *

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 1. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

Subpart G—Penalties.

■ 2. Section 598.701 is amended by revising paragraph (a) introductory text and paragraph (a)(3) to read as follows:

§ 598.701 Penalties.

(a) Attention is directed to section 807 of the Foreign Narcotics Kingpin Designation Act, which is applicable to violations of the provisions of any license, rule, or regulation issued by or pursuant to the direction or authorization of the Secretary of Treasury pursuant to this part or otherwise under that Act. Section 807 of the Foreign Narcotics Kingpin Designation Act, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law

101–410, as amended, 28 U.S.C. 2461 note), provides that:

* * * * *

(3) A civil penalty not to exceed $1,075,000 per violation may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of the Foreign Narcotics Kingpin Designation Act.

Note to paragraph (a)(3). The current $1,075,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

* * * * *

Dated: October 1, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 15, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–27074 Filed 10–23–03; 2:56 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 575

Removal of Certain Provisions of the Iraqi Sanctions Regulations; Interpretive Guidance

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the Department of the Treasury is amending the Iraqi Sanctions Regulations to remove provisions that preceded the substantial lifting of economic sanctions in late May 2003. OFAC also is publishing interpretive guidance concerning secondary-market transactions in Iraqi debt.

DATES: Effective October 28, 2003. Written comments must be received no later than December 29, 2003.

ADDRESSES: Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622–1657 or via OFAC's Web site <*http://www.treas.gov/offices/eotffc/ofac/comment.html*>.

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Licensing, tel. 202/622–2480, Chief of Policy Planning and Program Management, tel. 202/622–2500, or Chief Counsel, tel. 202/622–2410.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1990, the President issued Executive Order 12722, declaring a national emergency with respect to Iraq. This order was issued under the authority of, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the U.S. Code and imposed economic sanctions, including a complete trade embargo, with respect to Iraq. In keeping with United Nations Security Council Resolution 661 of August 6, 1990, and under the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 of August 9, 1990, which imposed additional restrictions. The Iraqi Sanctions Regulations, 31 CFR part 575 (the ''Regulations''), implement Executive Orders 12722 and 12724 and are administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

On May 22, 2003, the United Nations Security Council adopted Resolution 1483, which substantially lifted the multilateral economic sanctions with respect to Iraq. On May 23, 2003, OFAC issued a general license that reflected Resolution 1483 by authorizing most transactions that had been prohibited by the Regulations. This general license was published in the **Federal Register** on June 27, 2003, as new section 575.533 of the Regulations (68 FR 38188–38190).

Section 575.533 supercedes prior substantive licensing provisions of the Regulations. OFAC is removing and reserving previous substantive licensing provisions—*i.e.*, sections 575.505, 575.506, 575.507, 575.508, 575.509, 575.510, 575.511, 575.513, 575.514, 575.517, 575.518, 575.519, 575.520, 575.521, 575.522, 575.523, 575.524, 575.525, 575.526, 575.527, 575.528, 575.529, 575.530, 575.531, and 575.532—in an effort to clarify that the operative authorization now appears in section 575.533.

OFAC also is removing certain definitions that are no longer relevant because they pertain to other regulatory provisions that have been removed. The following outdated definitions are being removed: section 575.307 (defining ''Government of Kuwait''), section 575.325 (defining ''986 Escrow Account'' and ''United Nations Iraq Account,'' both of which refer to a defunct account), and sections 575.327 and 575.328 (defining ''Memorandum of Understanding'' and ''Guidelines,'' both of which refer to outdated procedures for approving certain transactions involving Iraq).

OFAC expects to make other conforming amendments to the Regulations in the near future and welcomes public comments on this endeavor.

OFAC also is publishing interpretive guidance concerning the scope of section 575.533. The new section 575.419 published today describes the circumstances in which U.S. persons may trade in Iraqi commercial or sovereign debt.

Request for Comments

Because these regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues addressed in these regulations, they are being issued in interim form and comments will be considered in the development of a final rule. Accordingly, OFAC encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close December 29, 2003. The address for submitting comments appears near the beginning of this document. OFAC will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. OFAC will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return such a submission to the originator without considering the comments in the development of final regulations. In the interest of accuracy and completeness, OFAC requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than January 26, 2004 and will be obtainable from OFAC's Web site *http://www.treas.gov/ofac*. If that service is unavailable, written requests for copies may be sent to Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave, NW, Washington, DC 20220, Attn: Chief, Records Division.

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web, Telnet, or FTP protocol is *fedbbs.access.gpo.gov*. This document and additional information concerning OFAC are available from OFAC's Web site *http://www.treas.gov/ofac*.

Paperwork Reduction Act

The collections of information related to these regulations can be found in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164.

List of Subjects

31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iran, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

■ For the reasons stated in the preamble, 31 CFR part 575 is amended as set forth below:

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for 31 CFR part 575 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.

Subpart C—General Definitions

§§ 575.307, 575.325, 575.327 and 575.328 [Removed and reserved]

■ 2. Remove and reserve §§ 575.307, 575.325, 575.327, and 575.328.

Subpart D—Interpretations

■ 3. Add a new § 575.419 to subpart D to read as follows:

§ 575.419 Transactions in Iraqi debt.

Section 575.533 authorizes U.S. persons to trade in Iraqi commercial or sovereign debt in secondary markets, subject to the following conditions:

(a) Such debt was not held in the United States or within the possession or control of a U.S. person as of May 23, 2003, *see* § 575.533(b)(1), (c); and

(b) Unless licensed or otherwise authorized by the Office of Foreign Assets Control, no U.S. person is permitted to enter into any transaction, including an attempt to collect on debt, with persons or organizations determined by the Director of the Office of Foreign Assets Control to be included within § 575.306, persons on the Defense Department's 55-person Watch List, or persons identified by the 661 Committee pursuant to paragraphs 19 and 23 of United Nations Security Council Resolution 1483, adopted May 22, 2003, *see* § 575.533(b)(3).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§§ 575.505—575.511, 575.513, 575.514, 575.517–575.532 [Removed and reserved]

■ 4. Remove and reserve §§ 575.505, 575.506, 575.507, 575.508, 575.509, 575.510, 575.511, 575.513, 575.514, 575.517, 575.518, 575.519, 575.520, 575.521, 575.522, 575.523, 575.524, 575.525, 575.526, 575.527, 575.528, 575.529, 575.530, 575.531, and 575.532.

Dated: September 9, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 15, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–27073 Filed 10–23–03; 2:13 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–03–050]

RIN 1625–AA–09

Drawbridge Operation Regulations; Great Channel Between Stone Harbor and Nummy Island, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Fifth Coast Guard District, is temporarily changing the regulations governing the operation of the Cape May Bridge across Great Channel at mile 0.7 between Stone Harbor and Nummy Island, New Jersey. The bridge area will be closed to navigation beginning 8 a.m. on October 16, 2003, through 11 p.m. on May 14, 2004. This closure is necessary to facilitate extensive mechanical rehabilitation and to maintain the bridge's operational integrity.

DATES: This temporary rule is effective from 8 a.m. on October 16, 2003, to 11 p.m. on May 14, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–03–050) and are available for inspection or copying at the Commander (oan-b), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23703–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda L. Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 11, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Great Channel Between Stone Harbor and Nummy Island, New Jersey'' in the **Federal Register** (68 FR 34877). We received no comments on the proposed rule. No public hearing was requested nor held.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A 30 day delayed effective

date is unnecessary because the bridge in question has not opened for vessel traffic in over five years, and has only opened twice in the last nine years. Further, there were no public comments during the 60-day comment period, and mariners have alternative routes around this drawbridge during the temporary closure.

Background and Purpose

Cape May County Department of Public Works (CMC) owns and operates the County of Cape May Bridge across Great Channel. The bridge is located between Stone Harbor and Nummy Island, New Jersey. The current regulations set out in 33 CFR 117.720 require the draw to open on signal except from May 15 through October 15 from 10 p.m. to 6 a.m., the draw need only open if at least four hours notice has been given. From October 16 through May 14, the draw need only open if at least 24 hours notice has been given.

Agate Construction Company, on behalf of CMC, has requested a temporary change to the existing regulations for the County of Cape May Bridge to facilitate necessary repairs. The repairs consist of extensive mechanical rehabilitation of the bascule span. To facilitate the repairs, the bascule span will be locked in the closed position to vessels from 8 a.m. on October 15, 2003, through 11 p.m. on May 14, 2004.

The Coast Guard reviewed the bridge logs for the last 10 years. From October 16 to May 14, the current regulation requires the draw need only open if at least 24 hours notice is given. From 1993 to 2002, the drawlogs revealed only two openings were provided between October 15 and May 14. The earliest and latest opening dates occurred May 15, 1998, and November 6, 1994, respectively. Also, the bridge is not landlocked on either side of Great Channel providing alternate vessel access to the Atlantic Ocean, to the south, and to the New Jersey Intracoastal Waterway, to the north. Therefore, vessels will not be negatively impacted by this proposal.

Regulatory Evaluation

The rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that the change will have a very limited impact on maritime traffic transiting this area. Mariners can plan their transits by using alternate routes to gain access to larger bodies of water.

Small Entities

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

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

The rule will not have a significant economic impact on a substantial number of small entities because even though the rule closes this small area to mariners, they will not be land-locked at either end and will be able to plan their transits by using available alternate routes.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a State of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because this rule temporarily changes the operating regulations for a drawbridge.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499, Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From October 16, 2003, through May 14, 2004, § 117.720(b) is temporarily suspended and a new paragraph (c) is added to read as follows:

§ 117.720 Great Channel

* * * * *

(c) From 8 a.m. on October 16, 2003, until 11 p.m. on May 14, 2004, the draw of the County of Cape May Bridge, mile 0.7, between Stone Harbor and Nummy Island need not open for the passage of vessels.

Dated: October 16, 2003.

Ben R. Thomason III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 03–27126 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–166]

RIN 1625–AA00

Safety Zone; Hatteras Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of a newly created breach in Hatteras Island, NC, caused by heavy surf during Hurricane Isabel. The U.S. Army Corps of Engineers will be conducting dredging and filling operations to close the newly created breach. A safety zone is needed to prevent vessels from traveling on the waters in the breach during the dredging and filling operations.

DATES: This rule is effective from 12 noon on October 17, 2003, to 5 p.m. on November 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–166 and are available for inspection or copying at Coast Guard Marine Safety Office, Wilmington, NC between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Chuck Roskam, Project Officer, USCG MSO Wilmington, telephone number (910) 772–2200.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard believes that the hazards associated with the situation are so severe that immediate action is necessary to prevent loss of property, serious injury, or loss of life. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Allowing for a comment period is impracticable and contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging and filling operations at Hatteras Island. However, notification will be made to affected mariners via marine information broadcasts, and direct contact with agents and vessels affected by this regulation.

Background and Purpose

Hurricane Isabel eroded a section of Hatteras Island, NC, in effect creating a breach allowing waters to flow between the Pamlico Sound and the Atlantic Ocean. Since the storm, local county government authorities and the U.S. Army Corps of Engineers (ACOE) have been working to re-establish road access to the entire Island. To accomplish this goal, the ACOE is planning to conduct operations to fill the breach. These around-the-clock operations, with associated dredge piping and vessels operating will present dangers to vessels and persons operating in the area. The Captain of the Port Wilmington, NC, is creating a safety zone in order to ensure the safety of workers, and persons and vessels that might wish to transit the area. The safety zone will serve to prevent vessels and persons from entering the area, and thus serve to keep the public safe from the potential hazards associated with the dredging and filling operations.

Discussion of Rule

The Coast Guard is establishing this safety zone at the new breach in Hatteras Island, NC, in order to protect vessels and persons from dangers associated with an ACOE dredging and filling project. Subsequent to Hurricane Isabel causing this new breach, boaters continue to make attempts to cross through this new opening between Pamlico Sound and the Atlantic Ocean. Having a safety zone in place would serve to keep boaters out of this area while the ACOE conducts its dredging and filling operations.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Based on the fact that this new passage between the Pamlico Sound and the Atlantic Ocean did not exist until the passage of Hurricane Isabel, and the U.S. Army Corps of Engineers intends to close the inlet, this rule will not have a significant impact. Any hardships experienced by persons or vessels are outweighed by the interest in protecting the public, vessels, and vessel crews

from the potentially devastating consequences of the hazard presented by the dredging and filling operations.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect mainly recreational boaters who may wish to transit the new breach between the Pamlico Sound and the Atlantic Ocean. The body of water filling the breach did not exist prior to the passage of Hurricane Isabel, and the U. S. Army Corps of Engineers intends to close the inlet. No small entities have become accustomed to using this new body of water; therefore this rule will not have a significant impact. Any hardships experienced by persons or vessels are outweighed by the interest in protecting the public, vessels, and vessel crews from the potentially devastating consequences of the hazard presented by the dredging and filling operations.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–150 to read as follows:

§ 165.T05–150 Safety Zone: Hatteras Island, NC.

(a) *Location.* The following area is a safety zone: waters of the Pamlico Sound and the Atlantic Ocean within a rectangle shaped area defined by the coordinates 35°13.3′ N, 75°39.2′ W; 35°13.3′ N, 75°40.3′ W; 35°12.8′ N, 75°40.3′ W; and 35°12.8′ W, 75°39.2′ W.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to all persons and vessels in the safety zone, or approaching the safety zone.

(2) All persons and vessels in the safety zone, or approaching the safety zone, must comply with the instructions of the Coast Guard Captain of the Port or designated on-scene-patrol personnel. These personnel include commissioned,

warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Waivers.* The COTP may waive any of the requirements of this section for any person, vessel or class of vessel upon finding that circumstances are such that application of the safety zone is unnecessary for port safety.

(d) *Effective period.* This section is effective from 12 noon on October 17, 2003, to 5 p.m. on November 1, 2003.

Dated: October 17, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03–27128 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7579–6]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Direct Final Rule, Removal of Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; removal of amendments.

SUMMARY: On July 3, 2003, (68 FR 39842), EPA published a direct final rule to approve a correction to the mobile source provisions in the regional haze rule. EPA stated in that direct final action that, if we received adverse comment by August 4, 2003, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comment on that direct final rule but did not timely publish the withdrawal. In this action, EPA is removing the amendments that were published in the July 3, 2003, direct final rule. We will address all public comments in a subsequent final action on the parallel proposed rule amendment (68 FR 39888).

DATES: This action is effective as of October 28, 2003.

ADDRESSES: Docket. Materials relevant to the direct final rule that was published in the **Federal Register** on July 3, 2003 (68 FR 39842) are contained in Public Docket Number OAR–2002–0076 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1744, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the docket identification number, OAR–2002–0076.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 1999, we published the final regional haze rule. The regional haze rule provisions appear at 40 CFR 31.308 and 40 CFR 51.309. The rule requires States to develop implementation plans that will make ''reasonable progress'' toward the national visibility goal. The State plans must include these visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the Grand Canyon Visibility Transport Commission (GCVTC) during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region.

On July 3, 2003, we published a direct final action (68 FR 39842) and a parallel proposal (68 FR 39888) to amend the mobile source provisions in 40 CFR 51.309. We stated in the direct final action that if we received adverse comment by August 4, 2003, we would publish a withdrawal notice in the **Federal Register**. We also stated that if the Agency received no adverse comments, the rule would be effective September 2, 2003. We received adverse comments from the Center for Energy and Economic Development but did not publish the withdrawal notice before September 2, 2003. In this action, EPA is removing the amendments that were published in the July 3, 2003 direct final rule. We will address all public comments in a subsequent final action on the parallel proposed rule amendment.

This removal action is a ministerial correction of the prior direct final rulemaking, which by its terms did not become effective because the Center for Energy and Economic Development commented adversely on the approval action. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) because EPA believes that notice-and-comment rulemaking of this removal action is contrary to the public interest and unnecessary. This removal action merely restores the regulatory text that existed prior to the direct final rule. Further notice-and-comment on this action is unnecessary because we are merely restoring the regulatory text that existed prior to the final rule. For the same reasons, we believe there is good cause for this removal to become effective upon publication. We will address all public comments in a subsequent final action on the parallel proposed rule amendment.

Statutory and Executive Order Reviews

As discussed above, this removal action merely restores the regulatory text that existed prior to the direct final rule. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This rule does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not

have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action also 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.*) 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 action 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 in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 22, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ 40 CFR Part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

■ 2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i); redesignating paragraph (d)(5)(ii) as paragraph (d)(5)(iv); and adding paragraphs (d)(5)(ii) and (d)(5)(iii) to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(6) Mobile Source Emission Budget means the lowest level of VOC, NO_X, SO_2 elemental and organic carbon, and fine particles which are projected to occur in any area within the transport region from which mobile source emissions are determined to contribute significantly to visibility impairment in any of the 16 Class I areas.

* * * * *

(d) * * *

(5) * * *

(i) Statewide inventories of current annual emissions and projected future annual emissions of VOC, NO_X, SO_2, elemental carbon, organic carbon, and fine particles from mobile sources for the years 2003 to 2018. The future year inventories must include projections for the year 2005, or an alternative year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State.

(ii) A determination whether mobile source emissions in any areas of the State contribute significantly to visibility impairment in any of the 16 Class I Areas, based on the statewide inventory of current and projected mobile source emissions.

(iii) For States with areas in which mobile source emissions are found to contribute significantly to visibility impairment in any of the 16 Class I areas:

(A) The establishment and documentation of a mobile source emissions budget for any such area, including provisions requiring the State to restrict the annual VOC, NO_X, SO_2, elemental and organic carbon, and/or fine particle mobile source emissions to their projected lowest levels, to implement measures to achieve the budget or cap, and to demonstrate compliance with the budget.

(B) An emission tracking system providing for reporting of annual mobile source emissions from the State in the periodic implementation plan revisions required by paragraph (d)(10) of this section. The emission tracking system must be sufficient to determine the States' contribution toward the Commission's objective of reducing emissions from mobile sources by 2005 or an alternate year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State, and to ensure that mobile source emissions do not increase thereafter.

* * * * *

[FR Doc. 03–27159 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 201, 204 and 206

RIN 1660–AA17

Hazard Mitigation Planning and Hazard Mitigation Grant Program

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

ACTION: Interim final rule.

SUMMARY: This rule clarifies the date that local mitigation plans will be required as a condition of receiving project grant funds under the Pre-Disaster Mitigation (PDM) program. In addition, we are taking the opportunity to correct cross references in our regulations to address areas of inconsistency regarding the planning requirement in the Fire Management Assistance Grant Program and Public Assistance Eligibility that should have been addressed previously.

DATES: Effective Date: October 28, 2003. Comment Date: We will accept written comments through December 29, 2003.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Helbrecht, Program Planning Branch, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC, 20472, 202–646–3358, (facsimile) 202–646–4127, or (email) *karen.helbrecht@dhs.gov.*

SUPPLEMENTARY INFORMATION: On February 26, 2002, FEMA published an interim final rule at 67 FR 8844 implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under section 104 of the Disaster Mitigation Act of 2000, (DMA 2000) Public Law 106–390. This identified the

requirements for State, tribal, and local mitigation plans necessary for Hazard Mitigation Grant Program (HMGP) project funding. On October 1, 2002, FEMA published a change to that rule at 67 FR 61512, extending the date that the planning requirements take effect. This rule stated that for disasters declared on or after November 1, 2004, State Mitigation Plans will be required in order to receive non-emergency Stafford Act assistance, and local mitigation plans will be required in order to receive HMGP project grants.

However, the date that local mitigation plans will be required for the Pre-Disaster Mitigation program as a condition of project grant funding was left at November 1, 2003. The intent was to make grants and technical assistance available in fiscal year 2003 to assist State and local governments to develop mitigation plans and implement mitigation projects during the first year of the competitive grant program. However, because the application period for the competitive PDM program will not close until October 6, 2003, the project grants will not be awarded until after November 1, 2003. The intent of this rule change is to clarify that the November 1, 2003 effective date for the planning requirement will apply only to PDM grant funds awarded under any Notice of funding opportunity issued after that date. Essentially, for PDM grant funds made available in fiscal year 2004 and beyond, local governments must have an approved mitigation plan in order to receive a project grant under the PDM program.

In addition, this rule updates the planning requirement identified in 44 CFR part 204, Fire Management Assistance Grant Program as well as part 206, subpart H, Public Assistance Eligibility. The changes bring these sections into conformity with the existing planning rule, 44 CFR part 201.

FEMA received many thoughtful comments, and intends to address them all prior to finalizing the rule. However, in the interest of expediting these minor clarifying and conforming changes, FEMA is issuing another interim final rule. FEMA encourages comments on this interim final rule, and will make every effort to involve all interested parties, including those who commented on the original interim final planning rules, prior to the development of the Final Rule.

Administrative Procedure Act Statement.

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to the public interest.

This interim final rule clarifies the date that local governments, as well as a tribe applying as a sub-applicant, must have a mitigation plan as a condition of receiving FEMA PDM project grant assistance. This interim final rule clarifies that the plan requirement applies only to PDM project grants awarded under any Notice of funding opportunity issued after November 1, 2003. The Notice of Availability of Funding (NOFA) for the fiscal year 2003 PDM program was not published until July 7, 2003, making it difficult to make grant awards by November 1, 2003. In order to make timely awards for the fiscal year 2003 PDM program, it is essential that the clarification of the effective date of the planning requirement be made effective as soon as possible.

In addition, this rule brings the mitigation planning requirements for the Fire Management Assistance Grant Program, and FEMA's Public Assistance Program into conformity with 44 CFR part 201. FEMA believes it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States, tribes, and communities by clarifying the effective date for planning requirements under 44 CFR part 201. Therefore, FEMA finds that prior notice and comment on this rule would not further the public interest. FEMA actively encourages, solicits, and will consider comments on this interim final rule from interested parties, as well as those submitted on the original interim final planning rule, in preparing the final rule. For these reasons, FEMA believes there is good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in th[e] Executive [O]rder.

The purpose of this rule is to clarify the date by which State, tribal, and local governments have to prepare or update their plans to meet the criteria identified in 44 CFR part 201. This interim final rule clarifies that local governments must have a mitigation plan approved in order to receive a project grant through the PDM program under any Notice of funding opportunity issued after November 1, 2003, in fiscal year 2004 and beyond. As such, the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is not a significant regulatory action and is not an economically significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Environmental Justice is incorporated into policies and programs under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from program participation, denying persons program benefits, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule extends the date for development or update of State and local mitigation plans in compliance with 44 CFR part 201. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

This new interim final rule simply clarifies the date by which States and communities have to comply with the planning requirements, and clarifies which FEMA programs are affected by these requirements. The changes do not affect the collection of information; therefore, no change to the request for the collection of information is necessary. In summary, this interim final rule complies with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA reviewed this rule under Executive Order 13132 and concluded that the rule has no federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

FEMA will continue to evaluate the planning requirements and work with interested parties as the planning requirements of 44 CFR part 201 are implemented. In addition, we actively encourage and solicit comments on this interim final rule from interested parties, and will consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

FEMA has reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. In this review, no ''tribal implications'' as defined in Executive Order 13175 were found 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. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking.

FEMA sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action to extend the time State and local governments have to prepare mitigation plans required by Section 322 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

In compliance with section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 8(2), for good cause we find that notice and public procedure on this interim final rule are impracticable, unnecessary, or contrary to the public interest. In order to make timely awards for the fiscal year 2003 PDM program, it is essential that the clarification of the effective date of the planning requirement be made effective as soon as possible. Accordingly, this interim final rule is effective on October 28, 2003.

List of Subjects in 44 CFR Part 201, Part 204, and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and record keeping requirements.

■ Accordingly, FEMA amends 44 CFR Parts 201, 204, and 206 as follows:

PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Section 201.6(a)(2) is revised to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) * * *

(2) Local governments must have a mitigation plan approved pursuant to this section in order to receive a project grant through the Pre-Disaster Mitigation (PDM) program under any Notice of funding opportunity issued after November 1, 2003. The PDM program is authorized under § 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133. PDM planning grants will continue to be made available to local governments after this time to enable them to meet the requirements of this section.

* * * * *

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 3. The authority citation for part 204 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR, 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p 412; and E.O. 12673, 54 FR 12571, 2 CFR, 1989 Comp., p. 214.

■ 4. Revise the definition of *Hazard mitigation plan* in § 204.3 to read as follows:

§ 204.3 Definitions used throughout this part.

* * * * *

Hazard mitigation plan. A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce

long-term benefits. We address mitigation of fire hazards as part of the State's comprehensive Mitigation Plan, described in 44 CFR part 201.

* * * * *

■ 5. Revise § 204.51(d)(2) to read as follows:

§ 204.51 Application and approval procedures for a fire management assistance grant.

* * * * *

(d) * * *

(2) *Hazard Mitigation Plan.* As a requirement of receiving funding under a fire management assistance grant, a State, or tribal organization, acting as Grantee, must:

(i) Develop a Mitigation Plan in accordance with 44 CFR part 201 that addresses wildfire risks and mitigation measures; or

(ii) Incorporate wildfire mitigation into the existing Mitigation Plan developed and approved under 44 CFR part 201 that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988.

■ 6. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 7. Revise § 206.226(b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2004, the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

Dated: October 22, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–27140 Filed 10–27–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2003–15858]

RIN 2105–AD30

Standard Time Zone Boundary in the State of South Dakota: Relocation of Jones, Mellette, and Todd Counties

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a concurrent resolution of the South Dakota legislature, DOT is relocating the boundary between mountain time and central time in the State of South Dakota. DOT is placing all of Jones, Mellette, and Todd Counties in the central time zone.

EFFECTIVE DATE: 2 a.m. MDT Sunday, October 26, 2003, which is the changeover from daylight saving to standard time.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, (202) 366–9315, or by e-mail at *joanne.petrie@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

Time zone boundaries are set by regulation (49 CFR part 71). Currently, under regulation, Mellette and Todd Counties, and the western portion of Jones County, are located in the mountain standard time zone. The eastern portion of Jones County is currently located in the central time zone.

Request for a Change

The South Dakota legislature adopted a concurrent resolution (Senate Concurrent Resolution No. 3) petitioning the Secretary of Transportation to place all of Jones, Mellette, and Todd counties into the central time zone. The resolution was adopted by the South Dakota Senate on February 3, 2003, and concurred in by the South Dakota House of Representatives on February 7, 2003. The resolution noted, among other things, that the vast majority of residents of those counties observe central standard time, instead of mountain standard time, because their commercial and social ties are to communities located in the central time zone. It further stated that there would be much less confusion and that it would be much more convenient for the commerce of these counties if these counties were located in the central time zone. A copy of the resolution has been placed in the docket.

Procedure for Changing a Time Zone Boundary

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT determined that the concurrent resolution of the South Dakota legislature made a *prima facie* case that warranted opening a proceeding to determine whether the change should be made. On August 11, 2003, DOT published a notice of proposed rulemaking (68 FR 47533) proposing to make the requested change and invited public comment. The NPRM proposed that this change go into effect during the next changeover from daylight saving time to standard time, which is on October 26, 2003.

Comments

Two comments were filed. One, which was filed by the South Dakota Secretary of State, supported the change. He stated that ''The proposal to place all of Jones, Mellette and Todd Counties in the central time zone would eliminate confusion these counties have when elections are conducted. Eliminating this confusion will improve voter turnout in these counties. South Dakota's polling hours are from 7 a.m. to 7 p.m. legal time. These counties that are legally set in mountain time follow central time for their business hours, therefore causing confusion in the past on what time zone to use for polling hours for local, state and federal elections.'' The other comment objected to daylight saving time observance and suggested that all states should be in the same time zone.

We did not hold a public hearing in the area because of the unusual circumstances in this case. According to the State legislature, the vast majority of people in the affected area are already

observing central time. We consulted with a variety of State, local, tribal, and federal officials to confirm the local observance and ask whether a hearing would be helpful in this case. Almost all believed that it would not.

This final rule makes the proposed change. It is effective during the next changeover from daylight saving time to standard time, which is October 26, 2003. We find good cause to make this effective with less than 30 days notice because the final rule merely conforms the regulation to the longstanding and almost universal time observance in the area.

Impact on Observance of Daylight Saving Time

This rule does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis & Notices

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations, and governmental jurisdictions with populations of less than 50,000. This final rule will primarily affect individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it will not be a substantial number. In addition, the change should have little, if any, economic impact. Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not require any new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this final rule under E.O. 12612 and have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation and Coordination With Indian Tribal Governments

E.O. 13175 provides that government agencies consult with tribes on issues that impact the Indian community. The Department has consulted with the Rosebud Sioux Tribal Council and has informed them of this action.

List of Subjects in Part 71

Time zones.

■ For the reasons discussed above, the Office of the Secretary revises title 49 part 71 to read as follows:

PART 71—[AMENDED]

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

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564. 15 U.S.C. 263, 114 Stat. 281149 CFR 159(a), unless otherwise noted.

■ 2. Paragraph (b) of § 71.7, Boundary line between central and mountain zones, is revised to read as follows:

§ 71.7 Boundary line between central and mountain zones.

* * * * *

(b) South Dakota. From the junction of the North Dakota-South Dakota boundary with the Missouri River southerly along the main channel of that river to the crossing of the original Chicago & North Western Railway near Pierre; thence southwesterly to the northern boundary of Jones County at the northeast corner of the NE 1, Sec. 6, T. 2 N., R. 30 E.; thence west along the northern boundary of Jones County; thence south along the western boundaries of Jones, Mellette and Todd Counties to the South Dakota-Nebraska boundary.

* * * * *

Issued in Washington, DC on October 21, 2003.

Norman Y. Mineta,

Secretary.

[FR Doc. 03–27056 Filed 10–24–03; 12:40 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0330612150–3214–02; 102003A]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Closure of the Fishery for Pacific Sardine North of Pt. Arena, California

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

ACTION: Closure of the fishery for Pacific sardine north of Pt. Arena, California.

SUMMARY: NMFS announces the closure of the fishery for Pacific sardine in the exclusive economic zone off the Pacific Coast north of Pt. Arena, California (39° 00′ N. lat.) at 12:01 a.m. local time (l.t.) on October 17, 2003. The purpose of this action is to comply with the allocation procedures mandated by the Coastal Pelagic Species Fishery Management Plan (FMP).

DATES: Effective 12:01 a.m. l.t., October 24, 2003 through December 31, 2003.

ADDRESSES: The data that was used as the basis for this action is available for public inspection at the Office of the Acting Regional Administrator, Rodney R. McInnis, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, (562) 980–4040.

SUPPLEMENTARY INFORMATION: On September 9,2003 (68 FR 53053), NMFS announced the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific Coast. An estimated 59,508 metric tons (mt) of the 110,908 mt harvest guideline was expected to remain unharvested on September 1, 2003. In accordance with the allocation procedures contained in the FMP, 80 percent of the 59,508 mt was allocated to Subarea B south of Pt. Arena, CA (47,606 mt) and 20 percent was allocated to Subarea A north of Pt. Arena, CA (11,902 mt). The allocation to Subarea A of 11,902 mt was reached on October 17, 2003. According to the allocation procedures in the FMP, the fishery may reopen on December 1, 2003, if any portion of the Subarea B allocation is unharvested at that time.

For the reasons stated here and in accordance with the FMP and its implementing regulations at 50 CFR 660.508, the fishery for Pacific sardine north of Pt. Arena, CA was closed at 12:01 a.m. October 17, 2003. If any of the sardine allocation to Subarea B south of Pt. Arena remains unharvested on December 1, 2003, it will be available to all fisheries off the Pacific Coast until the end of the fishing season on December 31, 2003.

Classification

The Assistant Administrator for Fisheries (AA), NMFS finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action under 5 U.S.C. 553(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because this closure is necessary to comply with the allocation procedures mandated by the FMP and its implementing regulations. For these reasons, the AA finds that good cause exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553(d)(3).

This action is required by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

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

Dated: October 23, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–27174 Filed 10–23–03; 3:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 208
Tuesday, October 28, 2003

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[Docket No. PRM–9–2]

Ohio Citizens for Responsible Energy, Inc.; Denial of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of a petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Ohio Citizens for Responsible Energy, Inc. (OCRE). The petition has been docketed by the Commission and assigned Docket No. PRM–9–2. The Petitioner requested that NRC amend 10 CFR part 9, ''Public Records,'' by adding a subpart E entitled ''Public Right of Access to Licensee-Held Information.'' This subpart would provide for public access to licensee-held documents, subject to limited exceptions, and include appeal procedures. The NRC is denying the petition because the additional recordkeeping and reporting proposed by the Petitioner is not necessary to protect the public health and safety or to ensure effective public participation in NRC adjudicatory hearings on licensing actions, and is contrary to internally and externally-driven initiatives to reduce unnecessary recordkeeping and reporting requirements.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, the Petitioner's response to these comments, the NRC's letter of denial to the Petitioner, and the congressional letters may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. 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.*

FOR FURTHER INFORMATION CONTACT: Maria E. Schwartz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–1888; or *MES@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 10, 1994, OCRE, the petitioner, filed a petition for rulemaking under 10 CFR 2.802 with the NRC. The Petitioner subsequently filed an amendment to the petition on April 11, 1994. The Petitioner is a private, not-for-profit organization incorporated under the laws of the State of Ohio that specializes in research and advocacy on nuclear safety issues. The Petitioner also supports the right of meaningful public participation in the regulation of nuclear facilities.

The Petitioner requests that the NRC amend 10 CFR part 9, ''Public Records,'' which addresses the public's right of access to information held by NRC. The Petitioner proposes an additional subpart E to part 9 entitled ''Public Right of Access to Licensee-Held Information,'' which would provide for public access to licensee-held documents including draft documents, subject to exceptions necessary to protect certain sensitive information such as personal information, proprietary information, safeguard information, identity of confidential sources, and classified information. The proposed rule would include appeal procedures if a requester was not satisfied with a licensee's response to a request for information. Under the Petitioner's proposed appeal process, the requester could appeal the matter to an Administrative Judge (AJ) on the Atomic Safety and Licensing Board Panel. The AJ's decision would be final and not further appealable.

The petition was docketed as PRM–9–2. NRC published a notice that announced the receipt of the petition and requested public comments on the suggested amendments in the Federal Register on June 13, 1994 (59 FR 30308). NRC received 27 comment letters and an additional letter responding to those comments from OCRE. Of the 27 responses, three endorsed the petition. These commenters included a public interest group and members of the public. Twenty-four commenters opposed the petition. These commenters were primarily utilities or representatives of utilities.

A response to the petition was delayed a number of times to consider the petition in light of the Commission's ongoing public information initiatives and legislative and executive branch directives on reducing unnecessary reporting and recordkeeping. For example, there was a significant delay associated with developing and implementing ADAMS, the Commission's electronic document library system. During the review period the staff contacted the petitioner to provide updates on the status of the agency's review. Nevertheless, the Commission finds this delay to be unacceptable. The Commission is committed to a more rigorous review of action on pending rulemaking petitions in order to prevent a recurrence of an unnecessary delay of this length and to assure timely response.

II. Discussion

The Petitioner's primary concern is that licensee-held documents are not accessible by members of the public and may contain information that the public would find useful in participating in NRC proceedings. The Petitioner asserts that rulemakings in the 1993–94 time frame as well as NRC bulletins and generic letters issued over the period 1988–94, instruct licensees to send conclusory statements to NRC while retaining documentation and analyses at licensees' facilities. Such information retained onsite by licensees for NRC inspection purposes is not retained by NRC in docket files, nor is it placed in NRC's Public Document Room (PDR) unless it is included in an NRC inspection report. In these

circumstances, the information cannot be obtained under the Freedom of Information Act (FOIA) (Pub.L. 108–23) because it does not constitute ''agency records'' as defined in the Paperwork Reduction Act of 1995 (PRA) (Pub.L. 104–13). The Petitioner asserts that this trend in the NRC's regulatory practice reduces the amount of information to which the public has access. The Petitioner believes that when NRC proposes to reduce the number of licensee reports required to be submitted to NRC or retained by licensees, NRC should take into consideration that while NRC may have access to these reports or information based on its status as the regulator of the licensee, the public does not because these reports and information will not be placed in the PDR. As a result, the Petitioner contends the public will not be able to participate fully in the regulatory process since the public will not be able to evaluate potential health and safety problems contained in these documents. The Petitioner is concerned that this result will undermine the public's effective participation in NRC's regulatory process. The Petitioner is also concerned that this will restrict the public's effective participation in the NRC's hearing process as provided for under the Atomic Energy Act of 1954, as amended (AEA). In addition, the Petitioner argues that this result will promote an atmosphere where public distrust of nuclear energy will grow, eroding the public's confidence in NRC's regulatory program and fostering a perception of coziness with the regulated industry.

The Petitioner acknowledged that the primary reason for this petition for rulemaking is not directly to protect or enhance the public health and safety; rather, it has been designed to ensure effective public participation by extending public access to information in the possession of licensees. To accomplish this, the Petitioner proposes to amend 10 CFR part 9 to require licensees to provide ''any record relevant to NRC-licensed or regulated activities'' subject to exemptions necessary to protect certain sensitive information such as personal information, proprietary information, safeguards information, identity of confidential sources, and classified information.

Legislative and Executive Branch directives, *e.g.*, the PRA (revising and strengthening earlier requirements) and the Clinton Administration's 1993 National Partnership for Reinventing Government (NPR), were initiated at approximately the same time that OCRE submitted its petition to NRC for consideration. These initiatives required federal agencies, including NRC, to move toward a less expensive and more efficient Federal Government. Phase 2 of NPR included a directive requiring agencies to focus on core mission competencies and service requirements and to review their current programs to identify areas that could be eliminated, including, among other things, areas that are particularly relevant to OCRE's petition, *i.e.*, deleting obsolete regulations and improving government management of communications technology which included a review of the need for, and use of, various information collections. The objectives of the PRA include reducing Government-required recordkeeping and reporting requirements, a greater use of electronic technology for operational efficiency and information dissemination, and a concerted effort, using information technology, to improve government management of information collections.[1]

In addition to these external initiatives, there were ongoing internal agency initiatives such as the establishment of NRC's Regulatory Review Group which, in 1993, provided a report to the Commission focusing on key areas in which changes in the way the NRC conducted business could significantly reduce stakeholder and NRC costs without adversely affecting the level of safety at operating nuclear power plants. The report recommended moving toward more performance-based requirements and proposed efficiencies in the area of reporting requirements. Based on those recommendations, NRC assessed reporting and recording requirements in order to identify those requirements which could be reduced in scope or eliminated without impacting NRC's ability to fulfill its mission regarding the protection of the public health and safety.

In cases where NRC has made a determination to reduce or eliminate a requirement, NRC first considered the impact on public health and safety. If there would be no direct impact on public health and safety, NRC next considered the reduced administrative burden on licensees and the extent to which the proposed elimination will deprive the public of health and safety information. In all cases, an existing requirement cannot be reduced or eliminated arbitrarily. Before regulations containing reporting requirements which NRC determines to be obsolete, unnecessarily burdensome, too prescriptive or to overlap or duplicate other regulations, can be removed, NRC must follow the administrative process for rulemaking which provides an opportunity for comment by members of the public. In this way, NRC seeks to maintain a balance between elimination of recordkeeping and reporting requirements which are burdensome and do not substantially contribute to providing a basis for its licensing and regulatory actions, and making the basis for its decisions transparent to stakeholders.

The PRA requires federal agencies to, among other things, ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public. This includes evaluating whether proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility. Recently, in conformance with the objectives of this Act, NRC amended its ''Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites,'' (65 FR 63769 (October 25, 2000)), to better align the reporting requirements with NRC's needs for information to carry out its safety mission (*e.g.*, extending the required initial reporting times for some events, consistent with the time at which the reports are needed for NRC action) and to reduce unnecessary reporting burden, consistent with NRC's needs (*e.g.*, eliminating the reporting design and analysis defects and deviations with little or no risk or safety significance (65 FR 63778–9)).

Subject to the need to protect safeguards and national security-related information, commercial nuclear facility licensing and regulation should be transacted publicly. In that regard, the NRC had made available substantial amounts of information for public review on its website, which since 2000 and the development of its Agency-wide Document Access and Management System (ADAMS) has provided this information in a more searchable form at NRC's Public Electronic Reading Room, *i.e., http://www.nrc.gov/reading-rm.html.* These documents, which include substantial amounts of

[1] This initiative has more recently evolved into the development of E–GOV which uses improved internet-based technology to make it easy for citizens and business to interact with the government, saving the taxpayer dollars while streamlining citizen-to-government communications. In 1998, the Government Paperwork Elimination Act (GPEA) (Pub. L. 105–277) was enacted to, among other things, help citizens gain one-stop access to existing Government information and services and increase Government accountability to citizens.

information relevant to licensing decisions, *e.g.*, the license application, as well as changes thereto, correspondence between the licensee and NRC,[2] and inspection reports, are available in ADAMS and continue also to be available in the PDR. NRC also has a comprehensive set of reporting requirements which have had the benefit of public comment and have been promulgated in accordance with the Administrative Procedure Act after careful consideration as to whether NRC needs to obtain licensees' records and information to carry out NRC's public health and safety responsibilities. The Petitioner has apparently discounted the process by which NRC determined that many of the documents which are the subject of the petition for rulemaking are unnecessary for NRC to possess in order to make regulatory decisions that protect the public health and safety, or has determined may be kept onsite at licensees' facilities for NRC inspection purposes but are not required to be submitted to NRC. In addition, much of the information which is of interest to the Petitioner and being retained onsite by licensees may also be available to members of the public because it is contained in, or has been relocated to, other documents that have been submitted (as part of applications or in response to requests for additional information) and are placed in NRC's Public Electronic Reading Room and/or the PDR.

III. Summary of the Public Comments

The notice of receipt of the petition for rulemaking invited interested parties to submit written comments concerning the petition. The NRC received 27 comment letters and an additional letter responding to those comments from OCRE. Of these, three letters from private citizens and the Clean Water Fund of North Carolina, an environmental group, favored granting the petition. Twenty-four letters opposing the petition were sent primarily by utilities or representatives of utilities such as Nuclear Energy Institute (NEI) and Nuclear Utility Backfitting and Reform Group (NUBARG). Many of the letters contained comments that were similar in nature. The following section summarizes, by issue, the public comments received and provides responses to those comments.

[2] Although the terrorist attacks of September 11, 2001, led to the NRC's decision to remove material from its website, the agency, after conducting a deliberate and systematic review of that material, has now restored most of the material to the Web site.

Comment 1. Licensee-Held Information Should Not Be Withheld From the Public

Of those responding in favor of granting the petition, one private citizen contended that the petition is justified because it is illegal and unfair that the public does not have access to licensee-held information. Another private citizen agreed with that position but pointed out that the petition, as written, is too general with respect to the scope of records covered by the proposal and suggested that the scope be limited to the records used by the licensee to support a docketed submittal (*i.e.*, those records which could have been included with the submittal). That commenter also noted that any proposed change to 10 CFR part 9 must not interfere with the handling of licensee-prepared records as proprietary information. The Clean Water Fund of North Carolina supported the Petitioner's view that limiting public access to information increases public cynicism regarding the regulation of nuclear energy.

NRC Response

Applicants for an NRC license and licensees provide information to NRC under the agency's requirements, See, *e.g.*, 10 CFR 30.6, 30.32 and 10 CFR 50.4, 50.33, 50.34, 50.90, which set out certain NRC license application requirements; 10 CFR 50.72 and 50.73, which require nuclear power reactor licensees immediately to notify NRC when certain conditions arise, followed by written event reports; and, licensee reports sent in response to NRC requests for additional information as part of a specific licensing or regulatory action. This information is submitted on the docket for the particular licensee and, except when it contains safeguards, personal information or other information that may be protected from public disclosure under 10 CFR 2.790, is placed in the PDR where it is available for public inspection and copying [3] and, in most instances, is available in electronic form through NRC's Public Electronic Reading Room, discussed above. In this way, the public has access to very large amounts of relevant licensee information. In addition, NRC allows licensees to retain specified records onsite for inspection purposes. Although NRC has the right to access these records or obtain them permanently, NRC has determined that it is not necessary, under most circumstances, for licensees to submit this information to NRC. To require the submission of information and documents beyond those that NRC determines it needs to have submitted for its regulatory function would be contrary to the objectives of the PRA. Finally, general information held by a licensee but not required to be retained or submitted for NRC's regulatory purposes is the property of the licensee. Absent an NRC determination that such information must be submitted to NRC in order for NRC to carry out its statutory and regulatory obligations, the AEA does not provide NRC with the authority to require that licensees provide such information to a third party.

[3] NRC has restored access to a large volume of licensing and regulatory materials that were removed from its website and PDR for review and screening following the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon.

Comment 2. The Petition Would, in Effect, Modify the FOIA Without Congressional Action

Several of the commenters endorsed NEI's comment that the proposed petition for rulemaking would expand the NRC's current requirements for granting public access to licensee documents. They believe that the proposed rulemaking, without Congressional action, would modify the FOIA by making the statute applicable to entities other than government agencies and to records other than those within a government agency's control. In addition, most commenters believe that the petition challenges the Congressional delegation of authority to the NRC by giving access to almost all of a licensee's internal documents, including those which the NRC has determined can be retained onsite, as well as those which NRC believes are unnecessary for it to possess or obtain access to in order to protect the public health and safety.

NRC Response

NRC believes the requested amendment is overly broad and, if granted, would allow access to almost all of a licensee's internal documents including drafts and other documents without a showing of need. The petition requests access to ''any record relevant to NRC licensed or regulated activities held by a possessor.'' In the context of NRC regulation, a very broad range of licensees' records may arguably be ''relevant'' to NRC activities. OCRE's petition relies heavily on NRC's authority under the AEA to access and, if it chooses, obtain permanent custody of such records. Section 161o. of the AEA, for example, provides NRC with the authority to require reports and recordkeeping, and to require licensees

to maintain these documents for inspection purposes, for specified activities and studies, and activities under licenses issued pursuant to the AEA, ''as may be necessary to effectuate the purposes of'' the AEA.

When in the possession and control of NRC, documents become ''agency records,'' and, in accordance with FOIA and the agency's regulations, such documents are available for public inspection and copying upon request by any person. The petition, if granted, would arguably amount to an unprecedented and legally questionable extension of the FOIA by granting access to private documents of regulated entities that are not ''agency records'' (as defined in the PRA) and are not required for NRC regulation and licensing. The FOIA applies to every record which an agency has, in fact, obtained; and not to documents which merely could have been obtained. The United States Supreme Court considered this issue in *Forsham* v. *Harris*, 445 U.S. 169 (1980), and concluded that Congress could not have intended FOIA to embrace documents that the Federal Government has the right of access to, as this would include an extraordinarily large amount of private documents.

Comment 3. There Are Many Administrative Costs Associated With Information Requests

Commenters stated that there are many administrative costs associated with information requests. Most commenters believe that since the subject of a request does not have to be well defined, nor is a stated purpose for the search required, it is likely that many licensees would have to create or recreate their filing systems at a substantial cost to accommodate broad requests. This cost would, in turn, be passed on to consumers. One commenter, the Mayo Clinic, stated that ''the petition would result in increased licensee efforts and costs with no benefit nor increase in safety for society. These additional costs would need to be passed on to customers who would gain nothing. In particular, medical licensees would be forced to pass these costs onto patients while at the same time reacting to federal health care initiatives to reduce costs.'' One licensee (Commonwealth Edison) estimated that any one request costs anywhere from $1,500 to $3,000, and would clearly require dedicated resources to this proposed effort.

NRC Response

NRC agrees with the general comments and assertions that the requirements proposed by the Petitioner would result in some, possibly substantial, administrative costs for licensees to respond to requests for documents. A licensee's process would likely include provisions for: (1) Receipt, acknowledgment, and tracking of the request; (2) evaluation of the request to determine if it will require a document search effort, and, if so, the nature and scope of the search; (3) conducting a search including interactions with document custodians; (4) reviewing collected materials and screening for ''relevance'' or other bases for non-disclosure such as trade secrets or privileged information; and (5) reproduction and transmittal of responsive documents. Since the documents which can be requested are ''any record,'' there are likely to be significant administrative burdens and costs for locating and compiling the requested information for reproduction. The cost could include dedicating personnel to this task. In addition, unlike the FOIA, the petitioner's proposal does not provide for the recovery of the costs associated with searching and reviewing documents.

Granting the petition could adversely impact the effectiveness of NRC by increasing the burden on the Commission's adjudicatory activities without a corresponding enhancement of safety. The appeal process provided by this petition would require AJs to be called upon to determine if a record can be the subject of a request, if reproduction fees are reasonable, and if the licensees' responses are timely. The proposal would strain the existing resources of the Atomic Safety and Licensing Board Panel. It might also necessitate seeking additional resources for NRC which might be difficult to obtain in the absence of a safety justification. The petition does not provide for effective Commission oversight of the AJs that is afforded for other adjudicatory matters; indeed, the Petitioner's proposal that the AJs' decisions would be final and would not be appealable or subject to review by the Commission, undermines the Commission's ability to effectively monitor and administer its adjudicatory processes. The Commission's regulations require licensees to provide full disclosure of information that NRC has determined is necessary for it to fulfill its mission to protect the public health and safety. OCRE's petition does not explain how its proposed document access and appeal process would enhance NRC's ability to accomplish that mission.

Comment 4. OCRE Has Not Provided a Specific Purpose for the Information Other Than Wanting Access to It

Several commenters stated that OCRE has not provided any specific reason for needing to review the onsite information it is requesting other than its belief that the public should have access to this information. The Petitioner has pointed out that the requested access is not directly for protection of the public health and safety. The commenters' criticisms further questioned whether OCRE is not casting public citizen groups into the role of providing oversight of NRC's regulatory program.

NRC Response

NRC recognizes the important contribution the public makes to NRC's regulatory process. To facilitate public involvement, NRC has developed more effective and efficient methods of providing information to the public in order that the public can be more fully informed on the licensing and regulatory process and issues associated with these activities. With the improvement of communication technology since the submittal of OCRE's petition, NRC has developed ADAMS, as discussed above, that provides access to documents relevant to its licensing decisions, as well as the Web site with additional links containing information regarding the regulation and management of nuclear facilities and materials to facilitate public participation in the regulatory process. A newly created ''Homepage'' and improved ''search engines'' were added in 2000 and have been updated recently, making ''navigation'' of this information easier. NRC is satisfied that the access to licensee-held documents envisioned by OCRE's petition is not necessary to participate in the hearing process, given the voluminous amounts of information available to the public regarding NRC's licensing review and regulatory decisions. For example, subpart L of 10 CFR part 2, ''Informal Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' contains provisions that allow any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to subpart L, to file a request for a hearing. Subpart L also requires the Secretary of the NRC to maintain a docket for each adjudication under this subpart, commencing with the filing of a request for a hearing, which includes the request for a hearing and other related documents, as well as a hearing file

consisting of the application for a license or amendment, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. The NRC staff has a continuing duty to keep the hearing file up to date with respect to these materials and to make them publicly available for inspection and copying, as well as providing them to the appropriate parties to the adjudication. To that end, the database for the Web-based version of ADAMS is updated once daily, usually after midnight East coast time. In the more formal NRC adjudications, additional discovery tools are available and these can provide access to much of the information and many of the documents in the licensee's sole possession that the Petitioner seeks through its petition for rulemaking. In view of the extensive provisions for access to relevant information and documents in NRC's hearing procedures in 10 CFR part 2,[4] NRC strongly disagrees with the Petitioner's assertion that without the proposed rule, the public's effective participation in NRC's hearing process will be restricted.

Comment 5. The Petition Could Have a Negative Impact on the Public Health and Safety

Several commenters pointed out that the petition for rulemaking could actually have a negative effect on public health and safety by producing a chilling effect on the development of utilities' self-assessments (which have been promoted by NRC) because the utilities fear that such documents could be used for purposes other than that for which they were intended.

NRC Response

NRC agrees it is possible that granting the petition could discourage licensee self-assessment. NRC agrees that providing access to draft and other preliminary documents may have a chilling effect and discourage employees of licensees from documenting information that may be perceived as adverse to their employers, resulting in less candid and frank self-assessments and ''lessons learned'' analysis. It should be noted that NRC encourages self-assessments and licensee-initiated corrective actions and NRC would not want to impose unnecessary requirements that discourage these activities.

Comment 6. Some Information Now Being Retained by Licensees Is Still Available to Members of the Public Through Reports to the NRC Which Are Placed in the NRC's Public Document Room

One commenter, Westinghouse Electric Corporation, pointed out that in each case provided by OCRE, ''there is voluminous information in the possession of the NRC and hence publicly available * * *'' Westinghouse took the examples provided by OCRE where documents are now being retained onsite, and pointed out where the information that is being retained onsite is still being provided in other records that are sent to NRC and, thereafter, placed in the PDR.

Another commenter, BG&E, responded to OCRE's appraisal of the current situation, by pointing out that approximately 90% of the information that it will take out of its technical specifications will be transferred to publicly available documents, such as the Updated Final Safety Analysis Report and the Quality Assurance Plan, and the remaining 10% will be transferred to more appropriate, publicly available documents which are controlled by existing regulations.

NRC Response

NRC agrees with the commenters that information retained on site often is provided in other records that are sent to NRC. Although some of this material may have been removed from its Web site and PDR after the terrorist attack of September 11, 2001, NRC has restored access to a large volume of licensing and regulatory materials that were removed.

Comment 7. OCRE is Mischaracterizing the 1989 Rules of Practice and Overstating the Effects of Not Having Access to the Records Sought

OCRE stated that ''without sufficient factual information to support admission of contentions, petitioners will never become interveners and will never have the right to discovery.'' However, while the Rules of Practice will preclude a contention from being admitted where an intervener has no facts to support its position and NRC hearing practice does not permit discovery to frame contentions, allowing access to ''any record relevant to NRC-licensed or regulated activities held by a possessor,'' would allow, as several commenters pointed out, ''litigation-type discovery against a licensee without filing a lawsuit and thus, without the legal safeguards designed to prevent ''fishing expeditions.'''

NRC Response

The NRC disagrees with the Petitioner's position that if this petition is not granted, the public will not be able to fully participate in the NRC hearing process which is provided for under the AEA. The AEA, as implemented by the Commission's regulations, provides the opportunity for a hearing to any person whose interests may be affected by the granting, renewal, or licensee-initiated amendment of an NRC license. The NRC staff makes available for public inspection and copying, documents relevant to its licensing decisions electronically at the NRC's Public Electronic Reading Room, discussed above, and/or in the PDR. These documents include the application, and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. These documents provide the basis for the NRC's decision to grant, renew, or amend, a license, and are sufficient to permit a member of the public to make an informed decision as to whether the person desires to participate in the hearing process and to formulate appropriate contentions. *See* Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process (54 FR 33168 (August 11, 1989)).

IV. Reasons for Denial

NRC recognizes the contribution the public makes to the regulatory process and the importance of public confidence in that process. However, based on the review of the amendment requested by OCRE and the comments received on this petition, NRC concludes that there are several legal and policy considerations associated with the petition for rulemaking which warrant denial of the petition. The specific reasons for denial are:

1. OCRE's request for access to licensee-held records is overly broad and would allow access to documents that the NRC requires licensees to maintain onsite for inspection purposes but generally does not require licensees to submit, as well as almost all of a licensee's internal documents including drafts and other documents which the NRC does not require licensees to maintain and on which NRC does not rely for NRC regulatory or licensing actions, even if they are, in some respect, relevant to NRC activities.

[4] The NRC has proposed changes to the adjudicatory process 66 FR 19610 (april 16, 2001). The proposed changes would not affect the access to documents and information currently provided to the public.

Neither the AEA or the FOIA, which applies to records which an agency has, in fact, obtained, and not to records which merely could have been obtained, provide the NRC with the authority to require licensees to supply such documents to the public.

2. OCRE has not made a showing that supplementing the safety information which underlies and supports Commission action and is available to the public, would result in enhanced safety. In fact, granting the petition may have an adverse impact on safety. Resources that licensees would use to defend and explain matters would not be available to address substantive safety issues. Granting the petition may also have a chilling effect and discourage employees of licensees from documenting information that may be perceived as adverse to their employers resulting in less candid and frank self-assessments and ''lessons learned'' analysis. The access required by the petition could discourage licensee self-assessments and self-identification of the need for corrective action.

3. Without a corresponding enhancement of safety, the petition would create a significant but unnecessary administrative and economic burden on licensees without justification. Because the records which could be requested are ''any record,'' such requests could significantly impact licensees which would be required to bear the cost of creating a system to assemble these documents as well as dedicating the administrative personnel necessary to locate and compile the requested information for reproduction. Unlike FOIA, which allows for the recovery of the costs associated with searching and reviewing documents, the only cost which the petition allows is the cost of document production.

4. The petition is contrary to efficient regulatory oversight of NRC facilities, as well as the legislative move to reduce unnecessary recordkeeping and reporting requirements. NRC has been engaged in activities to eliminate unnecessary requirements and to move toward risk-informed requirements which focus on safety matters. These internal agency initiatives have gone hand-in-hand with the objectives and requirements of the PRA. The documents which are the subject of the petition for rulemaking include documents that NRC has determined are unnecessary for NRC to fulfill its mission regarding the protection of the public health and safety and the common defense and security.

5. Granting the petition would adversely impact the effectiveness of the NRC by increasing the burden on the Commission's adjudicatory activities without a corresponding enhancement of safety. The appeal process provided by this petition would require AJs to be called upon to determine whether a record can be the subject of a request; whether reproduction fees are reasonable; and, whether a licensee's response is timely. This would increase the work load of NRC AJs which would affect the amount of time available for other cases. The petition does not provide for the Commission to review the decisions of its subordinate judges which undermines the Commission's ability to effectively monitor and administer its adjudicatory processes.

6. OCRE has not made a showing that without this amendment to 10 CFR part 9 the public will not be able to fully participate in the NRC hearing process provided for under the AEA. The AEA, as implemented by the Commission's regulations, provides the opportunity for a hearing to any person whose interests may be affected by the granting, suspending, revoking or amending of an NRC license or application to transfer control. The documents which provide the basis for an application to grant, renew, or amend, a license, are available in electronic form for viewing or downloading at the NRC's Public Electronic Reading Room, *http://www.nrc.gov/reading-rm.html,* or at the NRC's PDR for public inspection and copying. These documents are sufficient for a member of the public to make an informed decision as to whether the person desires to participate in the hearing process and to formulate appropriate contentions. The Commission is satisfied that, given the information that the NRC ensures is available to the public, the access to licensee-held documents that the petition requests is not necessary for meaningful participation in the hearing process.

V. Conclusion

In sum, granting the petition could create a significant administrative and economic burden on licensees and increased administrative burden on the NRC without a corresponding enhancement of safety. The potential but speculative benefits that might occur from public access to licensee-held documents are outweighed by the burden granting the petition would impose. Moreover, the Commission does not have the authority to require a licensee to provide documents to members of the public that NRC has determined are not necessary to be kept as agency records to provide the basis for NRC's regulatory and licensing actions. The petition for rulemaking filed by OCRE, PRM–9–2, is denied.

Dated at Rockville, Maryland, this 22nd of October, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–27131 Filed 10–27–03; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY63–263, FRL–7579–5]

Approval and Promulgation of Implementation Plans; New York; Revised Motor Vehicle Emissions Budgets for 1990 and 2007 Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is proposing approval of New York's: revised 1990 and 2007 motor vehicle emission budgets recalculated using MOBILE6; and modified date for submittal of the State's mid-course review. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in its portion of the New York-Northern New Jersey-Long Island nonattainment area (NAA).

DATES: Comments must be received on or before November 28, 2003. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-

line instructions for submitting comments.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, and New York State Department of Environmental Conservation, Office of Air and Waste Management, 14th Floor, 625 Broadway, Albany, New York 12233–1010.

FOR FURTHER INFORMATION CONTACT: Andrew A. Bascue, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249 or *bascue.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: This revision is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally adopted and submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

New York held a public hearing on its proposed SIP revision on June 24, 2003. If New York's proposed SIP revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will take final action on the State's plan consistent with this proposal and any submitted comments. Before EPA can approve this SIP revision, New York must adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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1. Background

In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their SIPs and motor vehicle emissions budgets (''budgets''). Although these memoranda primarily targeted certain serious and severe ozone NAAs, EPA has implemented this policy in all other areas that have made use of Federal Tier 2 benefits in air quality plans from EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.'' All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to make a commitment to revise and resubmit their budgets within either 1 or 2 years of the final release of MOBILE6 in order to gain SIP approval.

On April 18, 2000, New York submitted a revision to the 1-hr Ozone Attainment Demonstration SIP for the New York portion of the New York-Northern New Jersey-Long Island severe ozone Nonattainment Area, which for purposes of this action will be referred to as the New York Metropolitan NAA. The New York Metropolitan NAA is comprised of the New York Counties of Bronx, Kings, Nassua, New York, Putnam, Queens, Richmond, Rockland and Westchester and the lower Orange County towns of Chester, Minisink, Monroe, Tuxedo, Warwick and Woodbury. The April 18, 2000 SIP revision included, among other things, revised budgets using interim MOBILE5-based estimates of the Tier 2 standards and an enforceable commitment to revise these budgets as well as the attainment demonstration using the MOBILE6 model within one year of the release of the model. Additional information on EPA's final approval of New York's April 18, 2000 submittal can be found in the February 4, 2002 **Federal Register** (67 FR 5170).

EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Thus, the effective date of that **Federal Register** notice constituted the start of the 1 year time period within which New York was required to revise its 1-Hour Ozone Attainment Demonstration SIP using the MOBILE6 model. On January 29, 2003, New York submitted to EPA a proposed revision for its SIP to meet this requirement. This proposed revision and the MOBILE6 modeling methodology used were refined and supplemented subsequent to discussion between New York and EPA. On June 24, 2003, New York held a public hearing on the revised motor vehicle emission budgets using MOBILE6 and EPA is proposing, herein, to approve those budgets.

2. What Is MOBILE6?

MOBILE6 is the most current version of a long line of MOBILE emissions factor models developed by EPA for estimating pollution from on-road motor vehicles in states outside of California. The model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variations in local conditions such as temperature, humidity, fuel quality, and inspection and maintenance programs. The model is used to calculate current and future inventories of motor vehicle emissions at the local, state and national level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on the model are also used to meet the Federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major update of the MOBILE model since 1993.

3. What Is the Purpose and Content of New York's Submittal?

The State submitted this proposed SIP revision to address an enforceable commitment made in the April 18, 2000 Attainment Demonstration SIP revision, approved by EPA on February 2, 2002 (67 FR 5170). The enforceable commitment obligated the State to update its 2007, attainment year, motor

[1] Memoranda, ''Guidance on Motor Vehicle Emissions Budgets in 1–Hour Ozone Attainment Demonstrations,'' issued November 3, 1999, and ''1–Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking,'' issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (''Tier 2 standards'') for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

vehicle emissions budgets using the MOBILE6 model and to reevaluate the attainment demonstration based on the updated budgets. The proposed revision demonstrated that the updated motor vehicle emissions budgets calculated using MOBILE6 continued to support the projected attainment of the 1-hour ozone NAAQS for the New York Metropolitan NAA by the attainment date of 2007. Also included as part of the proposed SIP revision, New York proposed to modify the planned date for submitting its mid-course review to December 31, 2004.

4. What Are the Revised MOBILE6 Budgets?

Table 1 below summarizes the revised motor vehicle emissions budgets for the New York Metropolitan NAA in tons per summer day (tpd). These revised budgets were developed using the latest planning assumptions, including the most recently available vehicle registration data, vehicle miles traveled (VMT) estimates, vehicle speeds, fleet mix, and SIP control measures. For additional details the reader is referred to the Technical Support Document (TSD) for this proposed action. EPA is proposing to approve these revised 1990 and 2007 motor vehicle emissions budgets. The 2007 motor vehicle emissions budgets will serve as the transportation conformity budgets for the New York Metropolitan NAA.

TABLE 1.—NEW YORK METROPOLITAN NAA MOTOR VEHICLE EMISSIONS BUDGETS, REVISED WITH MOBILE6

1990		2007	
VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
596	512	182	230

5. Are the Revised MOBILE6 Budgets Consistent With New York's 1-Hour Attainment Demonstration?

EPA has found that New York's revised MOBILE6 budgets are consistent with its 1-hour ozone Attainment Demonstration. EPA has articulated its policy regarding the use of MOBILE6 for SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' [3] and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas.'' [4] New York included in the January 29, 2003 submittal a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration SIP continues to demonstrate attainment using revised MOBILE6 budgets for the New York Metropolitan NAA, see Table 2. New York's attainment demonstration used photochemical grid modeling supplemented with a weight of evidence analysis. Consistent with EPA policy, as detailed in the aforementioned guidance documents, the State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 budgets with the previously approved (67 FR 5170) MOBILE5 budgets for the New York Metropolitan NAA to determine if attainment will still be predicted by the 2007 attainment year. Specifically, the State calculated the percent reduction from the 1990 base year to the 2007 attainment year for NO_X and VOC MOBILE5-based budgets. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and 2007 attainment year budgets.

TABLE 2.—RELATIVE REDUCTION COMPARISON BETWEEN MOBILE5-BASED BUDGETS AND MOBILE6-BASED BUDGETS FROM BASE YEAR TO ATTAINMENT YEAR

	NO_X (percent)	VOC (percent)
MOBILE5	44.8	66.7
MOBILE6	55.1	69.3

As shown in Table 2, New York's relative reduction comparison shows that for the New York Metropolitan NAA the percent reductions in VOC and NO_X budgets obtained through the use of MOBILE6 are greater than the percent reductions calculated with MOBILE5-based budgets. As such, New York's January 29, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2007 for the New York Metropolitan NAA, *i.e.* the SIP continues to demonstrate its purpose.

6. Are New York's Motor Vehicle Emissions Budgets Approvable?

Table 1 summarizes New York's revised budgets contained in the January 29, 2003 submittal. These budgets were developed using the most recent planning assumptions, including the most recently available vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. The updated budgets for 2007 were developed for the New York Metropolitan Transportation Council (NYMTC) to use for purposes of transportation conformity, which it is required to meet by October 2005. The budgets were developed using appropriate methodology and support the SIP in demonstrating its purpose, therefore the budgets are approvable. Additional detail regarding the methodology and inputs used by the State can be found in the TSD for this proposed action.

Concurrent with this notice of proposed rulemaking, EPA is completing the adequacy review process on the revised 2007 attainment budgets for NYMTC. EPA held the 30-day comment period for the budgets between July 1, 2003 and July 31, 2003 by posting a notice on EPA's conformity website: *http://www.epa.gov/otaq/transp/conform/adequacy.htm*. In accordance with the ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' [5] EPA will issue its adequacy determination, including a response to comments, by posting it on the conformity Web site, and will also subsequently announce the determination in the **Federal Register**. The revised 2007 attainment budget will apply for conformity purposes once EPA issues its adequacy determination.

7. When Will New York Submit Its Mid-Course Review?

On April 18, 2000, New York submitted a mid-course review analysis which showed a continued downward trend in both the number of violations of the 1-hour ozone standard and the measured ozone concentrations. EPA found, however, that several more years of monitored data and implementation of the Regional NO_X Program were needed before a true mid-course review of the attainment demonstration could be made. Therefore, on February 4, 2002 (67 FR 5170), EPA approved New York's further commitment to perform a mid-

[3] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[4] Memorandum, ''Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas,'' issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[5] Memorandum, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' issued May 14, 1999. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

course review and submit the results to EPA by December 31, 2003.

Due to challenges by upwind states of EPA's Regional NO_X Program, the benefit of these upwind NO_X reductions will not be fully realized until late 2003. Therefore, EPA has allowed states to revise their mid-course commitments to provide for the review no later than December 31, 2004. In order to be consistent with surrounding states and to include the benefit of the Regional NO_X Program in its mid-course review, New York revised its commitment to perform a mid-course review to December 31, 2004. EPA proposes to approve this revised commitment.

8. Summary of Conclusions and Proposed Action

This action is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New York and submitted formally to EPA for incorporation into the SIP.

EPA is proposing to approve New York's proposed SIP revision submitted on January 29, 2003. This submittal revises New Jersey's 1990 and 2007 motor vehicle emission budgets using MOBILE6 and modifies the planned date to complete the State's mid-course review to December 31, 2004. New York has demonstrated that its 1-Hour Attainment Demonstration SIP for the New York Metropolitan NAA continues to demonstrate attainment with the revised MOBILE6 budgets.

9. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 15, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–27157 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7579–7]

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to allocate essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2004. Essential use allowances enable a person to obtain controlled class I ODSs as an exemption to the regulatory ban of production and import of these chemicals, which became effective on January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The proposed allocations total 2077.91 metric tons of chlorofluorocarbons for use in metered dose inhalers. EPA is also proposing to allocate the remaining allowances for methyl chloroform (141.877 metric tons) to the U.S. Space Shuttle Program.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before November 28, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on November 7, 2003. If a hearing is held, EPA will publish a document in the Federal Register announcing the hearing information.

ADDRESSES: Comments on this proposed rulemaking should be submitted to Air and Radiation Docket, Environmental

Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention: Docket ID No. OAR–2003–0202. Comments also may be submitted electronically, by facsimile, or through hand deliver or courier service, as described in **SUPPLEMENTARY INFORMATION** below. Comments will be filed in EPA Air Docket ID No. OAR–2003–0202. Written comments or other materials also may be submitted in duplicate to the Essential Use Program Manager as identified in **FOR FURTHER INFORMATION CONTACT** below.

Materials related to previous EPA actions on the essential use program are contained in EPA Air Docket No. A–93–39. Docket A–93–39 is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The Air Docket is open from 8:30 a.m. until 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Essential Use Program Manager, by regular mail: U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington DC, 20005, by telephone: 202–564–9712; or by email: *monroe.scott@epa.gov.*

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I. General Information

A. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action at Air Docket ID No. OAR–2003–0202. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Hard copies of documents related to previous essential use allocation rulemakings and other actions may be found in EPA Air Docket ID No. A–93–39. The public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, although this information is part of EPA's official docket. The public docket is available for viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742. EPA may charge a reasonable fee for copying docket materials.

2. Electronic Access

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 identification number.

Certain types of information will not be placed in 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. 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 section I.A.1 above.

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.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification 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 section I.C below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

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.

To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0202. 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.

If you submit a comment electronically, 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. 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.

Comments also may be sent by electronic mail (e-mail) to *A–And–R–Docket@epa.gov*, Attention Docket ID No. OAR–2003–0202. 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.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. 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 two copies of your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention: Docket ID No. OAR–2003–0202.

3. By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2003–0202. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

4. By Facsimile

Fax your comments to: 202–566–1741, Attention: Docket ID No. OAR–2003–0202.

C. How Should I Submit Confidential Business Information to EPA?

Comments that contain confidential business information should be submitted in two versions, one clearly marked ''Public'', to be filed in the public docket, and the other clearly marked ''Confidential'' to be reviewed by authorized government personnel only. If the comments are not marked, EPA will assume they do not contain confidential business information and will docket them.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the Essential Use Program Manager. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Basis for Allocating Essential Use Allowances

A. What Are Essential Use Allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting chemicals in the U.S. for purposes that have been deemed ''essential'' by the Parties to the Montreal Protocol and the U.S. Government.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption of class I ODSs is accomplished through adherence to phase-out schedules for specific class I ODSs,[2] including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol and the Clean Air Act (Act) provide exemptions that allow for the continued import and/or production of class I ODS for specific uses. Under the Protocol, exemptions may be granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

''(a) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phase out may be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are listed at 40 CFR Part 82 subpart A, appendix A.

essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

B. Under What Authority Does EPA Allocate Essential Use Allowances?

Title VI of the Act implements the Protocol for the United States.[3] Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phaseout date for the following essential uses:

(1) Methyl Chloroform, ''solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available.'' EPA issues methyl chloroform allowances to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical Devices (as defined in section 601(8) of the Act), ''if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices.'' EPA issues allowances to manufacturers of metered-dose inhalers, which use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary diseases.

(3) Aviation Safety, for which limited quantities of halon–1211, halon–1301, and halon 2402 may be produced ''if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.'' Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because alternatives are available or because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Protocol, under Decision X/19, additionally allows a general exemption for laboratory and analytical uses through December 31, 2005. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an allowance for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

C. What Is the Process for Allocating Essential Use Allowances?

Before EPA may allocate essential use allowances, the Parties to the Protocol must first approve the United States' request to produce or import essential class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through today's action were first nominated by the United States in January 2001.

Once the U.S. nomination is approved by the Parties, EPA allocates essential use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For medical devices, EPA requests information from manufacturers about the number and type of devices they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for metered-dose inhalers in the coming calendar year. Based on FDA's assessment, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA may not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2004, the Parties authorized the United States to allocate up to 2,975 metric tons of CFCs for essential uses.

For methyl chloroform, Decision X/6 by the Parties to the Protocol established that ''* * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties [will] be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential uses.'' Section 604(d)(1) of the Act terminates the exemption period for methyl chloroform on January 1, 2005. Therefore, between 1999 and 2004 EPA may allow production or import up to a total of 176.4 metric tonnes of methyl chloroform for authorized essential uses.

III. Essential Use Allowances for Medical Devices

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2004 control period.

1. On March 10, 2003, EPA sent letters to MDI manufacturers requesting the following information under section 114 of the Act (''114 letters''):

a. The MDI product where CFCs will be used.

b. The number of units of each MDI product produced from 1/1/02 to 12/31/02.

c. The number of units anticipated to be produced in 2003.

d. The gross target fill weight per unit (grams).

e. Total amount of CFCs to be contained in the MDI product for 2004.

f. The additional amount of CFCs necessary for production.

g. The total CFC request per MDI product for 2004. The 114 letters are available for review in the Air Docket ID No. OAR–2003–0202. The companies requested that their responses be treated as confidential business information; for

[3] According to Section 614(b) of the Act, Title VI ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol * * * and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.'' EPA's regulations implementing the essential use provisions of the Act and the Protocol are located in 40 CFR part 82.

this reason, EPA has not placed the responses in the docket.

2. On April 17, 2003, EPA sent FDA the information MDI manufacturers provided in response to the 114 letters with a letter requesting that FDA make a determination regarding the amount of CFCs necessary for MDIs for calendar year 2003. This letter is available for review in Air Docket ID No. OAR–2003–0202.

3. On August 25, 2003, FDA sent a letter to EPA stating the amount of CFCs necessary for each MDI company in 2004. This letter is available for review in the Air Docket ID No. OAR–2003–0202.

In their letter, FDA informed EPA that they had determined that 2,077.91 metric tons of CFCs were necessary for use in medical devices in 2004. The letter stated, ''Our recommendation for the allocation for CFCs is lower than the total amount requested by sponsors. In the past, we have based our recommendations on estimates that 60 million albuterol MDIs using CFCs as a propellant would be necessary each year. However, we have based the recommendation for 2004 on an estimate that 55 million will be necessary. In reaching this estimate, we took into account the sponsors' production of albuterol MDIs that used CFCs as a propellant in 2002, their estimates for production in 2003, and the presence on the market of two albuterol MDIs that do not use CFCs. Three firms have requested CFCs sufficient to manufacture a total of over 65 million albuterol MDIs. Our allocation decision is based on a need to limit CFC allocations to quantities needed for the manufacture of 55 million albuterol MDIs and ensure the public health.''

In accordance with the determination made by FDA, today's action proposes to allocate essential use allowances for a total of 2,077.91 metric tons of CFCs for use in MDIs for calendar year 2004. The amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low. Commentors requesting increases or decreases of essential use allowances should provide detailed information supporting their claim for additional or fewer CFCs. Any company that needs less than the full amount listed in this proposal should notify EPA of the actual amount needed.

IV. Exemption for Methyl Chloroform for Use in the Space Shuttle and Titan Rockets

As discussed in Section I.C above, before the start of calendar year 2005; EPA may allocate up to 176.4 tons of methyl chloroform for authorized essential uses. According to reporting submitted to the EPA tracking system for ozone-depleting substances, the total amount of methyl chloroform produced or imported by essential use allowance holders (the U.S. Air Force (USAF) for Titan Rockets, and the National Aeronautics and Space Administration (NASA) for the Space Shuttle) from 1999 through the second quarter of 2003 was 34.523 metric tons. USAF and NASA have notified EPA that they do not intend to use their 2003 allowances to obtain methyl chloroform during the last two quarters of 2003. Therefore, EPA finds that 141.877 tons of methyl chloroform allowances are available for 2004. In addition, USAF has notified EPA that they have no need for 2004 allowances. For this reason, we propose to make the remaining balance of allowances (141.877 metric tons) available to NASA.

V. Proposed Allocation of Essential Use Allowances for Calendar Year 2004

EPA proposes to allocate essential use allowances for calendar year 2004 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2004

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	390.60
Aventis Pharmaceutical Products	CFC–11 or CFC–12 or CFC–114	48.40
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	500.20
PLIVA Inc.	CFC–11 or CFC–12 or CFC–114	136.00
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	918.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	84.71
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	141.877

VI. Correction to 40 CFR Part 82, Sections 3 and 4(k)

On January 2, 2003, EPA published a final rule (68 FR 237) regarding quarantine and preshipment applications of methyl bromide, which is an ozone-depleting substance. This final rule removed paragraphs (n) through (s) of 40 CFR Part 82, Section 4, and redesignated paragraphs (t) through (w) as (n) through (q). However, the final rule did not also change the definition of ''essential-use allowances'' in § 82.3 to be consistent with the reordering of paragraphs in § 82.4. The definition of essential use allowances in § 82.3 reads, ''Essential-Use Allowances means the privileges granted by § 82.4(t) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.'' Therefore, for consistency with the reordered regulations, we are correcting the definition of essential use allowances to refer to § 82.4(n).

In addition, the final rule revised section 4(k) of 40 CFR Part 82 to include paragraph 4(k)(1), which states that ''* * * only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, and used controlled substances.'' In undertaking this revision, EPA inadvertently deleted a phrase that had appeared in the prior version of this statement. EPA proposes to restore the deleted phrase by correcting the statement in question to read, ''* * * only essential use allowances or exemptions are required to import class I controlled substances, with the

exception of transhipments, heels, used controlled substances, and essential use CFCs.'' This correction clarifies that the import restriction does not apply to CFCs produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority of another country for use in essential metered dose inhalers. *See* 67 FR 6351 (February 11, 2002).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* OMB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, the term small entities is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances.

Although this proposed rule will not have significant economic impact on a substantial number of small entities, we continue to be interested in the potential impact of the proposed rule on small entities and welcome comments related to these issues.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase out of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children From Environmental Health risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be 'economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards.

Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Environmental protection, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: October 22, 2003.

Marianne L. Horinko,

Acting Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by revising the definition of Essential Use Allowances to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Essential-Use Allowances means the privileges granted by § 82.4(n) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

* * * * *

3. Section 82.4 is amended by revising paragraph (k)(1) and the table in paragraph (n)(2) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, used controlled substances, and essential use CFCs.

* * * * *

(n) * * *

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2004

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	390.60
Aventis Pharmaceutical Products	CFC–11 or CFC–12 or CFC–114	48.40
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	500.20
PLIVA Inc.	CFC–11 or CFC–12 or CFC–114	136.00
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	918.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	84.71
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	141.877

[FR Doc. 03–27160 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 208
Tuesday, October 28, 2003

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. 03–085–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support the National Nonambulatory Livestock Study.

DATES: We will consider all comments that we receive on or before December 29, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–085–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–085–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–085–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the National Nonambulatory Livestock Study, contact Mr. Chris Quatrano, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526–8117; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Nonambulatory Livestock Study.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and dissemination of any pest or disease of livestock and for eradicating such pests and diseases from the United States when feasible. In connection with this mission, the Centers for Epidemiology and Animal Health, Veterinary Services, Animal and Plant Health Inspection Service (APHIS), plans to initiate an information collection to gather data for the National Nonambulatory Livestock Study.

Section 10815 of the Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to investigate and submit a report to Congress on practices involving nonambulatory livestock. The objectives of the study include: (1) Assessing the scope of nonambulatory livestock; (2) identifying the causes that render livestock nonambulatory; (3) examining humane treatment practices for nonambulatory livestock; and (4) examining the extent to which nonambulatory livestock may present handling and disposition problems for stockyards, market agencies, and dealers.

Information from this study will be analyzed and organized into a final report for the Secretary of Agriculture and for Congress, highlighted in information sheets or descriptive reports to be disseminated by APHIS or USDA's National Agricultural Statistics Service, and used to optimize bovine spongiform encephalopathy surveillance. Participation in this study is voluntary, and all information is confidential.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities for the National Nonambulatory Livestock Study.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.2145454 hours per response.

Respondents: Beef and dairy producers, livestock market operators/managers, and USDA's Food Safety and Inspection Service slaughter plant inspectors.

Estimated annual number of respondents: 4,375.

Estimated annual number of responses per respondent: 1.2571428.

Estimated annual number of responses: 5,500.

Estimated total annual burden on respondents: 6,680 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 23rd day of October 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–27150 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–103–4]

Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China; Availability of an Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening of comment period.

SUMMARY: We are reopening the comment period for an environmental assessment prepared for a proposal to allow the importation of artificially dwarfed (penjing) plants of the genera *Buxus, Ehretia (Carmona), Podocarpus, Sageretia,* and *Serissa* from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 12, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–103–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–103–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–103–3'' on the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, we published in the **Federal Register** (65 FR 56803–56806, Docket No. 98–103–1) a proposal to amend the regulations to allow artificially dwarfed plants of the genera *Buxus, Ehretia (Carmona), Podocarpus, Sageretia,* and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments on our proposal for a total of 90 days, ending December 20, 2000.[1]

In response to comments received on the proposed rule, APHIS has narrowed the application of the rule to apply to particular species of the genera mentioned previously. We have also revised the pest risk assessments and created a risk mitigation document. The five revised pest risk assessments as well as the risk mitigation document are available on the Internet at *http://www.aphis.usda.gov/ppq/pim.* We have also concluded section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 10, 2003, FWS concluded the section 7 consultation process by concurring with APHIS'' determination that the importation of *Buxus sinica, Ehretia microphylla, Podocarpus macrophyllus, Sageretia thea,* and *Serissa foetida* from the People's Republic of China will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving FWS concurrence and after preparing the revised pest risk assessments and the revised pest mitigation document, APHIS prepared an environmental assessment titled ''Final Rule for the Importation of Artificially Dwarfed Plants in Growing Media from the People's Republic of China'' and dated September 2003. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

On September 15, 2003, we published in the **Federal Register** (68 FR 53956–53957, Docket No. 98–103–3) a notice announcing the availability of the environmental assessment. In that notice, we requested public comments on the environmental assessment.

Comments on the environmental assessment were required to be received on or before October 15, 2003. We are reopening the comment period for the environmental assessment until November 12, 2003. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between October 16, 2003 (the day after the close of the original comment period) and the date of this notice.

You may review the environmental assessment on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.* You may request paper copies of the environmental assessment, the pest risk assessments, and the risk mitigation document from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 23rd day of October, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–27148 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–34–P

[1] The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on December 1, 2000 (65 FR 75187, Docket No. 98–103–2).

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by a group of fresh garlic producers in the state of California for trade adjustment assistance. The Administrator will determine within 40 days whether or not imports of garlic contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing period beginning October 2002 and ending September 2003. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 10, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27145 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agriculture Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on September 15, 2003, by the Columbia River Fishermen's Protective Union Members, P.O. Box 56, Astoria, Oregon 97103.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices did not decline at least 20 percent during January 2002 through December 2002 when compared with the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 5, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27146 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region 4; Notice of Settlement Pursuant to CERCLA; Bassett Gulch Mill Site, Blaine County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with Brigham Young University (the Settling Party) concerning the Bassett Gulch Mill Site, Blaine County, Idaho (''the Site''). Under the settlement, the Settling Party has agreed to undertake a removal action at the Site at a cost of approximately $500,000 to address the continuing release of hazardous substances at the Site. Pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), the USDA Forest Service Intermountain Region has agreed to forego the collection of past response costs at the Site from the Settling Party. The settlement includes a covenant not to sue the Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Ketchum Ranger District, P.O. Box 2356, 206 Sun Valley Road, Ketchum, ID, 83340 and at the offices of the USDA Forest Service Intermountain Region, 324 25th Street, Ogden, UT 84401.

DATES: Comments must be submitted on or before November 28, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the Ketchum Ranger District, PO Box 2356, 206 Sun Valley Road, Ketchum, ID, 83340 and at the offices of the USDA Forest Service Intermountain Region, 324 25th Street, Ogden, UT 84401. A copy of the proposed settlement may be obtained from Mike O'Farrell at the Ketchum Ranger District at 208–622–5371, or from Michael R. Hope with USDA's Office of the General Counsel, (303) 275–5545. Comments should reference the Bassett Gulch Mill Site, Blaine County, Idaho, and should be addressed to Michael R. Hope, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Pat Trainor, USDA Forest Service, PO Box 1026, McCall, ID 83638, phone (208) 634–0700. For legal information, Michael R. Hope, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005, phone (303) 275–5545.

Dated: September 23, 2003.

Jack G. Troyer,

Regional Forester, USDA Forest Service, Intermountain Region.

[FR Doc. 03–27138 Filed 10–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Internet Export Finance Matchmaker.

OMB Number: 0625–0232.

Type of Request: Regular Submission.

Burden: 90 Hours.

Number of Respondents: 500.

Avg. Hours Per Response: Exporters—10 Minutes. Financial Institutions—30 Minutes.

Needs and Uses: The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing

agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is has developed an interactive INTERNET trade finance matchmaking program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing the information about the match, and contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

Affected Public: Businesses or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Roster, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street, and Constitution Ave., NW., Washington, DC 20230. E-mail: *dhynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Roster, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 21, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–27099 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1286]

Grant of Authority; Establishment of a Foreign-Trade Zone: Imperial County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the County of Imperial, California (the Grantee), has made application to the Board (FTZ Docket 57–2002, filed 12/3/02), requesting the establishment of a foreign-trade zone at sites in Imperial County, California, within and adjacent to the Calexico Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72914, 12/9/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 257, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of October 2003.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 03–27168 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2003]

Foreign-Trade Zone 28—New Bedford, MA; Application for Foreign-Trade Subzone Status: The Acushnet Company (Sporting Goods), New Bedford, MA Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of New Bedford (Massachusetts), grantee of FTZ 28, requesting special-purpose subzone status for the warehousing and manufacturing facilities (sporting goods) of the Acushnet Company (Acushnet), located in the New Bedford, Massachusetts area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 17, 2003.

The Acushnet facilities are located at five sites (133 acres total; 1.4 million sq. ft. of enclosed space): Site # 1—''Ball Plant II'' (34.4 acres; 183,000 sq. ft.)—located at 246 Samuel Barnett Boulevard in North Dartmouth, Massachusetts; Site # 2—''Ball Plant III'' (32.0 acres; 175,000 sq. ft.)—located at 215 Duchaine Boulevard in New Bedford; Site # 3—''Building C/Custom Operations'' (9.5 acres; 438,000 sq. ft.)—located at 700 Belleville Avenue in New Bedford; Site # 4—''Fairhaven/Corporate Headquarters, Packaging, and Distribution'' (53.1 acres; 448,500 sq. ft.)—located at 333 Bridge Street in Fairhaven, Massachusetts; and Site # 5—''Footjoy'' (4.3 acres; 165,158 sq. ft.)—located at 144 Field Street in Brockton, Massachusetts.

The facilities (approximately 1,900 employees) may be used under FTZ procedures for manufacturing, assembling, and processing golf footwear and golf balls, as well as packaging, warehousing, distributing, scrapping, and research and development activities for golf footwear, golf balls, golf gloves, golf outerwear, and other golf-related accessories and equipment. For Acushnet's current manufacturing, foreign-sourced materials account for approximately 30 to 40 percent of finished-product value. The application lists the categories of material inputs which may be sourced from abroad, including: Leather; clasps, buckles, etc.; other parts of footwear (includes outsoles); other made up articles (includes shoe bags); zinc oxide and zinc peroxide; ogano-sulfur compounds; prepared rubber accelerators; compound plasticizers;

prepared binders for foundry molds or cores; polymers of ethylene; and tungsten powders. Current duty rates for these input materials range up to 7.6 percent.

Zone procedures would exempt Acushnet from Customs duty payments on foreign components used in export production. On its domestic sales, Acushnet would be able to defer duty payments, and to choose the lower duty rate that applies to the listed finished-product categories (duty-free to 10 percent) for the foreign inputs listed above, among others. Acushnet would be able to avoid duty on foreign inputs which become scrap/waste, estimated at no more than 20 percent of imported inputs. The application also indicates that Acushnet may realize logistical/procedural and other benefits from subzone status. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 29, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 12, 2004.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One West Exchange Street, Providence, RI 02903.

Dated: October 17, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–27167 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–2003]

Foreign-Trade Zone 40—Cleveland, OH, Area: Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 17, 2003.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97; June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); and, August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03).

The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (1,339 acres)—Port of Cleveland complex, Cleveland Bulk Terminal and Tow Path Valley Business Park, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the ''Cleveland Tank Plant''), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,942acres)—Cleveland Hopkins International Airport complex and the adjacent Snow Road Industrial Park, Brook Park; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (174 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula. Applications are pending with the FTZ Board to expand FTZ 40 to include a site at the Harbour Point Business Park in Vermilion, Ohio (Docket 33–2003) and a site at the Brook Park Road Industrial Park in Brook Park, Ohio (Docket 44–2003).

The applicant is now requesting authority to expand existing Site 3 by adding an additional 172 acres within the Cleveland Business Park, Rocky River Drive (SR 237), Cleveland (Cuyahoga County). The site is immediately adjacent to the Cleveland Hopkins International Airport and is being developed as an industrial park. The property was acquired by the City of Cleveland and Cleveland Hopkins International Airport as part of a major airport expansion project and was later sold for business development purposes. The site is presently owned by Cleveland Business Park, Ltd., and it will provide public warehousing and distribution services to area businesses. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

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

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is December 29, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 12, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: October 17, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–27166 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1287]

Grant of Authority; Establishment of a Foreign-Trade Zone: Bowie County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Red River Redevelopment Authority (the Grantee), has made application to the Board (FTZ Docket 10–2003, filed 2/25/03), requesting the establishment of a foreign-trade zone at sites in Bowie County, Texas, adjacent to the Shreveport-Bossier County Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 11037, 3/7/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 258, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of October 2003.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 03–27169 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China

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

ACTION: Notice of final determination of sales at less than fair value and critical circumstances.

EFFECTIVE DATE: October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Kramer, Anya Naschak, or Ann Barnett-Dahl, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0405, 482–6375, or 482–3833, respectively.

Final Determination

We determine that certain malleable iron pipe fittings from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin of dumping is shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

On April 22, 2003, we published in the **Federal Register** a preliminary determination that critical circumstances exist for imports of malleable pipe fittings for one of the mandatory respondents, Jinan Meide Casting Co. (JMC), and one of the non-selected respondents, SCE Co., Ltd. (SCE), based on an increase in imports exceeding the required 15 percent, but that no massive imports exist for the other mandatory respondents, Langfang Pannext Pipe Fitting Co., Ltd. (Pannext), and Beijing Sai Lin Ke Hardware Co., Ltd. (SLK), and the other non-selected respondents, Myland Industrial Co., Ltd. (Myland) and Chengde Malleable Iron General Factory (Chengde). In addition, we found that imports of subject merchandise were massive in the three-month comparison period for the PRC-wide entity for which data are available.

We published the preliminary determination in this investigation on June 6, 2003. *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the People's Republic of China, 68 FR 33911 (June 6, 2003) (Preliminary Determination). Since the publication of the Preliminary Determination, the following events have occurred.

On June 3, 2003, in order to remedy deficiencies in respondents' reporting of scrap inputs, the Department asked respondents to weigh and keep accurate records of each ingredient that goes into the cupola and to submit biweekly reports to the Department until two weeks before verification. JMC and Pannext each submitted three production reports covering a six-week period, and SLK submitted four reports covering an eight-week period.

On June 4, 2003, SLK requested that the Department correct an alleged ministerial error in SLK's margin calculation. On June 13, 2003, the Department determined that the error in the margin calculation resulted from SLK's failure to indicate that it had reported the weight of the fittings in its revised sales database in pounds, although all other data were in kilograms. In addition, the Department determined that this error was not ministerial in nature. As a result, at that time we did not make the suggested correction. However, SLK subsequently revised its reported weights, which are used in the calculation of U.S. price, to kilograms, and we have used the corrected weights for the final determination.

On July 3, 2003, the petitioners (Ward Manufacturing, Inc. and Anvil International, Inc.) submitted a request for a public hearing in accordance with 19 CFR 351.310(c). On July 7, 2003, respondents JMC and Pannext requested a hearing. On September 2, 2003, the Department informed all interested parties that a hearing would be held (see Memorandum from Ann Barnett-Dahl to the File dated September 2, 2003). On September 5, 2003, the petitioners requested that the Department conduct a portion of the hearing in closed session. The hearing was held on September 17, 2003. The petitioners and three respondents submitted case briefs and rebuttal briefs on September 8 and 15, 2003, respectively.

On July 16, 2003, JMC, Pannext and SLK placed on the record public information for the purpose of providing the Department with additional information that can be used in valuing the factors of production.

The Department conducted verifications on the following dates: June 25, 2003, Houston, Texas—Pannext Fittings Corp.; July 8–10, 2003, Chicago, Illinois—LDR Industries, Inc.; July 28–August 1, 2003, Jinan, PRC—JMC;

August 11–12, 2003, Beijing, PRC—SLK; August 13–15, 2003, Tianjin, PRC—a supplier to SLK.

Period of Investigation

The period of investigation is April 1, 2002 through September 30, 2002.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. A designation as an NME country remains in effect until the Department revokes it. See section 771(18)(C) of the Act. The respondents in this investigation have not requested revocation of the PRC's NME status. We have continued to treat the PRC as an NME in this investigation. For further discussion, see the Department's Preliminary Determination, 68 FR 33391, 33913.

Separate Rates

In our Preliminary Determination, we determined that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information that would warrant reconsideration of our separate rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to a separate rate, see Preliminary Determination.

The PRC-Wide Rate

For the reasons set forth in the Preliminary Determination, we continue to find that the use of adverse facts available for the PRC-wide rate is appropriate for other exporters in the PRC, based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. See Preliminary Determination, 68 FR 33911, 33915–33916. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the three mandatory respondents and the respondents that are entitled to a separate rate.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, see Memorandum from Ann Barnett-Dahl to Richard Weible, Office Director, Total Facts Available Corroboration Memorandum for All Others Rate, dated May 28, 2003.

Consistent with our Preliminary Determination, as adverse facts available, we have used the rate from the petition, recalculated with the new surrogate value information discussed in the Memorandum to the File Regarding Total Facts Available Corroboration Memorandum for the PRC-Wide Rate, October 20, 2003. See also the Issues and Decision Memorandum for the Final Determination in the Less Than Fair Value Investigation of Certain Malleable Iron Pipe Fittings from the People's Republic of China: April 1, 2002 through September 30, 2002, at Comments 4 through 10, accompanying this notice (Decision Memorandum). The recalculated rate for the China-wide entity is 111.36 percent.

Surrogate Country

For purposes of the final determination, the Department continues to find that India is the appropriate primary surrogate country. For further discussion and analysis regarding the surrogate country selection, see the Department's Preliminary Determination at 33916.

Use of Facts Available

Section 776(a) of the Act provides that, if necessary information is not available on the record, or if an interested party fails to provide such information in a timely manner or in the form or manner requested, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. If an interested party is unable to submit the information requested or in the requested form, that party is required to notify the Department promptly and must suggest a reasonable alternative. *See* section 782(c)(1).

In the *Preliminary Determination*, we relied on partial facts available for the value of recycled scrap because the information on the record did not satisfy the statute with respect to the unreported inputs in the calculation of normal value. *See Preliminary Determination* at 33918. After the *Preliminary Determination*, but prior to verification, on June 3, 2003, the Department requested that respondents ''weigh and keep accurate written records of each ingredient that goes into the cupola for each charge on a CONNUM specific basis * * * Provide the source of each input, *e.g.* purchased or reprocessed material * * * {and} for each CONNUM, record (1) The total casting weight, (2) the total weight of produced subject merchandise, and (3) the total weight of generated scrap,'' in an effort to allow respondents another opportunity to alleviate the Department's concerns regarding the quantities of inputs reported to date. On June 4, 2003, the Department also requested that respondents address the Department's concerns regarding the underreporting of metallic inputs during the POI. Although respondents submitted additional information in response to each of these requests, the information provided to the Department did not address the Department's concern that respondents have failed to report sufficient quantities of inputs to account for total production during the POI, and the reported information continued to have significant discrepancies that have not been explained. Therefore, the application of facts available is appropriate pursuant to section 776(a), because the Department does not have the necessary information needed to calculate its margin, respondents did not provide the information, and respondents have not proposed any reasonable alternatives to account for underreported or unreported inputs, in accordance with section 782(c)(1).

For Pannext, as facts available for the under-reported purchased scrap inputs, the Department is continuing to increase purchased scrap, where necessary, to the POI-wide average quantity for steel scrap input as reported in its response, when the reported metallic inputs (including steel scrap and pig iron) to produce one kilogram of output was less than one kilogram. For JMC, as facts available for the under-reported purchased scrap inputs, the Department is increasing the reported purchased and non-subject merchandise recycled scrap inputs for those CONNUM where the sum of these inputs is less than one kilogram to produce one kilogram of output. The factor used to increase these CONNUMs is the average of the CONNUMs where the sum of the inputs is greater than or equal to one. For SLK the Department has also increased the inputs when the sum of the inputs are less than one kilogram to produce one kilogram of output for certain suppliers. *See* SLK Proprietary Analysis Memo.

Additionally, as facts available for recycled scrap that was not reported in the ''form or manner requested'' (*see* section 776(a) of the Act), the

Department is continuing to use an average of the adjustment ratios for JMC and Pannext as calculated in petitioners' May 15th letter at Exhibit 4, and increasing JMC, Pannext, and SLK's reported values for metallic inputs by this average, 56.83%. For a complete discussion of this issue, *see* accompanying Decision Memorandum at Comment 1.

For this final determination, given an increase in total inputs as described above and in the Decision Memorandum at Comment 1, the Department must increase respondents' energy inputs to a level that corresponds to the increase in these inputs. Therefore the Department has applied neutral facts available to value respondents' energy inputs to determine normal value in accordance with section 773(c)(1) of the Tariff Act. As facts available for these underreported energy inputs, the Department has used respondents' reported energy data to find an appropriate neutral facts available adjustment for these underreported inputs. For a complete discussion of this issue, see accompanying Decision Memorandum at Comment 2 and JMC, Pannext, and SLK's Proprietary Analysis Memoranda.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See* Final Analysis Memorandum for JMC; Final Analysis Memorandum for Pannext; and Final Analysis Memorandum for SLK.

Verification

Pursuant to section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the Preliminary Determination as a result of verification, see Final Analysis Memorandum for Pannext and Final Analysis Memorandum for SLK.

Scope of Investigation

For purposes of this investigation, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of this investigation are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. HTSUS subheadings are provided for convenience and Bureau of Customs and Border Protection (BCBP) purposes, however, the written description of the scope of this proceeding is dispositive.

Final Determination of Critical Circumstances

On April 22, 2003, before the *Preliminary Determination,* we made a preliminary finding of critical circumstances with respect to JMC, SCE, and the PRC-wide entity on the basis of massive imports of the subject merchandise over a relatively short period and a history of injurious dumping from the PRC based on a current antidumping duty order on the subject merchandise imposed by the European Community. See Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China, 68 FR 19779, 19780. We received no comments on this issue from any of the parties. Based on our final determination of sales at less than fair value, pursuant to section 735(a)(3)(A)(i) and (B), we therefore determine that critical circumstances exist with respect to JMC, SCE, and the PRC-wide entity.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the BCBP to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouse, for consumption as follows: for Pannext, SLK, or Chengde, on or after the date of publication of the Preliminary Determination in the **Federal Register**, June 6, 2003; for JMC, SCE and companies subject to the PRC-wide rate, on or after the date which is 90 days prior to the date of publication of the Preliminary Determination, *i.e.*, March 8, 2003, due to the Final Determination of Critical Circumstances. BCBP shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Percent [1]
Jinan Meide Casting Co., Ltd	11.35
Beijing Sai Lin Ke Hardware Co., Ltd	14.32
Langfang Pannext Pipe Fitting Co., Ltd	7.35
Chengde Malleable Iron General Factory	10.96
SCE Co., Ltd	10.96
PRC-Wide	111.36

[1] Weighted-average margin percent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: October 20, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I

General Issues

Comment 1: Whether to Apply Facts Available for Material Inputs
Comment 2: Whether to Apply Facts Available for Energy Inputs
Comment 3: Financial Ratios
Comment 4: Surrogate Values—Whether to Update Information for the POI
Comment 5: Surrogate Values—Recycled Iron Scrap
Comment 6: Surrogate Values—Iron and Steel Shavings
Comment 7: Surrogate Values—Ferrosilicon
Comment 8: Surrogate Values—Firewood
Comment 9: Surrogate Values—Wood Pallets
Comment 10: Surrogate Values—Zinc Dust and Zinc Powder
Comment 11: Whether to Consider Certain Inputs as Overhead Items
Comment 12: Whether the Department Correctly Calculated the Distance for the Non-Market Economy (''NME'') Inland Freight Charge for Respondents
Comment 13: Calculate Cost of Production (''COP'') on a per-piece basis
Comment 14: Whether to Add Surrogate Freight to the Surrogate Values of Recycled Scrap

Company Specific Issues

A. JMC

Comment 15: Whether Certain Sales by JMC should be considered CEP
Comment 16: Ministerial Errors

B. Pannext

Comment 17: Whether to Correct Items found at Verification

C. SLK

Comment 18: Use of Yield-Adjusted Factors of Production for SLK supplier
Comment 19: Weight-Averaging in the Normal Value calculation
Comment 20: Use of the Correct Weight of the Finished Product

[FR Doc. 03–27165 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–830, A-475–829]

Stainless Steel Bar from Germany and Italy: Notice of Extension of Time Limit for 2001–2003 Administrative Reviews

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the current reviews of the antidumping duty orders on stainless steel bar from Germany and Italy. The period of review is August 2, 2001 through February 28, 2003. This postponement is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smith (Germany) at (202) 482–1276 or Blanche Ziv (Italy) at (202) 482–4207, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2003, the Department of Commerce (''the Department'') published a notice of initiation of administrative reviews of the antidumping duty orders on stainless steel bar from Germany and Italy covering the period August 2, 2001 through February 28, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 19498 (April 21, 2003). The preliminary results for these reviews are currently due no later than December 1, 2003.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing complicated sales and cost information that have required numerous supplemental questionnaire responses. In addition, we intend to verify the sales and cost information provided by the respondents in accordance with 19 CFR 351.307 (b)(1)(iv). Accordingly, it is not practicable to complete the preliminary results in these reviews within the originally anticipated time limit (*i.e.*, December 1, 2003). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than January 30, 2004, in accordance with section 751(a)(3)(A) of the Act.

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

Dated: October 23, 2003.

Jeffrey A. May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–27164 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

DEPARTMENT OF JUSTICE

[Docket No. 2003–C–028]

Request for Comments on Agenda for the National Intellectual Property Law Enforcement Coordination Council

AGENCIES: Department of Justice and United States Patent and Trademark Office, Department of Commerce, as Co-Chairs, National Intellectual Property Law Enforcement Coordination Council.

ACTION: Notice and request for public comments.

SUMMARY: The National Intellectual Property Law Enforcement Coordination Council (the Council) seeks public comments relating to the agenda and mission of the Council. Interested members of the public are invited to present written comments on how to improve overall coordination and the topics outlined in the Supplementary Information section of this Notice.

DATES: All comments are due by November 28, 2003.

ADDRESSES: Persons wishing to offer written comments should address comments to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 1450, Alexandria, VA 22313–1450, marked for the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575, or by electronic mail through the Internet to *Elizabeth.shaw2@uspto.gov.* All comments will be maintained for public inspection in Room 902, Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw by telephone at (703) 305–1033, by fax at (703) 305–7575, or by mail marked to her attention and addressed to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and

Trademark Office, Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION:

Background

The National Intellectual Property Law Enforcement Coordination Council (the Council) was created pursuant to 15 U.S.C. 1128. The Council's mission is ''to coordinate domestic and international intellectual property law enforcement among federal and foreign entities.'' The Council consists of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, co-chair of the Council (The Honorable James E. Rogan); the Assistant Attorney General, Criminal Division, co-chair of the Council (The Honorable Christopher A. Wray); the Under Secretary of State for Economic, Business, and Agricultural Affairs (The HonorableAlan P. Larson); the Deputy United States Trade Representative (Ambassador Peter Allgeier); the Commissioner of Customs (The Honorable Robert C. Bonner); and the Under Secretary of Commerce for International Trade (The Honorable Grant Aldonas). By statute, the Council shall also consult with the Register of Copyrights (The Honorable Marybeth Peters).

The work of the Council is a United States Government effort aimed at coordinating domestic and international intellectual property law enforcement among Federal and foreign entities. This coordinating role may be divided into two parts. The first is to provide a vehicle for agencies to share information on their activities relating to enforcement of intellectual property rights and related training activities. The second role involves projects that the Council itself may undertake.

The Council has identified the following areas of focus in fulfilling its mission: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness.

On August 5, 2002, the Council published a notice in the **Federal Register** seeking public comment on issues associated with the Council's mission (67 FR 50633 (2002)). A summary of comments previously received is published in the Council's 2000 Annual Report, available on the Internet at *http://www.uspto.gov.*

Issues for Public Comment

How the Council may best address the areas of focus listed above.

Activities the private sector is engaged in relating to public awareness campaigns involving intellectual property rights protection.

How the Council may be effective in coordinating a public awareness campaign.

Guidelines for Written Comments.

Written comments should include the following information: the name, affiliation, and title of the individual providing the written comment; and if applicable, an indication of whether the comments offered represent the views of the respondent's organization or personal views.

Parties offering written comments should also provide comments in an electronic format. Such submissions may be provided via Internet electronic mail or on a 3.5'' floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Electronic submissions should be provided as unformatted text (*e.g.* ASCII or plain text) or as formatted text in one of the following formats: Microsoft Word (Macintosh, DOS or Windows versions); or WordPerfect (Macintosh, DOS or Windows versions).

Information provided pursuant to this notice will be made part of the public record and may be made available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who rely on confidential information to illustrate a point are requested to summarize, or otherwise submit, the information in a way that permits its public disclosure.

Dated: October 22, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office.

Dated: October 6, 2003.

Christopher A. Wray,

Assistant Attorney General for the Criminal Division, Department of Justice.

[FR Doc. 03–27155 Filed 10–27–03; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: Tuesday, November 4, 2003; 10 a.m.

LOCATION: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Decision on Petition HP 01–3—Chromated Copper Arsenate (CCA) Treated Wood in Playground Equipment

The Commission will consider Petition HP 01–3 from the Environmental Working Group and the Healthy Building Network requesting a ban on the use of chromated copper arsenate (CCA) treated wood in playground equipment

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–7923.

Dated: October 24, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–27283 Filed 10–24–03; 2:32 pm]

BILLING CODE 6533–01–M

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 13, 2003, 8:30 a.m. to 5 p.m.; and Friday, November 14, 2003, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; *david.thomassen@science.doe.gov*), or Ms. Shirley Derflinger (301–903–0044; *shirley.derflinger@science.doe.gov*), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda

Thursday, November 13, and Friday, November 14, 2003:

- Comments from Dr. Raymond Orbach, Director, Office of Science
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research
- Discussion of DOE nanotechnology research by Dr. Pat Dehmer, Associate Director of Science for Basic Energy Sciences
- Status report of current BERAC charges
- Discussion of U.S. Climate Change Science Program Strategic Plan and Technology Program
- Discussion of Joint Genome Institute's Production Genomics Facility transition to a DNA sequencing user facility
- Comments from Professor Andre Syrota, Director of Life Sciences for the French Atomic Energy Commission
- New Business
- Public comment (10 minute rule)

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 23, 2003.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 03–27144 Filed 10–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, November 12, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

The meeting presentation will feature an overview of Monitored Natural Attenuation, a process which relies on natural attenuation processes (within the context of a carefully controlled and monitored clean-up approach) to achieve site-specific remedial objectives.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 23, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–27141 Filed 10–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 20, 2003, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 210–2215.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion 6 p.m. Call to Order; Introductions; Approve October Minutes; Review Agenda

6:10 p.m. DDFO's Comments
- ES & H issues
- Budget Update
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m. Ex-officio Comments

6:40 p.m. Public Comments and Questions

6:50 p.m. Break

7 p.m. Presentation

- Six-Phase Heating Treatability Study
- Agreed Order (discussion only)
- Site Management Plan (discussion only)

8 p.m. Public Comments and Questions

8:10 p.m. Administrative Issues

- Review of Work Plan
- Review of Next Agenda
- Federal Coordinator Comments

8:30 p.m. Review of Action Items

8:45 p.m. Task Force and Subcommittee Reports

- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership
- Executive Committee

9:10 p.m. Final Comments

9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued in Washington, DC on October 23, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–27142 Filed 10–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 17, 2003, 9 a.m. to 6 p.m.; and Tuesday, November 18, 2003, 9 a.m. to 12 noon.

ADDRESSES: Quality Suites, 3 Research Court, Rockville, Maryland 20850, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to obtain the view of FESAC on how the Department might deal with the recommendations contained in the National Research Council's (NRC) Burning Plasma Assessment Committee report dated September 24, 2003.

Tentative Agenda

Monday, November 17, 2003

- DOE Perspectives
- Office of Fusion Energy Sciences (OFES) Perspectives
- Presentation of the NRC Report ''Burning Plasma—Bringing A Star to Earth''
- Discussion of FESAC Response to NRC Report
- Discussion of Procedure for Setting Program Priorities and Selection of Panel Members
- Public Comments

Tuesday, November 18, 2003

- Preliminary Reports from the Inertial Fusion Energy (IFE) Review Panel
- Preliminary Report from the Workforce Development Panel
- Preliminary Report from the Committee of Visitors

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 23, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–27143 Filed 10–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–089]

ANR Pipeline Company; Notice of Negotiated Rate Tariff Filing

October 21, 2003.

Take notice that on October 15, 2003, ANR Pipeline Company (ANR), tendered for filing its Negotiated Rate Tariff Filing.

ANR's filing request that the Commission approve three negotiated rate arrangements between ANR and PSEG Energy Resources & Trade LLC. ANR requests that the Commission grant such approval effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00118 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–582–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 21, 2003.

Take notice that on October 16, 2003, Florida Gas Transmission Company (FGT) tendered for filing additional documentation and support, as directed by Commission Order issued September 30, 2003, for FGT's Unit Fuel Surcharge proposed to be effective October 1, 2003 in the instant proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. As directed in the September 30, 2003 order, all such comments or protests must be filed within 15 days of this filing, or on or before the date as indicated below. 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 proceedings. This filing 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-filing link.

Protest Date: October 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00122 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–079 and RP98–198–006]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 21, 2003.

Take notice that on October 15, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2003.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Texas Eastern further states that copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00123 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–328–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 21, 2003.

Take notice that on October 15, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an September 16, 2003 effective date:

Twenty-First Revised Sheet No. 1
Eleventh Revised Sheet No. 1–A.1
First Revised Sheet No. 910
First Revised Sheet No. 2541

Transco states that the filing is being made in compliance with the Commission's Order issued September 16, 2003 in Docket No. CP03–328–000, and the requirements of Part 154 of the Commission's Regulations.

Transco states that the above sheets reflect the termination of Transco's Rate Schedules X–99 and X–248 from Transco's Original Volume No. 2 FERC Gas Tariff, and their associated deletion from the Table of Contents in Transco's Volume No. 2.

Transco states that copies of the filing are being mailed to its affected

customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: November 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00119 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–400–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 21, 2003.

Take notice that on October 15, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an effective date of August 31, 2001:

Fifteenth Revised Sheet No. 1A
Tenth Revised Sheet No. 1–A.1
Third Revised Sheet No. 1434
First Revised Sheet No. 2624

Transco states that the filing is being made in compliance with the Commission's Order issued on August 31, 2001 in Docket No. CP01–400–000.

Transco states that the above sheets reflect the termination of Transco's Rate Schedules X–158 and X–253 from Transco's Original Volume No. 2 FERC Gas Tariff, and their associated deletion from the Table of Contents in Transco's Volume No. 2.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: November 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00124 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–101–000, et al.]

Flat Rock Windpower LLC, et al.; Electric Rate and Corporate Filings

September 16, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Flat Rock Windpower LLC

[Docket No. EG03–101–000]

Take notice that on September 10, 2003, Flat Rock Windpower LLC (Applicant) filed with the Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it is developing a wind-powered eligible facility with a capacity of approximately 300 megawatts, which will be located in Lewis County, New York.

Comment Date: October 7, 2003.

2. FPL Energy Oklahoma Wind, LLC

[Docket No. EG03–102–000]

Take notice that on September 10, 2003, FPL Energy Oklahoma Wind, LLC (the Applicant), filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 51 MW wind-powered generation facility located in Harper and Woodward Counties, Oklahoma. Applicant also states that electric energy produced by the facility will be sold at wholesale.

Comment Date: October 7, 2003.

3. FPL Energy Sooner Wind, LLC

[Docket No. EG03–103–000]

Take notice that on September 10, 2003, FPL Energy Sooner Wind, LLC (the Applicant), filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 51 MW wind-powered generation facility located in Harper and Woodward Counties, Oklahoma. Electric energy produced by the facility will be sold at wholesale.

Comment Date: October 7, 2003.

4. Coral Power, L.L.C.; Coral Energy Management, LLC; Coral Canada U.S. Inc.

[Docket Nos. ER96–25–023, ER01–1363–003, and ER01–3017–003]

Take notice that on September 10, 2003, Coral Power, L.L.C. (Coral Power), Coral Energy Management, LLC (Coral EM) and Coral Canada U.S. Inc. (Coral

Canada), filed with the Federal Energy Regulatory Commission (Commission) an amendment to their consolidated three-year updated market power analysis submitted to the Commission on August 18, 2003. Coral Power, Coral EM and Coral Canada state that they are power marketers and brokers with their principal place of business in Houston, Texas, and they do not directly own or control generation or transmission assets.

Comment Date: October 1, 2003.

5. Avista Corporation

[Docket No. ER99–1435–004]

Take notice that on September 10, 2003, Avista Corporation filed with the Commission its three-year updated market power analysis in compliance with the Commission's orders granting Avista market-based rate authorization.

Comment Date: October 1, 2003.

6. Avista Corporation

[Docket No. ER99–1435–004]

Take notice that on September 10, 2003, Avista Corporation filed with the Commission its three-year updated market power analysis in compliance with the Commission's orders granting Avista market-based rate authorization.

Comment Date: October 1, 2003.

7. Entergy Services, Inc., Generator Coalition v. Entergy Services, Inc. Consolidated

[Docket Nos. ER01–2201–005 and EL02–46–004]

Take notice that on September 8, 2003, Entergy Services, Inc, (Entergy) filed a refund report related to the refunds and rebillings ordered by the Commission in the above-referenced dockets. The refunds and rebillings addressed in this filing relate to the allocation of Qualifying Facility output. A copy of the refund report has been served on all parties to the service lists in the above-referenced proceedings and the state commissions in the Entergy region.

Comment Date: October 9, 2003.

8. Tampa Electric Company

[Docket No. ER03–48–001]

Take notice that on September 10, 2003, Tampa Electric Company (Tampa Electric) filed a refund report in compliance with the Commission's Letter Order of July 9, 2003, approving the settlement agreement in Docket No. ER03–48–000.

Tampa Electric states that copies of the refund report have been served on affected customers and the Florida Public Service Commission.

Comment Date: October 1, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–995–001]

Take notice that on September 11, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, submitted for filing a revised unexecuted Interconnection and Operating Agreement among American Transmission Company, the Midwest ISO and Wisconsin Public Service Company. Midwest ISO states that a copy of this filing was served on all parties to the proceeding.

Comment Date: October 1, 2003.

10. Aquila, Inc.

[Docket No. ER03–1079–001]

Take notice that on September 10, 2003, Aquila, Inc. on behalf of itself and as agent for its divisions Aquila Networks-MPS, Aquila Networks-WPK, Aquila Networks-WPC and Aquila Networks-L&P (collectively Aquila) tendered for filing additional proposed changes in its FERC Electric Tariff Volumes 28 and 29. The proposed changes amend Aquila's July 16, 2003 filing in this docket.

Comment Date: October 1, 2003.

11. TexPar Energy, Inc.

[Docket No. ER03–1219–001]

Take notice that on September 10, 2003, TexPar Energy, Inc. submitted an amendment to its August 15, 2003, Notice of Cancellation of its Market-based Rate Schedule.

Comment Date: October 1, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–1239–001]

Take notice that on September 10, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement (ISA) among PJM; Prince George's County, Maryland, A Body Corporate and Politic; and Potomac Electric Power Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 24, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: October 1, 2003.

13. WPS Resources Operating Companies

[Docket No. ER03–1323–000]

Take notice that on September 10, 2003, WPS Resources Operating Companies, on behalf of Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Resources), tendered for filing an executed service agreement between WPS Resources and Madison Gas and Electric Company (MG&E) under WPS Resources' Joint Tariff for Sales of Ancillary Services and Wholesale Distribution Service, FERC Electric Tariff, Original Volume No. 2 (JAST) and a notice of cancellation and revised service agreement cover sheet (Cancellation Documents) to terminate a service agreement between WPS Resources and MG&E under WPS Resources' open access transmission tariff, FERC Electric Tariff, First Revised Volume No. 1.

WPS Resources respectfully requests that the Commission allow the JAST service agreement and the Cancellation Documents to become effective on September 1, 2003, the date service commenced under the JAST service agreement.

WPS states that copies of the filing were served upon MG&E and the Public Service Commission of Wisconsin.

Comment Date: October 1, 2003.

14. Colorado Green Holdings, LLC

[Docket No. ER03–1326–000]

Take notice that on September 10, 2003, Colorado Green Holdings, LLC (Colorado Green) filed with the Federal Energy Regulatory Commission (the Commission) pursuant to Section 205 of the Federal Power Act an Application for Order Accepting Initial Rate Schedule, which would allow Colorado Green to engage in the sale of electric energy and capacity at market-based rates. Colorado Green states it is engaged in the business of developing, and will construct, own, and operate, a 162 MW wind power generation facility located in Prowers County, Colorado. Colorado Green notes that it seeks certain waivers, blanket approvals, and authorizations under the Commission's regulations. Colorado Green also seeks waiver of the 60-day notice prefiling requirements under 18 CFR 35.3.

At present, Colorado Green states it is owned by GE Wind Energy, LLC, a subsidiary of General Electric Company. Colorado Grene also states that it is contemplated that, in the near future, ownership of Colorado Green will be transferred to new, wholly-owned subsidiary jointly owned by PPM Energy, Inc., an affiliate of PacifiCorp, an Oregon corporation and a regulated electric utility providing retail electric service in California, Oregon, Washington, Utah, Idaho, and Wyoming, and by Shell WindEnergy, a subsidiary of Shell Oil Company. The

application requests that the Commission authorize market-based rates under both the existing and contemplated future ownership structures described in the application.

Comment Date: September 25, 2003.

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. E3–00125 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–127–001, et al.]

IDACORP Energy L.P., et al.; Electric Rate and Corporate Filings

September 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. IDACORP Energy L.P. and Sempra Energy Trading Corp

[Docket No. EC03–127–001]

Take notice that on September 8, 2003, IDACORP Energy L.P. and Sempra Energy Trading Corp., pursuant to Section 203 of the Federal Power Act submitted a supplement to Exhibit G of the Application filed on August 20, 2003 in Docket No. EC03–127–000.

Comment Date: September 22, 2003.

2. Caledonia Generating, LLC; PurEnergy Caledonia LLC

[Docket No. EC03–134–000]

Take notice that on September 4, 2003, Caledonia Generating, LLC (Caledonia) filed an application under Section 203 of the Federal Power Act requesting Commission authorization for the transfer of all jurisdictional facilities related to Caledonia's 813 MW gas-fired electric generating station located near the Town of Caledonia, Mississippi, to PurEnergy Caledonia LLC (PurEnergy Caledonia), in connection with the transfer of Caledonia's generating facility to a passive non-operating owner/lessor. Caledonia has requested privileged treatment of the contents of Exhibit I to the Section 203 application. In addition, PurEnergy Caledonia filed a notice of succession with respect to Caledonia's market-based rate tariff.

Comment Date: September 25, 2003.

3. Ameren Services Company

[Docket No. ER02–2237–002]

Take notice that on September 8, 2003, Ameren Services Company (Ameren) pursuant to the Commission's Letter Order dated August 8, 2003, submitted a compliance filing correcting the designation for the Network Operating Agreement which should read ''Ameren Operating Companies FERC Electric Tariff Second Revised Volume No. 1, Second Substitute Service Agreement No. 512, Docket Nos. ER02–2237–000 and 001.''

Comment Date: September 29, 2003.

4. Southwest Power Pool, Inc.

[Docket No. ER03–978–001]

Take notice that on September 8, 2003, Southwest Power Pool, Inc. (SPP) submitted a revised Interconnection and Operating Agreement (Revised IA) between SPP, Blue Canyon Windpower, LLC (Blue Canyon) and Western Farmers Electric Cooperative (WFEC) in compliance with the Commission's July 23, 2003 Order in Docket No. ER03–978–000. SPP states that copies of this filing were served on Blue Canyon, WFEC and on all parties on the official service list in this docket.

Comment Date: September 30, 2003.

5. Pacific Gas and Electric Company

[Docket No. ER03–1091–001]

Take notice that on September 8, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Termination of the Generator Special Facilities Agreement with Duke Energy Morro Bay LLC. PG&E has also requested certain waivers.

PG&E states that copies of this filing have been served upon Wellhead Panoche, Wellhead Gates, CalPeak Vaca Dixon, High Winds, Hanover, Duke Morro Bay, the California Independent System Operator Corporation and the CPUC.

Comment Date: September 29, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER03–1115–000]

Take notice that on September 8, 2003, Pacific Gas and Electric Company (PG&E) withdrew its Request for Deferral of Consideration of its July 25, 2003, filing in Docket No. ER03–1115–000 of a revised Generator Special Facilities and Generator Interconnection Agreements between PG&E and Elk Hills Power, LLC (Elk Hills) (collectively, Parties).

PG&E states that copies of this filing have been served upon the California Public Utilities Commission and all parties designated on the official service list in this proceeding.

Comment Date: September 29, 2003.

7. Central Hudson Gas & Electric Corporation

[Docket Nos. ER03–1297–000, ER03–1298–000, ER03–1299–000, and ER03–1300–000]

Take notice that on September 9, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) submitted Notices of Cancellation for its Rate Schedule FERC Nos. 57, 58, 59 and 60. Central Hudson states that the notices did not reflect the correct pagination pursuant to the requirements of the Commission's Order No. 614, and therefore Central Hudson is submitting substituted notices for those originally filed on September 3, 2003.

Comment Date: September 30, 2003.

8. Palama, LLC

[Docket No. ER03–1306–000]

Take notice that on September 8, 2003, Palama, LLC (Palama) petitioned the Commission for acceptance of Palama 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.

Palama states that it intends to engage in wholesale electric power and energy

purchases and sales as a marketer. Palama notes that it is not in the business of generating or transmitting electric power.

Comment Date: September 30, 2003.

9. PacifiCorp

[Docket No. ER03–1308–000]

Take notice that on September 8, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of PacifiCorp's Rate Schedule No. 424 with Black Hills Corporation effective March 31, 2002.

PacificCorp states that copies of this filing were supplied to Black Hills Corporation and the Public Utility Commission of Oregon.

Comment Date: September 29, 2003.

10. Arizona Public Service Company

[Docket No. ER03–1309–000]

Take notice that on September 8, 2003, Arizona Public Service Company (APS) tendered for filing a Notice of Cancellation of the Edison-Arizona Interruptible Transmission Service Agreement, between APS and Southern California Edison Company (SCE), in accordance with Commission's regulations 18 CFR 35.11. APS is requesting an effective date of November 1, 2003.

Comment Date: September 29, 2003.

11. Arizona Public Service Company

[Docket No. ER03–1310–000]

Take notice that on September 8, 2003, Arizona Public Service Company (APS) tendered for filing a Notice of Cancellation of the Wholesale Power Agreement between APS and Southern California Edison Company (SCE), in accordance with Commission regulations 18 CFR 35.11. APS is requesting an effective date of December 31, 2003.

Comment Date: September 29, 2003.

12. Chesapeake Transmission, LLC

[Docket No. ER03–1311–000]

Take notice that on September 8, 2003, Chesapeake Transmission, LLC (CTL) submitted for filing, pursuant to Section 205 of the Federal Power Act, a petition requesting that the Commission: (1) Grant CTL blanket authority to make sales of transmission rights at negotiated rates; and (2) grant certain waivers, in connection with its proposed Chesapeake Transmission Line project.

Comment Date: September 29, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1312–000]

Take notice that on September 8, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Schedule 20—Station Power of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in order to provide clarification of the Station Power process and procedures as it applied to Generators.

The Midwest ISO has requested waiver of the notice provision of Section 205 of the Federal Power Act in order to accommodate an effective date of October 8, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO states it will provide hard copies to any interested parties upon request.

Comment Date: September 29, 2003.

14. Geothermal Properties, Inc.

[Docket No. ER03–1314–000]

Take notice that on September 9, 2003, Geothermal Properties, Inc. tendered for filing a Notice of Cancellation of its market-based rate authority under FERC Electric Tariff, Original Volume No. 1, effective date February 15, 2001 in Docket No. ER01–869–000. Geothermal Properties, Inc. states that the cancellation should take effect September 30, 2003, and that it has not entered into any power sales or power purchase agreements or transactions pursuant to the tariff.

Comment Date: September 30, 2003.

15. MS Retail Development Corp.

[Docket No. ER03–1315–000]

Take notice that on September 9, 2003, MS Retail Development Corp. (MS Retail) petitioned the Commission for acceptance of MS Retail's 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.

MS Retail states that it is a corporation formed under the laws of Delaware and its principal place of business is New York, New York. MS Retail notes that in transactions where it sells electric power it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment Date: September 30, 2003.

16. Sunrise Power Company

[Docket No. ER03–1317–000]

Take notice that on September 8, 2003, Sunrise Power Company, LLC, filed a Joint Interconnection Facilities Agreement between Sunrise and La Paloma Generating Company, LLC pursuant to Section 205 of the Federal Power Act.

Comment Date: September 29, 2003.

17. e prime, inc.

[Docket No. ER03–1319–000]

Take notice that on September 9, 2003, e prime, inc. filed a notice with the Commission seeking cancellation of its market-based rate authority effective September 1, 2003 pursuant to Section 35.15(c) of the Commission regulations.

Comment Date: September 30, 2003.

18. Commonwealth Edison Company

[Docket No. ER03–1320–000]

Take notice that on September 9, 2003, Commonwealth Edison Company (ComEd) submitted for filing an interconnection agreement by and between ComEd and Mendota Hills, LLC (Mendota Hills), designated as Service Agreement No. 728 under ComEd's open access transmission service tariff, ComEd FERC Electric Tariff, Second Revised Volume No. 5, to be effective on November 9, 2003.

Comment Date: September 30, 2003.

19. Southwestern Public Service Company

[Docket No. ER03–1321–000]

Take notice that on September 8, 2003, Xcel Energy Services Inc., on behalf of Southwestern Public Service Company (SPS), filed revisions to SPS's Rate Schedule FERC No. 118 and notice of cancellation of certain obsolete supplements to SPS's Rate Schedule FERC No. 118.

Comment Date: September 29, 2003.

20. Bethlehem Steel Corporation

[Docket No. ER03–1322–000]

Take notice that on September 8, 2003, Bethlehem Steel Corporation (Bethlehem) pursuant to Commission's regulations 18 CFR 35.15 and 131.53, submitted for filing a Notice of Cancellation of FERC Electric Tariff No. 1 and Rate Schedule FERC No. 2.

Comment Date: September 29, 2003.

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. E3–00126 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF04–4081–000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Filings

October 20, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southwestern Power Administration

[Docket No. EF04–4081–000]

Take notice that on October 15, 2003, the Deputy Secretary, U.S. Department of Energy, submitted to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis, pursuant to the authority vested in the FERC by Department of Energy Delegation Order No. 00–037.00, effective December 6, 2001, an annual power rate of $452,952 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert Douglas Willis Hydropower Project (Robert D. Willis) to Sam Rayburn Municipal Power Agency (SRMPA). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–50 for the period November 1, 2003, through September 30, 2007, and has been submitted to FERC for confirmation and approval on a final basis for the same period. The annual rate of $452,952 is based on the 2003 Revised Power Repayment Study for Robert D. Willis and represents an annual increase in revenue of $99,252 or 28.1 percent to satisfy repayment criteria.

The Deputy Secretary states that this rate supersedes the annual power rate of $353,700, which FERC approved on a final basis October 22, 2001, under Docket No. EF01–4081–000 for the period October 1, 2001, through September 30, 2005.

Comment Date: November 5, 2003.

2. Brazos Wind, LP

[Docket No. EG04–4–000]

Take notice that on October 15, 2003, Brazos Wind, LP filed with the Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935. Brazos Wind, LP states that it is a limited partnership organized under the laws of the State of Texas that is engaged directly and exclusively in developing, owning, and operating a 160 MW wind-powered electric generating facility, which will be an eligible facility.

Comment Date: November 10, 2003.

3. Midwest Independent Transmission System Operator, Inc., et al.; Ameren Services Company, et al.; American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company, Complainants v. Midwest Independent Transmission System Operator, Inc. Respondent; American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company, Complainants v. PJM Interconnection, L.L.C., Respondent; American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company, Complainants v. Ameren Services Company, Respondent; American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company, Complainants, v. Illinois Power Company, Respondent; American Electric Power Service Corporation, and Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., Complainants, v. Dayton Power and Light Company, Respondent; American Electric Power Service Corporation, and Dayton Power and Light Company, Complainants v. Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., Respondent; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc, and Dayton Power and Light Company, Complainants v. American Electric Power Service Corporation, Respondent

[Docket Nos. EL02–111–007, EL03–212–002, EL04–4–000, EL04–5–000, EL04–6–000, EL04–7–000, EL04–8–000, EL04–9–000, EL04–10–000]

Take notice that on October 14, 2003, American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd) and Dayton Power and Light Company (collectively, Companies) submitted a regional Seams Elimination Cost Assignment (SECA) proposal for the MISO–PJM footprint (as that term is used in the Commission's Order in Midwest Independent Transmission System Operator, Inc., *et al.*, 104 FERC ¶ 61,105(2003)), under the set of circumstances specified in the filing. The regional SECA proposal would require all transmission providers in the MISO–PJM footprint to revise their tariffs to implement load-

based SECA charges. The SECA proposal is presented for review in Docket Nos. EL02–111–000 and EL03–212–000.

Alternatively, if the Commission denies the request to accept the Companies' regional SECA rate solution for filing and review in these proceedings, each of the Companies has submitted complaints under Section 206 of the Federal Power Act (FPA) against transmission providers in the proposed MISO–PJM footprint to implement the SECA proposal, under the set of circumstances specified in the filing.

AEP states of this filing were served on the parties in Docket Nos. EL02–111–000 and EL03–212–000, and on each respondent in the Companies' complaints.

Comment Date: December 15, 2003.

4. Bangor Hydro-Electric Company

[Docket No. ER00–980–008]

Take notice that on October 10, 2003, Bangor Hydro-Electric Company (BHE) filed a Supplemental Informational Filing, in the above-docketed proceedings. BHE states that the submittal is designed to resolve all issues associated with BHE's Rate Formula, as well as, other issues raised by the participants in the course of negotiations.

Comment Date: October 27, 2003.

5. Duke Energy Oakland, LLC

[Docket No. ER03–116–001]

Take notice that on October 15, 2003, Duke Energy Oakland, LLC (DEO) pursuant to 16 U.S.C. 824d, and 18 CFR 35.13, tendered for filing certain revisions to Rate Schedules A and B of DEO's Reliability Must Run (RMR) Agreement with the California Independent System Operator (CAISO) for contract year 2003. DOE states that the filing is the result of an Offer of Settlement with respect to all issues in Docket No. ER03–116–000 relating to DEO's 2003 Annual Fixed Revenue Requirement (AFRR) under its RMR Agreement with CAISO which was filed concurrently in Docket No. ER03–116–000.

DEO requests an effective date of January 1, 2003 for these revisions. DEO states that copies of the filing have been served upon the CAISO, Pacific Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 5, 2003.

6. Xcel Energy Services Inc., Northern States Power Company

[Docket No. ER03–1278–001]

Take notice that on October 14, 2003, Xcel Energy Services Inc. (XES) on behalf of Northern Sates Power Company (NSP) tendered for filing with the Commission a response to Staff's request for additional information in support of the Generation Interconnection Agreement between NSP and Wilson-West Wind Farm, LLC, Moulton Heights Wind Power Project, LLC, North Ridge Wind Farm, LLC, Viking Wind Farm, LLC, Vandy South Project, LLC, Muncie Power Partners, LLC and Vindy Power Partners, LLC filed with the Commission on August 29, 2003.

Comment Date: November 4, 2003.

7. Commonwealth Edison Company

[Docket No. ER03–1320–001]

Take notice that on October 13, 2003, Commonwealth Edison Company (ComEd) submitted for filing a revised Interconnection Agreement between ComEd and Mendota Hills, LLC (Mendota Hills) designated as Service Agreement No. 728 under ComEd's open access transmission service tariff, ComEd FERC Electric Tariff, Second Revised Volume No. 5. ComEd requests an effective date of November 9, 2003. ComEd states that this filing was submitted to correct a typographical error in Section 3.4 of the Interconnection Agreement previously filed with the Commission on September 9, 2003.

ComEd states that copies of this filing were served on Mendota Hills and the Illinois Commerce Commission

Comment Date: November 4, 2003.

8. Monongahela Power Company

[Docket No. ER04–38–000]

Take notice that on October 14, 2003, Monongahela Power Company (Monongahela Power), tendered for filing pursuant to the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, Notices of Cancellation of Monongahela Power Company, Rate Schedule FERC Nos. 56, 57 and 58 consisting of Transition Service Agreements with Harrison Rural Electrification Association, the City of New Martinsville and the City of Philippi, respectively. Monongahela Power states that the Agreements terminated by their own terms effective November 30, 2003 and Monongahela Power therefore requests an effective date of November 30, 2003 for the cancellations. Accordingly, Monongahela Power requests waiver of the Commission's regulations.

Monongahela Power states that copies of the filing have been provided to each jurisdictional customer and the West Virginia State Corporation Commission.

Comment Date: November 4, 2003.

9. MAC Power Marketing, LLC

[Docket No. ER04–39–000] Take notice that on October 14, 2003, MAC Power Marketing, LLC (MAC Power) tendered for filing a Notice of Cancellation of it Market-Based Rate Authority in Docket No. ER98–575–000. MAC Power states that this cancellation should be effective as of September 18, 2002, the date of dissolution of the company.

Comment Date: November 4, 2003.

10. CenterPoint Energy Houston Electric, LLC

[Docket No. ER04–41–000]

Take notice that on October 14, 2003, CenterPoint Energy Houston Electric, LLC (CenterPoint Houston) tendered for filing a Form of Transmission Service Agreement under its Transmission Service Tariff for Transmission Service To, From and Over Certain Interconnections (TFO Tariff). CenterPoint Houston states that the Form of Transmission Service Agreement was inadvertently omitted from its filing of the TFO Tariff.

Comment Date: November 4, 2003.

11. Pure Energy, LLC

[Docket No. ER04–42–000]

Take notice that on October 14, 2003, Pure Energy, LLC, submitted for filing a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, and Rate Schedule FERC No. 1, under which Pure Energy, LLC will engage in wholesale electric power and energy transactions as a marketer.

Pure Energy, LLC states it is not currently subject to any state regulatory commission nor is it selling power to any person pursuant to the proposed rate schedule and accordingly, no copies have been served on other parties.

Comment Date: November 4, 2003.

12. Ameren Services Company

[Docket No. ER04–44–000]

Take notice that on October 15, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Services between ASC and Reliant Energy Services, Inc. ASC states that the purpose of the Agreement is to provide transmission services to Reliant Energy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 5, 2003.

13. Worthington Generation L.L.C.

[Docket No. ER04–45–000]

Take notice that on October 15, 2003, Worthington Generation L.L.C. filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and Part 35 of the Commission's regulations, a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1 (Original Sheets Nos. 1–2) which became effective on June 1, 2000. Worthington Generation L.L.C. has requested that this cancellation be made effective as of October 15, 2003.

Comment Date: November 5, 2003.

14. PJM Interconnection, L.L.C.

[Docket No. ER04–46–000]

Take notice that on October 15, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an Interconnection Service Agreement (ISA) among PJM, Motiva Enterprises, L.L.C. and Delmarva Power & Light Company d/b/a Conectiv Power Delivery and a Notice of Cancellation of an Interim ISA that has been superseded. PJM requests a waiver of the Commission's 60-day notice requirement to permit a September 22, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: November 5, 2003.

15. PB Financial Services, Inc.

[Docket No. ER04–47–000]

Take notice that on October 15, 2003, PB Financial Services, Inc. (PBFSI) petitioned the Commission for acceptance of PBFSI 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.

PBFSI states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. PBFSI further states that it is not in the business of generating or transmitting electric power.

Comment Date: October 31, 2003.

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. E3–00117 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2014–006 and ER02–2014–011]

Entergy Services, Inc.; Notice of Technical Conference

October 21, 2003.

In an order issued March 13, 2003, in Docket No. ER02–2014–006 (102 FERC ¶ 61,281), the Commission required Entergy Services, Inc. (Entergy) to file with the Commission, on a monthly basis, certain information related to the calculation of Generator Operator Limits (GOL) values. Those monthly data submissions have been filed in Docket No. ER02–2014–011. The March 13, 2003 order also required the Commission's staff to convene a technical conference to evaluate the market implications of the GOL process.

Take notice that a technical conference will be held at 10 a.m., on November 6, 2003, for the purpose of reviewing the monthly data submissions in Docket No. ER02–2014–011. This conference is intended to be a working session focused solely on gaining an understanding of the data provided by Entergy. It is not intended to discuss the merits or market implications of the GOL process itself. Entergy should be prepared to demonstrate how the PSSE/PTI loadflow program is executed and the sequence used to calculate local GOLs for an example area. Additionally, Entergy should prepare a demonstration of an ATC calculation using data from its latest submittal using the PSSE/PTI loadflow software. There will be a subsequent technical conference to evaluate the GOL process. The date of that technical conference will be announced in a subsequent notice.

This conference will be held in a room to be announced at a later date at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties that will participate by phone should contact Mark Gratchen at (202) 502–6274 no later than 12 p.m., November 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00120 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

October 20, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so

requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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 (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

PROHIBITED

Docket No.	Date filed	Presenter or requester
1. Project No. 477–024	10–04–03	Joseph L. Miller, M.D.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00121 Filed 10–27–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0024; FRL–7579–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Halogenated Solvent Cleaning, EPA ICR Number 1652.05, OMB Control Number 2060–0273

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 28, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0024, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center (ECDIC) EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; E-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 16, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0024, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning (40 CFR part 63, subpart T), was proposed on November 29, 1993, promulgated on December 2, 1994, and corrected to final rule June 5, 1995.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Plants must

demonstrate compliance with the emission standards by monitoring their control devices and performing annual emissions testing. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance when it begins operation, and informs the Agency if the source remained in compliance during any period of operation.

In the Administrator's judgment, emissions of hazardous air pollutants (HAPs) from halogenated solvent cleaners may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP standards were promulgated for this source category, as required under section 112 of the Clean Air Act. HAP emissions from halogenated solvent cleaners are the result of inadequate equipment design and work practices.

These standards rely on the proper design and operation of halogenated solvent cleaning machines such as working-mode covers, a freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners. Certain records and reports are necessary to enable EPA to identify sources subject to the standards and to ensure that the standards are being achieved.

Owners/operators of halogenated solvent cleaners must provide EPA with an initial notification of existing or new solvent cleaning machines, initial statements of compliance, an annual control device monitoring report (owners/operators of batch vapor and in-line cleaning machines), an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines complying with the alternative standard), and exceedance of monitoring parameters or emissions. The records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of solvent cleaning machines.

Estimated Number of Respondents: 1,431.

Frequency of Response: Initially, quarterly, semiannually, and annually.

Estimated Total Annual Hour Burden: 41,035 hours.

Estimated Total Annual Costs: $3,852,248 which includes zero annualized capital/startup costs and $1,015,000 annual O&M costs.

Changes in the Estimates: There is no change in the number of respondents identified in the active ICR, due to stagnant growth in the industry; however, there is a decrease of 4,172 hours in the estimated Burden currently identified in the OMB Inventory of Approved ICR Burdens. The reason for the decrease in burden was a correction of the active ICR estimated burden calculation for existing sources. A rule promulgated in December 1994 stated that existing sources were not required to comply with the standard recordkeeping and reporting requirements after December 1997; thus the requirement no longer exists. Therefore, the renewal of the ICR shows a reduction in burden. For the same reason, there are no capital/startup costs, only O&M costs associated with this ICR as compared to the active ICR currently identified in the OMB Inventory.

Dated: October 20, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–27158 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0005, FRL–7579–3]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0278.08/OMB Control No. 2070–0044; Notice of Supplemental Distribution of a Registered Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notice of Supplemental Distribution of a Registered Pesticide Product; EPA ICR No. 0278.08; OMB Control No. 2070–0044. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before November 28, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0005, to (1) EPA online using EDOCKET (our preferred method), by email to *opp-docket@epa.gov,* or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mail Code: 7502C, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 26, 2003 (68 FR 8890). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0005, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients (EPA ICR 0278.08, OMB Control No. 2070–0044).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on October 31, 2003. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. EPA is responsible for the regulation of pesticides as mandated by FIFRA. Section 3(e) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to their own. Such distribution and sale is termed ''supplemental distribution'' and the product is termed a ''distributor product.'' EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5, *Notice of Supplemental Distribution of a Registered Pesticide Product)* when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 1,000 hours, or 15 minutes per response. According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,900.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 2.

Estimated total annual burden hours: 1,000.

Estimated total annual burden costs: $96,000.

Changes in the ICR Since the Last Approval: The total estimated annual respondent cost for this ICR has decreased 250 hours (from 1,250 to 1,000), due mainly to a decrease in the number of responses expected. Estimated costs have decreased $24,000 (from $120,000 to $96,000) for the same reason. These decreases are explained more fully in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: October 16, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–27162 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–12]

San Diego Unified Port District v. Pacific Maritime Association; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by San Diego Unified Port District (''Complainant'') against Pacific Maritime Association (''Respondent''). Complaint contends that Respondent took action that reprioritized the unloading of cargo ships at the Port of San Diego (''Port''). The Complaint claims that this ''action took away priority unloading of refrigerated cargo'' which allegedly has put the Port at a competitive disadvantage with other Southern California ports, and has further exacerbated already existing labor problems at the Port. Complaint alleges that Respondent's actions violate sections 10(d)(1), (2) and (4) of the Shipping Act of 1984, 46 U.S.C. app.1709. Complainant seeks an order finding Respondent to have violated the sections cited above, directing Respondent to cease and desist, and awarding reparations for the unlawful conduct in an amount of $87,814, with interest and counsel's fees.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence with the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall

include oral testimony and cross-examination in the discretion of the presiding officer only upon showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 18, 2004 and a final decision of the Commission shall be issued by February 5, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–27111 Filed 10–27–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Aubrey K. McClendon and Tom L. Ward, both of Oklahoma City, Oklahoma; to acquire control of First Medicine Lodge Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire First Bank of Medicine Lodge, Medicine Lodge, Kansas.

Board of Governors of the Federal Reserve System, October 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–27101 Filed 10–27–03; 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 *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30303:

1. First National Banc, Inc. Saint Marys, Georgia; to acquire 100 percent of the voting shares of First National Bank, Orange Park, Florida.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Cornerstone Financial Services, Inc., West Union, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in West Union, West Union, West Virginia.

Board of Governors of the Federal Reserve System, October 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–27100 Filed 10–27–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1152]

Federal Reserve Bank Services Imputed Investment Income on Clearing Balances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved modifications to the method for imputing priced-service income from clearing balance investments. The Federal Reserve Banks impute this income when setting fees and measuring actual cost recovery each year. The Reserve Banks will impute the income from clearing balance investments on the basis of a broader portfolio of investments than used previously, selected from those available to banks. The Reserve Banks will impute an investment return expressed as a constant annual spread over the rate used to determine the cost of clearing balances. The constant annual spread will be determined based on an underlying imputed investment portfolio. Selection of the portfolio investment mix will be subject to a risk-management framework that includes criteria consistent with those used by banks, bank holding companies, and regulators in evaluating investment risk. The revised method will be used to impute investment income on clearing balances beginning in January 2004.

FOR FUTHER INFORMATION CONTACT: Gregory L. Evans, Manager (202/452–3945) or Brenda L. Richards, Sr. Financial Analyst (202/452–2753); Division of Reserve Bank Operations and Payment Systems. Telecommunications Device for the Deaf (TDD) users may contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Monetary Control Act (MCA) requires Federal Reserve Banks to establish fees for ''priced services'' provided to depository institutions at a level necessary to recover, over the long run, all direct and indirect costs actually

incurred and imputed costs.[1] [2] In addition, the Reserve Banks impute a priced services return on capital (profit).[3] The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF). Just as the PSAF is used to impute costs that would have been incurred and profits that would have been earned had the services been provided by a private business firm rather than the central bank, the Reserve Banks impute income that would have been earned on the investment of clearing balances that customers hold with the Reserve Banks as if those balances had been held with a correspondent bank. This imputed income, less the costs associated with the clearing balances, is referred to as the net income on clearing balances (NICB).

Calculating the PSAF includes projecting the level of priced-services assets, determining the financing mix used to finance the assets, and the rates used to impute financing costs.[4] Much of the data for the PSAF are developed from the ''bank holding company (BHC) model,'' a model that contains consolidated financial data for the nation's fifty largest (based on deposit balances) BHCs. As part of this process, a core amount of clearing balances is considered stable and available to finance long-term assets.

The method for deriving the NICB is reviewed periodically to ensure that it is still appropriate in light of changes that may have occurred in Reserve Bank priced services activities, accounting standards, finance theory, regulatory practices, and banking activity.[5] The current method for imputing investment income assumes that the Reserve Banks invest all clearing balances, net of imputed reserve requirements and the amount used to fund priced-services assets, in three-month Treasury bills. The imputed income on the Treasury bill investments net of the actual earnings credits granted to clearing balance holders based on the federal funds rate is considered income for priced-services activities. The net income associated with clearing balances is one component in pricing decisions and in evaluating cost recovery.

A. Clearing Balances

Depository institutions may hold both reserve and clearing balances with the Federal Reserve Banks.[6] [7] Reserve balances are held pursuant to a regulatory requirement and are not a result of an institution's use of priced services.[8] Clearing balances are held to settle transactions arising from use of Federal Reserve priced services for institutions that either do not hold reserve balances or find their reserve balances inadequate to settle their transactions.[9] At year-end 2002, depository institutions held more than $10 billion in clearing balances at Reserve Banks.

Clearing balances held at Reserve Banks are similar to compensating balances held by respondent banks at correspondent banks. Respondent banks hold compensating balances to support the settlement of payments, and to pay fees assessed by the correspondent bank. Reserve Banks and some correspondent banks establish a contracted balance level that the account holder must maintain on average over a specified period. Both Reserve Banks and correspondent banks provide compensation in the form of earnings credits to the holders of clearing or compensating balances. Historically, earnings credits provided by the Reserve Banks have been based on the federal funds rate. In May 2003, the Board requested comment on whether it should consider modifications to the Reserve Banks' earnings credit rate in the future, and, if so, what factors should be considered in the evaluation.[10] One commenter stated that the Federal Reserve should evaluate the appropriateness of its earnings credit rate as part of its overall pricing of services, including a review of private sector practice. The Board recently changed the earnings credit rate to be based on a discounted three-month Treasury bill rate, which is now more consistent with market practice.[11]

B. Imputed Investment of Clearing Balances

The Reserve Banks impute income on the clearing balance investments rather than using the actual results from monetary policy investment activities.[12] The imputation of clearing balance income is analogous to assuming that the priced-services enterprise, which is essentially a ''monoline'' bank offering only payment services, also includes a treasury function. Income is currently imputed based on the assumption that all available clearing balances are invested in three-month Treasury bills.[13] [14]

Historically, most of the net income on clearing balances was the result of imputed earnings on excess balances held, which have no associated cost. The practice of imputing clearing balance investments in three-month Treasury bills while paying earnings credits at the federal funds rate resulted in an average interest rate spread of negative 18 basis points over the past twenty years with a standard deviation over the same period of 23 basis points and ranged from 23 to −58 basis points.[15]

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[1] Priced services include primarily check, automated clearinghouse, Fedwire funds transfer, and Fedwire securities services.

[2] Imputed costs include financing costs, taxes, and certain other expenses.

[3] The return on capital is imputed using the average of the results of three economic models: the comparable accounting earnings model, the discounted cash-flow model, and the capital asset pricing model.

[4] Equity is imputed based on the Federal Deposit Insurance Corporation's (FDIC) definition of a ''well-capitalized'' institution for insurance premium purposes.

[5] In 1994, the Board requested comment on a proposal to modify the method for imputing clearing balance income. The Board proposed replacing the three-month Treasury bill imputed investment with a longer-term Treasury investment based on the earning asset maturity structure of the largest BHCs. As a result of issues related to interest rate risk raised in the comments, the Board did not adopt the proposal. The proposal would have created an asset and liability mismatch that created interest rate risk exposure inappropriate for Federal Reserve priced services. In addition, Federal Reserve priced services would not have assumed the interest rate risk associated with longer-maturity investments because the imputed return would have been adjusted monthly to reflect current rates (59 FR 42832, August 19, 1994).

[6] Clearing balances were introduced when Reserve Banks implemented the MCA.

[7] Clearing balances, unless otherwise indicated, refer to total clearing balances, including contracted balances and balances in excess of the contracted amount, held by depository institutions with the Federal Reserve Banks.

[8] Regulation D, 12 CFR part 204.

[9] Many depository institutions also set their contracted clearing balance level to generate earnings credits needed to pay fees assessed for Reserve Bank priced services.

[10] 68 FR 32513, May 30, 2003.

[11] More specifically, the earnings credit rate will be 90 percent of a rolling 13-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. See companion notice, Federal Reserve Bank Services, elsewhere in today's **Federal Register**.

[12] Decisions about monetary policy investment transactions are not motivated by profit objectives; therefore, the actual investment results are not applicable to priced-service activities.

[13] Clearing balances needed to meet an imputed reserve requirement (10 percent of clearing balances) and to fund assets used in the production of priced services ($407 million in 2004) are not available for investment.

[14] The Board chose three-month Treasury bills as the imputed investment vehicle in 1982 because, at that time, the yield was considered to approximate the return that would be realized had clearing balance funds been held and invested by a correspondent bank. In addition to providing a short-term earnings rate consistent with creating a matched asset and liability structure with the short-term liabilities, the three-month Treasury bill yield data are easily verified by outside observers with publicly available data.

[15] The standard deviation measures the variance around the average and indicates the level of volatility of the rates. Two-thirds of the time the actual yield will fall in the range of the average plus or minus one standard deviation. Ninety-five percent of the time the actual yield is expected to

Given that a simple change to federal funds investments would have simultaneously eliminated the interest rate spread and reduced the volatility, as expressed by the standard deviation, to zero, the Board believed that the Reserve Banks' imputed investment income method may have imputed an inappropriately low NICB to priced services.[16] Correspondent banks and BHCs invest in a much wider array of investments than those imputed by the Federal Reserve, including loans, Treasury securities with longer maturities, government agency securities, government-sponsored enterprise securities, federal funds, commercial bonds, commercial paper, money market mutual funds, asset-backed securities, foreign currencies, repurchase agreements, and derivatives. As a result, the Board requested comment on a proposal to expand imputed investment options within a risk management framework similar to that used by banks, BHCs, and regulators in evaluating investment risk. To implement the proposal, the Board requested comment on two methods.

II. Summary and Analysis of Comments

The Board received two responses, both from Reserve Banks, to its request for comment. Although the Federal Reserve worked with private-sector representatives in developing the methods on which the Board requested comment, the Board received no comments from the banking industry. Both commenters favor changing the method used for imputing investment income and believe that a new method more consistent with the practices of BHCs will provide a better basis on which to impute income used in setting Federal Reserve fees.

A. Investments

Because the BHCs are a proxy for providers of priced-services activities, options for Reserve Bank clearing balance investments should be comparable to those available to BHCs. In principle, all of the investments available to BHCs could be appropriate clearing balance investments. In its request for comment, the Board proposed limiting imputed investments to federal funds; investments suitable for a buy-and-hold strategy, such as Treasury securities, government agency securities, commercial paper, and municipal and corporate bonds; and money market and mutual funds.[17] For investments with a fixed term, this strategy eliminates capital gains and losses from the investment returns and simplifies the recognition and reporting of imputed investment income. Realized and unrealized gains and losses on imputed mutual fund investments would be incorporated in the total return and recorded as net earnings. The Board requested comment on whether this investment strategy was appropriate.

Both commenters considered it reasonable to expand the imputed investment options. To limit discretion allowed in ''managing'' the portfolio and on the array of allowable investments, one commenter suggested that the investments be selected from a relatively narrow set of assets with readily observable market values. The second commenter suggested choosing investments with average or lower than average risk characteristics and recommended that the set of fixed-income investments be limited to those that are investment grade.

The Board has concluded that in constructing an imputed portfolio, investments will be selected from those allowable to banks and BHCs and will employ a buy-and-hold strategy for those investments with a stated maturity. Mutual fund gains and losses will be incorporated in the total return and recorded as net earnings. When investing in fixed-income instruments, only those of investment grade will be imputed.

B. Risk-Management Framework

The Board considered the comparability of the imputed investments with investments of a similar private-sector entity, and requested comment on establishing a risk-management framework to limit the imputed investments to prudent levels in accordance with sound business practice and regulatory constraints. To address these risks, the exposure to any one type of risk would be limited and measured in terms of earnings or equity at risk. The Reserve Banks currently use three risk measures in calculating the PSAF that address liquidity, interest rate, and credit risk. In its request for comment, the Board proposed incorporating these measures, while adopting a specific constraint on credit risk, and adding a measure to address the longer-term effects of interest rate risk. In addition, the Board requested comment on any other risk-management criteria that should be considered.

1. Liquidity Risk

Although clearing balances are short term in nature, the Board previously determined that a portion of clearing balances remained stable and initially established $4 billion as available to fund long-term assets used in the delivery of priced services, rather than invested only in short-term assets.[18] Neither commenter objected to making the portion of core clearing balances not used to fund priced services assets available for investment in longer-term instruments. The Board believes that limiting the use of clearing balances to fund longer-term assets to only that portion that is deemed core clearing balances effectively manages liquidity risk.

2. Interest Rate Risk

In considering interest rate risk, one must evaluate the effect on earnings should the rate used to determine the cost of funds and the investment yield on those funds change at different intervals. To evaluate the risk of funding longer-term assets with short-term liabilities at rates that do not change concurrently and the resulting earnings volatility, the Board adopted the interest rate sensitivity analysis measure as part of its PSAF method. As adopted, this measure requires that longer-term investment of clearing balances be managed so that a 200-basis-point change in the rates for both the yield on all relevant priced services assets and the cost of all relevant priced service liabilities would not affect earnings, measured by the overall priced services recovery rate, by more than 200 basis points.

In requesting comment, the Board proposed adopting a second measure of interest rate risk, known as economic value of equity (EVE), for use in conjunction with the earnings at risk measure. The EVE measure, which is used by BHCs and regulators, compares the present value of interest-bearing assets and liabilities in the current rate environment resulting from a change in interest rates. The comparison shows the change in present values as a proportion of equity.[19] The Board

fall in the range of the average plus or minus two standard deviations.

[16] While reducing interest rate risk, a change in investment from Treasury bills to Federal funds would, in theory, increase credit risk. As a practical matter, however, banks have not incurred losses due to default in federal funds transactions.

[17] Mutual fund investments would be selected from those that are publicly available and widely held. The specific funds used for imputing income would be disclosed during the price-setting process so that performance could be tracked and replicated. See companion notice, Federal Reserve Bank Services, elsewhere in today's **Federal Register**.

[18] 66 FR 52617, October 16, 2001.

[19] EVE is used as a complement to the interest rate sensitivity analysis already adopted to evaluate the effects of long-term mismatches between assets and liabilities on the value of an entity; the interest

Continued

requested comment on whether a risk tolerance of a change of 8 percent of equity resulting from a 200-basis-point-rate change is appropriate.[20] One commenter agreed that the introduction of EVE is appropriate given the current supervisory guidelines for the BHC peer group and stated that the proposed constraint is appropriate.

The Board received no comment on whether these two measures of interest rate risk, earnings at risk and equity at risk, are together sufficient measures for monitoring and controlling interest rate risk. The Board will adopt the EVE measure and set the risk tolerance at a change of 8 percent of equity resulting from a 200-basis-point-rate change. In addition, the earnings at risk tolerance will be maintained as a prudent constraint on the imputed investments.

3. Credit Risk

The overall level of credit risk compared with the level of equity is measured by the ratio of risk-adjusted assets to capital.[21] The FDIC uses two risk-based capital measures as criteria in defining a ''well-capitalized'' institution for insurance premium purposes. One requires a risk-based capital ratio of 10 percent or more for total capital and the other requires a risk-based ratio of 6 percent or more for tier one capital.[22] Only tangible equity capital (tier one capital) is imputed to Reserve Bank priced services; therefore, the two measures are the same. The current investment in three-month Treasury bills carries a risk weight of zero. As a result, the balance sheet underlying the 2003 PSAF showed that the priced services risk-based capital ratio is nearly 33 percent for both measures.[23] A change in investment strategy that includes investments with greater risk requires establishing a minimum risk-based total capital ratio within which to make investment decisions. To manage credit risk, the Board requested comment on whether either of two options for establishing a minimum risk-adjusted total capital ratio adequately limits imputed investment risk. The first option would maintain the ratio of total capital to risk-adjusted assets at a level equal to or greater than that maintained by the fifty largest BHCs, which has remained near 12 percent between 1997 and 2002. Under the second option, the risk-based capital ratio would be maintained equal to or greater than the minimum required by the FDIC for a well-capitalized institution, which is currently 10 percent.

One commenter noted that the current priced services risk-based capital ratio is not representative of that of its peers and supported a change to a ratio within the range of 10 to 12 percent and provided empirical data suggesting that the FDIC minimum is within the range of risk-based capital ratios for the top 50 BHCs. The Board has concluded that imputed investments will be limited to those that result in priced-services activities maintaining a risk-based capital ratio equal to or greater than the minimum required by the FDIC for a well-capitalized institution, which is currently 10 percent.

In responding to whether other risk management criteria should be considered, one commenter suggested that, because of rapidly changing risk management practices, the Board regularly review BHC peer group risk management practices. Because the priced services risk-based capital ratio will be based on FDIC requirements, it will be reviewed each year to determine the ratio necessary to meet the regulatory capital requirements. The Board has concluded that all four risk constraints will be included in the framework used to select investments on which to impute priced-services income.

C. Implementation Methods

The Board requested comment on two alternative methods to impute clearing balance investment income based on the proposed conceptual framework. Both methods emerge from an underlying imputed portfolio of investments. The first method proposed constructing a specific portfolio of hypothetical investments, tracking its yield, and ascribing the income to priced-services activities (the actual return method). The second method proposed using average hypothetical portfolio returns, expressed as a constant spread over the three-month Treasury bill rate, as the basis for future investment performance and ascribing the income to priced services activities (the constant annual spread method).

1. Constructing a Portfolio

To construct a hypothetical portfolio, the Reserve Banks would select from the investment options described earlier that are available to banks and BHCs, based on an allocation method that uses historical data to create an optimized portfolio. Historical data are used to create the optimized portfolio to avoid any perception that the Federal Reserve is signaling future monetary policy actions or is otherwise projecting future economic conditions or interest rate environments. This optimized portfolio is the basis for the investment allocation within the risk-management framework that maximizes the spread of the rate of return on the portfolio over the Treasury bill rate.[24] To avoid the administrative complexities of incorporating realized capital gains and losses in the imputed investment results for fixed-term investments, such as corporate bonds, the Board proposed to impute these investments as held to maturity.[25]

To impute the pricing-year's investment income, the Board proposed using this portfolio method to create a pricing-year imputed portfolio of investments for the actual return method or to create a ten-year average portfolio performance for the constant annual spread method.

To create a pricing-year imputed portfolio of investments to implement the actual return method, the Board proposed assuming that the pricing-year portfolio is the most current optimized portfolio for the most current ten-year period. For example, the 2004 pricing-year's imputed portfolio yield would be the yield obtainable in 2004 from the optimum portfolio allocated based on the optimized portfolio's investment return performance from 1994 through 2003.

To create ten years of optimized portfolio actual returns to average for implementing the constant annual spread method, the Board proposed creating the optimized portfolio for each year in the most recent ten-year period. For example, the 2004 pricing-year's constant annual spread would be based on the actual investment return performance from 1993 through 2002. The optimized portfolio for 1993 would be based on historical investment return performance from 1983 through 1992, the portfolio for 1994 would be based on performance from 1984 through 1993, and so on.

The key difference in the implementation methods is how the

rate sensitivity analysis captures the risk to near-term earnings.

[20] Large BHCs typically manage the EVE measure within a risk-tolerance range of 5 to 10 percent. More information on measurement of interest rate risk can be found at *http://www.federalreserve.gov/boarddocs/supmanual/trading/trading.pdf.*

[21] Credit risk results from the possibility that the issuer of a bond or other borrower cannot repay its obligations as promised. Criteria for managing credit risk are necessary when investing in instruments other than Treasury securities.

[22] *http://www.fdic.gov.*

[23] 66 FR 67834, November 7, 2002.

[24] A ten-year period was selected because the data are available and the period includes a variety of interest rate environments.

[25] This results in a ladder approach to determining the average yield. For an investment in five-year corporate bonds, for example, the average yield would incorporate the yield from bonds purchased in increments over the preceding five years.

investment return is imputed for cost-recovery measurement purposes for the pricing year. Imputing the return under the actual return method requires applying the investment yields during the pricing year to the imputed investments. The constant annual spread method, however, simplifies the process during the year by applying the historical ten-year average portfolio spread over the current three-month Treasury bill rate.[26]

2. Imputing the Actual Return

The data in the table show the results of selecting an optimized portfolio for each year as described above and imputing the return as if the portfolio were held during that year.[27] The investments were chosen to optimize the return while placing a 35 basis point constraint on the standard deviation of the spread. Over the ten-year period, the asset mix is composed primarily of commercial paper or one-year Treasury notes and money market mutual funds. When holding clearing balance levels constant as in this example, fluctuations experienced using the actual return method reflect both variance in the Treasury bill rate and variance in the spread between the portfolio yield and the Treasury bill rate. The actual standard deviation associated with the actual return method over the ten-year period is greater than the 23 basis point standard deviation associated with the current imputed investment method. The actual standard deviation of the portfolio spreads is also greater than the 35 basis point standard deviation applied to select each year's optimum portfolio. The ten-year average NICB generated in this example would have been $106.4 million with a standard deviation of $42.2 million.

Actual return method

Year	Spread over 3-month T-bill	NICB (millions)
1993	0.29	$78.4
1994	−0.19	43.1
1995	0.60	152.3
1996	0.18	101.2
1997	0.67	151.4
1998	0.37	118.4
1999	−0.37	35.4
2000	0.35	129.2
2001	0.44	111.7
2002	1.12	142.6
Average 10-year	0.35	106.4
Standard deviation 10-year	0.42	$42.2

3. Imputing the Constant Annual Spread

During the development of this proposal, the Federal Reserve met with a group of representatives from banks, corporate credit unions, and their trade associations to obtain information about institution investment practices. [28] These representatives observed that construction of a risk-management framework and hypothetical portfolio appeared unduly complex for imputing income from hypothetical investments and suggested that a constant basis point calculation could be simpler and provide similar results. They suggested that the NICB calculation impute investment income based on a clearing balance investment yield expressed as a constant spread over the rate used to determine the clearing balance cost of funds. The representatives observed that this approach might be easier to understand, administer, and monitor.

Using a constant spread over the three-month Treasury bill rate to impute the income from investing clearing balances would, by definition, not reflect the actual variability within the year between the investment rate of return and the Treasury bill rate that would occur with the actual return method. Although investment income imputed using a constant annual spread would vary with fluctuations in the three-month Treasury bill rate, finance theory suggests that a discount to the constant annual rate might be required to earn the consistency during the year that is produced by a constant spread method.

Unfortunately, historical mutual fund data needed to calculate NICB under the constant annual spread method are not available.[29] Conceptually, however, the averaging of the basis-point spreads in the constant annual spread method will reduce the basis-point fluctuations that otherwise would have occurred. Removing the fluctuations in the return related to the actual variability between the investment yield rate of return and the Treasury bill rate that would occur with the actual return method generates a higher return in some years than would have been experienced with the actual return method and a lower return in others.

Both commenters preferred the actual return method over the constant annual spread method. The commenters noted that the actual return method is more transparent and more representative of BHC practices. One commenter stated that the need to demonstrate that the constant annual spread would be achievable with the actual portfolio would result in the same level of effort as the actual return method.

The Board agrees with the industry representatives that the constant annual spread method reduces some complexity associated with the imputation process during the pricing

[26] A calculation of the optimized portfolio return will still be necessary, however, to factor into future pricing-years' constant annual spread.

[27] To eliminate fluctuations in implementation method results related to changes in clearing balances in the table, all clearing balance amounts are held constant throughout the analysis period. To construct the optimized portfolio, balances are held at the levels estimated for 2002 price-setting; investable balances are $5.473 million and balances on which earnings credits are paid are $5.892 million. To impute the results for each year, the balances are held at the 2004 level; investable balances are $10.302 million and balances on which earnings credits are paid are $9,711.

[28] The advisory group included participants from the American Bankers Association, the Independent Community Bankers of America, and the Association of Corporate Credit Unions.

[29] In order to model the results that the constant annual spread method would have produced for years prior to 2004, returns for years prior to 1993 would need to be simulated. Those simulated portfolios would, in turn, be based on optimum portfolios that include years prior to 1983, the earliest year for which required data are available.

year. The Board believes that while neither method can exactly simulate banking industry practices, the constant annual spread method provides a reasonable proxy for the return a BHC would receive with similar investments. As a result, the pricing-year administrative burden is somewhat reduced with the constant annual spread method.

The Board has adopted the constant annual return method for imputing income on investments for the NICB calculation. Each pricing year, the constant annual spread will be determined based on an optimized investment portfolio, subject to the risk-management framework. The constant annual spread will be determined based on the actual return from the optimized investment portfolio in each of the most recent ten years. The constant spread will be calculated as the difference between the portfolio rate of return and the three-month Treasury bill rate. NICB for 2004, using the constant annual spread method with a 35 basis point spread shown in the table, is estimated to be $52.7 million.[30]

III. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.''[31] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal power or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

These changes are intended to expand the investments assumed in the NICB calculation to resemble more closely investments pursued by bank holding companies, the services of which are considered to resemble most closely the services provided by Reserve Banks. Imputed investment decisions would be made within a framework that incorporates risk-management measures used in industry and regulatory practice. Accordingly, the Board believes these changes will not have a direct and material adverse effect on the ability of other service providers to compete effectively, due to legal differences, with the Federal Reserve in providing similar services.

IV. Method for Imputing Investment Income on Clearing Balances

The Board has adopted the following modifications to the method for imputing investment income on clearing balances:

• Investment income for each pricing year will be imputed based on the average annual spreads between the investment yields and three-month Treasury bill rates that would have been realized on investments made in the most recently available 10-year period based on portfolios optimized as described below. The selected spread will be held for the pricing year.

• Imputed investments will be selected from those available to banks and BHCs. The imputed portfolio for each year will be optimized and subject to a risk management framework. The portfolio will be optimized based on the most recent ten-year historical data to maximize the return that could have been realized over that entire ten-year period within the risk management framework.

The risk management framework consists of the following:

• A core amount of clearing balances, currently $4 billion less core balances use to fund long-term assets in the PSAF calculation, is available to invest in longer-term instruments.

• The earnings at risk measure will be used as a constraint to manage shorter-term interest rate risk. Assuming a 200 basis point change in both the yield on relevant assets and the cost of all relevant liabilities, the effect to priced services recovery will be limited to a change of 200 basis points.

• The EVE measure is adopted as a constraint to manage longer-term interest rate risk, subject to a limit on the effect to equity of 8 percent resulting from a 200 basis point change in the asset yield and clearing balance rates.

• Investments will be limited to maintain the FDIC's minimum risk-based capital ratio for a well-capitalized institution, which is currently 10 percent.

[30] The two-year lag in data is consistent with the PSAF method, which uses audited financial statements for the top 50 BHCs from this period, and is necessary because complete 2003 actual return data are not yet available.

[31] FRRS 9–1558.

By order of the Board of Governors of the Federal Reserve System, October 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–27124 Filed 10–27–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1165]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the 2004 fee schedules for Federal Reserve priced services and electronic connections and a private-sector adjustment factor (PSAF) for 2004 of $179.7 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved changing the earnings credit rate on clearing balances from the federal funds rate to 90 percent of the three-month Treasury bill rate, and changing the limit on the frequency of changes to contracted clearing balances from once per month to as often as each maintenance period.

DATES: The new fee schedules become effective January 2, 2004. The change in the earnings credit rate on clearing balances, and the change to how often depository institutions can change contracted clearing balances becomes effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jack K. Walton II, Assistant Director, (202/452–2660); Gregory E. Cannella, Financial Services Analyst, (202/530–6214), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Lezell Murphy, Senior Financial Analyst, (202/452–3758); or Brenda Richards, Senior Financial Analyst, (202/452–2753); or Gregory Evans, Manager, Financial Accounting, (202/452–3945), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only,* please call 202/452–3544. Copies of the 2004 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. *Discussion*—From 1993 through 2002, the Reserve Banks recovered 98.8 percent of their total costs for providing priced services, including special project costs, imputed expenses, and targeted after-tax profits or return on equity (ROE).[1]

Table 1 summarizes the priced services' actual, estimated, and budgeted cost recovery rates for 2002, 2003, and 2004, respectively. Cost recovery is estimated to be 85.6 percent in 2003 and budgeted to be 93.6 percent in 2004. The aggregate cost recovery rates are heavily influenced by the performance of the check service, which accounts for approximately 83 percent of the total cost of priced services. The electronic services (FedACH, Fedwire funds and national settlement (NSS), and Fedwire securities) account for approximately 17 percent of costs, while noncash and special cash services represent a *de minimis* amount.

Table 1

Pro Forma Cost and Revenue Performance
($ millions)

Year	1[a] Revenue	2[b] Total expense	3 Net income (ROE) [1-2]	4[c] Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	918.3	891.7	26.6	92.5	93.3%
2003 (Estimate)	889.0	933.4	-44.4	104.7	85.6%
2004 (Budget)	934.5	886.3	48.2	112.4	93.6%

[a] Revenue includes net income on clearing balances (NICB). For 2002 and 2003, clearing balances, net of imputed reserve requirements and balances used to finance priced services assets, are assumed to be invested in three-month Treasury bills. For 2004, net clearing balances are assumed to be invested in a broader portfolio of investments. Based on the historical average return on the portfolio, income is imputed as a constant return over the rate used to determine the cost of clearing balances. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. For 2002 and 2003, the cost of clearing balances was based on the federal funds rate and for 2004 the cost is based on the discounted three-month Treasury bill rate.
[b] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, and the cost of float and interest on imputed debt, if any. Credits or debits related to the accounting for pensions under FAS 87 are also included.
[c] Target ROE is the after-tax ROE included in the PSAF.

Table 2 presents an overview of the 2002, 2003 budget, 2003 estimate, and 2004 budget cost recovery performance by category of major priced service.

Table 2

Priced Services Cost Recovery
(percent)

Priced service	2002	2003 Budget	2003 Estimate	2004 Budget
All services	93.3	93.7	85.6	93.6
Check	91.7	92.5	83.2	91.9
FedACH	104.1	100.3	101.6	101.8
Fedwire funds & NSS	99.6	101.8	98.0	103.3
Fedwire securities	100.1	100.6	106.0	104.7
Noncash collection	100.6	110.9	118.9	113.3
Special cash	94.8	77.3	71.9	n.a.

n.a. – Not applicable

[1] These imputed expenses, such as taxes that would have been paid, and the return on equity that would have to be earned had the services been furnished by a private business firm, are referred to as the private-sector adjustment factor (PSAF). The ten-year recovery rate is based upon the pro forma income statements for Federal Reserve Banks' priced services published in the Board's Annual Report. Beginning in 2000, the PSAF has included additional financing costs associated with pension assets attributable to priced services. This ten-year cost recovery rate has been computed as if these costs were not included in the PSAF calculations prior to 2000. If these costs were included in the calculations, and assuming that the Reserve Banks would not have made any contemporaneous cost or revenue adjustments, the 10-year recovery rate would be 97.8 percent.

1. *2003 Estimated Performance*—In 2003, the Reserve Banks estimate that they will recover 85.6 percent of the costs of providing priced services, compared with the budgeted recovery rate of 93.7 percent. The Reserve Banks do not expect to recover fully actual and imputed expenses, incurring an overall net loss of $44.4 million, which is $87.3 million less than the budgeted net income of $42.9 million. This shortfall is largely driven by lower-than-expected net income from clearing balances (NICB) and increased pension costs, as well as lower-than-expected check service revenues and one-time costs associated with check restructuring.[2]

Two primary factors are contributing to the check service's underrecovery. First, higher-than-anticipated volume declines, as well as a shift by customers to lower priced check products as a result of low interest rates, have resulted in check service operating revenues in 2003 running $26.9 million below budget. The Federal Reserve System's recent retail payments research, along with more recent anecdotal information from the industry, indicates that check use in the United States is continuing to decline.[3] The deterioration in the Reserve Banks' check volume is consistent with this nationwide trend. Second, while the Reserve Banks have reduced operating costs in response to the volume declines, one-time costs associated with the check restructuring initiative have contributed to significantly lower-than-budgeted check service cost recovery.

2. *2004 Projected Performance*—For 2004, the Reserve Banks project a priced services cost recovery rate of 93.6 percent, with net income of $48.2 million, as compared to target net income of $112.4 million. The primary factors affecting 2004 cost recovery are the one-time costs associated with planned and potential further restructuring of the Reserve Banks' check operations and the continued decline in check volume.

The primary risks to the Reserve Banks' ability to achieve their budget targets are greater-than-expected costs associated with the restructuring initiative and a steeper decline in the Reserve Banks' check volume than the projected 8.9 percent decrease. Additionally, the Check Clearing for the 21st Century Act (Check 21) presents risk to existing volumes, pricing, and product strategies. To address the continuing decline in check volumes, the Reserve Banks will continue to implement a business and operational strategy that will improve efficiency, reduce excess capacity and other costs, and position the service to achieve its financial and payment system objectives over the long term.

3. *2004 Pricing*—The following summarizes the Reserve Banks'' changes in fee structures and levels for priced services in 2004, along with an indication of overall experience with prices in each service line since 1996:[4]

Check

- The Reserve Banks will raise fees for forward-collection check products 5.8 percent, return check products 6.1 percent, and payor bank check products 0.7 percent compared with January 2003 fees.
- The price index for the check service has increased about 37 percent since 1996.

FedACH

- The Reserve Banks will reduce the input file processing fee from $5.00 to $3.75, and will retain all other fees at their current levels.
- The price index for the FedACH service has decreased about 66 percent since 1996.

Fedwire Funds and National Settlement

- The Reserve Banks will retain fees at their current levels.
- The price index for the Fedwire funds and national settlement service has decreased about 62 percent since 1996.

Fedwire Securities

- The Reserve Banks will reduce the on-line transfer origination and receipt fee from $0.40 to $0.32 and will reduce the claim adjustment fee from $0.38 to $0.30. The Reserve Banks will increase the off-line surcharge from $25 to $28 and will increase the joint custody surcharge from $22 to $30. The Reserve Banks will retain all other fees at their current levels.
- The price index for the Fedwire securities service has decreased about 39 percent since 1996.

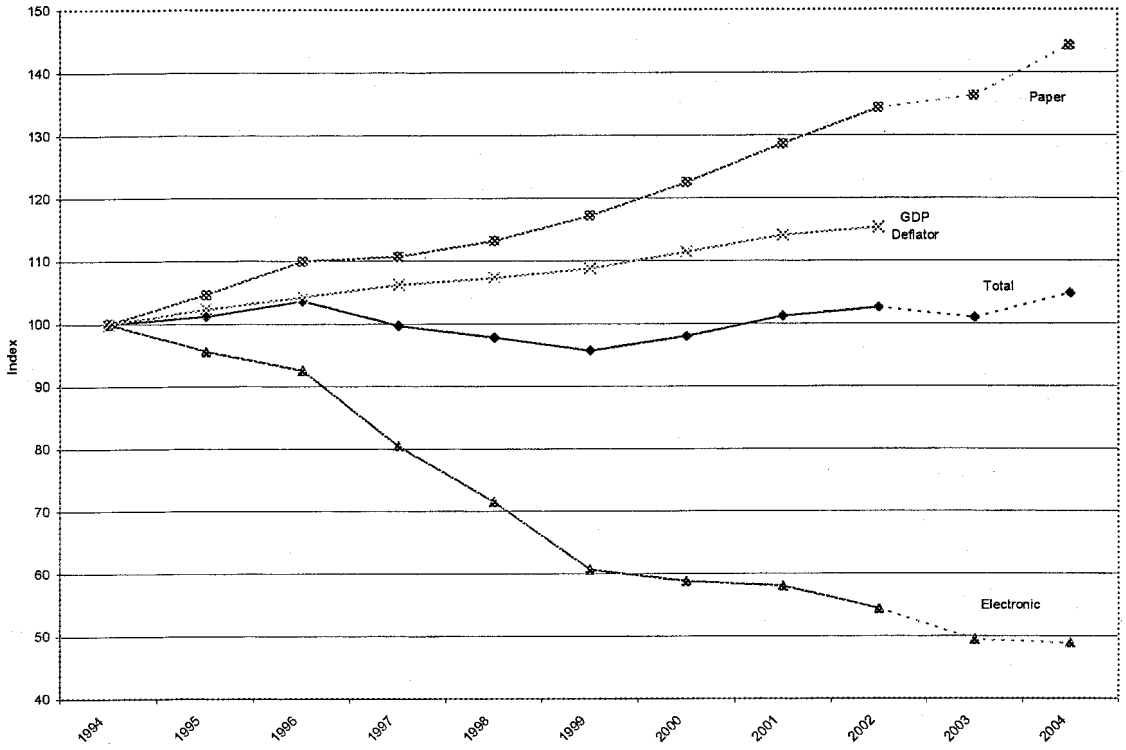
4. *2003 Price Index*—Figure 1 compares indices of fees for the Federal Reserve's priced services with the GDP price deflator. Since 1995, the price index for all priced services has increased a total of about 3.6 percent. The price index for electronic payment services (FedACH, Fedwire funds and national settlement, Fedwire securities, and electronic check products), as well as electronic access to Federal Reserve Banks' priced services, is projected to decrease 1.2 percent in 2004. The price index for paper-based payment services (check and noncash collection) is expected to increase about 5.9 percent in 2004. Compared with the price index for 2003, the price index for all Federal Reserve Bank priced services is projected to increase approximately 3.9 percent in 2004.

[2] The Reserve Banks' check restructuring initiative will reduce Federal Reserve check processing locations from 45 to 32 sites and will streamline check adjustments by 2004. (*See http://www.frbservices.org/Retail/pdf/CheckRestructure-CustomerLetter.pdf.*)

[3] See Gerdes, Geoffrey R. and Jack K. Walton II, ''The Use of Checks and Other Noncash Payment Instruments in the United States,'' Federal Reserve Bulletin, August 2002, pp. 360–374. (*See http://www.federalreserve.gov/pubs/bulletin/default.htm.*)

[4] Data elements used in calculating the price index for 2002 and prior years include explicit fee revenue from priced services and volumes associated with those services. For 2003 and 2004, the year-over-year percentage changes are based on comparisons of the 2002 results, 2003 estimates, and 2004 projections.

FIGURE 1
PRICE INDICES FOR FEDERAL RESERVE PRICED SERVICES



B. *Earnings Credits on Clearing Balances*—The Board has approved changing the rate used in calculating earnings credits on clearing balances from the federal funds rate to 90 percent of the three-month Treasury bill rate, effective January 8, 2004. The ''marginal reserve requirement'' adjustment in the earnings credit calculation will continue to be made using the federal funds rate.

Clearing balances were introduced in 1981, as a part of the Board's implementation of the Monetary Control Act, to facilitate the access to Federal Reserve priced services by institutions that either did not have an account at a Reserve Bank or did not have a sufficient required reserve balance to support the settlement of their payment transactions. Reserve Banks have calculated earnings credits based on the effective federal funds rate since the inception of the clearing balance program over twenty years ago. Earnings credits can be used only to offset charges for priced services, are calculated monthly, and expire if not used within one year.[5]

The most common practice at private-sector correspondent banks is to calculate earnings credits on compensating balances using a rate discounted from the lagged three-month Treasury bill rate. Discounts are expressed either as a percentage reduction or a level (basis-point) reduction from the base rate. Even so, almost one-quarter of large correspondent banks no longer explicitly tie the earnings credit rate to an external benchmark. Correspondent banks generally do not establish required compensating balance levels and they generally do not allow earning credits to accumulate to future months, like the Federal Reserve.[6] Earnings credits on balances held at correspondent banks generally must be used in the month earned.

Under current procedures, the earnings credits on clearing balances held at the Federal Reserve are based on the average effective federal funds rate, the average clearing balance maintained, the imputed reserve requirement adjustment, and the marginal reserve requirement. These two adjustments are applied so that the return on clearing balances at the Federal Reserve is comparable to what the depository institution would have earned had it maintained the same balance at a private-sector correspondent.[7]

[5] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount, or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

[6] A minimum balance may be established in specific cases, depending on the creditworthiness of the customer.

[7] The ''imputed reserve requirement'' adjustment is made because a private-sector correspondent would be required to hold reserves against the respondent's balance with it. As a result, the correspondent would reduce the balance on which it would base earnings credits for the respondent because it would be required to hold a portion, determined by its marginal reserve ratio, in the form of non-interest-bearing reserves. For example, if a depository institution held $1 million in clearing balances with correspondent bank and the correspondent had a marginal reserve ratio of 10 percent, then the correspondent bank would be required to hold $100,000 in reserves, and it would grant credits to the respondent based on 90 percent of the balance, or $900,000. This adjustment imputes a marginal reserve ratio of 10 percent to the Reserve Bank.

The ''marginal reserve requirement'' adjustment accounts for the fact that the respondent can deduct balances maintained at a correspondent, but not the Federal Reserve, from its reservable liabilities. This reduction has value to the respondent when it frees up balances that can be invested in interest-bearing instruments, such as a federal funds. For example, a respondent placing $1 million with a

Continued

By using the federal funds rate, the Reserve Banks are calculating earnings credits using a rate that is higher than typical market practice. The Reserve Banks could better align their rates with those of the marketplace and lower their cost of clearing balances, which must be recovered via fees, by changing to a Treasury-bill-based rate. The Board has approved that the earnings credit rate be changed to 90 percent of a rolling 13-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market to better align Federal Reserve policy with market practice.

The Board also approved changing its policy on the frequency with which depository institutions can change their contracted clearing balances. The new policy will permit changes more frequently, as often as each maintenance period. Under this new policy, any change would still need to be made before the beginning of the reserve maintenance period to which it applies. Advance agreement on the amount of the contracted balance ensures that variations in contracted clearing balances are not a source of uncertainty for the conduct of open market operations during a reserve maintenance period. Depository institutions, through the Reserve Banks, have expressed interest over the years in being able to make more frequent changes to their contracted level.

C. *Check*—Table 3 below shows the 2002, 2003 estimate, and 2004 budgeted cost recovery performance for the check service.

Table 3

Check Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	760.9	751.2	9.7	78.2	91.7%
2003 (Estimate)	744.5	805.8	-61.2	89.4	83.2%
2004 (Budget)	776.1	751.1	25.0	93.6	91.9%

1. *2002 Performance*—The check service recovered 91.7 percent of total costs in 2002, including imputed expenses, and a portion of targeted ROE, which was less than the targeted recovery rate of 95.5 percent. The volume of checks collected decreased 1.9 percent from 2001, consistent with nationwide trends away from the use of paper checks and toward greater use of electronic payment methods. Revenue fell from 2001 levels primarily due to declining volume combined with a customer shift to lower priced products. Customer demand for these lower priced products grew and the value of premium priced accelerated availability products diminished as interest rates declined. Revenue was $44.3 million less than budget. Costs were $13.6 million less than budget due to local cost reductions, which were largely offset by lower-than-budgeted pension credits.

2. *2003 Estimate*—Through August 2003, the check service has recovered 84.3 percent of total costs, including imputed expenses, and targeted ROE. For the full year, the Reserve Banks do not expect to recover fully their costs of providing check services. Specifically, the Reserve Banks estimate that the check service will recover 83.2 percent of its total costs for the full year compared with the budgeted 2003 recovery rate of 92.5 percent, for an operating loss of $61.2 million. The lower-than-budgeted recovery rate is driven by lower-than-anticipated NICB and pension credits, which account for $59.4 million of the financial shortfall. Additional contributing factors include costs of $39.0 million associated with the check restructuring and check modernization initiatives that were not included in the original budget, and less-than-budgeted operating revenue of $26.9 million.[8] The service revenue shortfall reflects a continued trend of customers towards the use of lower priced products, which are more attractive in a low interest rate environment. The budget variances are summarized in table 4.

correspondent rather than the Federal Reserve would free up $30,000 if its marginal reserve ratio were 3 percent.

The formula used by the Reserve Banks to calculate earnings credits can be expressed as e = [b * (1–FRR) * r] + [b * (MRR) * f] where e is total earnings credits, b is the average clearing balance maintained, FRR is the assumed Reserve Bank marginal reserve ratio (10 percent), r is the earnings credit rate (currently equal to f), MRR is the marginal reserve ratio of the depository institution holding the balance (either 0 percent, 3 percent, or 10 percent) and f is the average federal funds rate. A depository institution that meets its reserve requirement entirely with vault cash is assigned a marginal reserve requirement of zero.

[8] The check modernization initiative, which is largely completed, is comprised of four individual projects to standardize the Reserve Banks' hardware and software platforms for check processing and adjustments, for check imaging and archiving, and to develop a Web-based delivery platform.

Table 4

Check 2003 Budget vs. 2003 Estimate
(millions of dollars)

	BUDGET	ESTIMATE	VARIANCE
Operating revenue	772.4	745.5	-26.9
NICB	8.6	-1.0	-9.6
Total revenue	**781.0**	**744.5**	**-36.5**
Check restructuring	0.0	32.6	32.6
Check modernization	100.5	106.9	6.4
Other operating costs	665.5	666.1	0.6
Pension credits	-41.0	8.8	49.8
Other imputed costs	29.7	-8.6	-38.3
Total cost	**754.7**	**805.8**	**51.1**
Net Income	**26.3**	**-61.2**	**-87.6**
Target ROE	89.4	89.4	
Recovery rate	92.5%	83.2%	

The volume of checks handled by the Reserve Banks has declined (as shown in table 5), reflecting the broader market trend in which the use of checks continues to decline. Forward-collection check product volume through August, excluding electronic fine sort volume, declined 4.8 percent.[9] For the full year 2003, the Reserve Banks estimate that forward-collection volume will decline 4.8 percent, compared with a budgeted decline of 1.9 percent. Return check volume has increased 0.4 percent through August 2003. The Reserve Banks, however, anticipate that return check volume will decline 0.2 percent for the full year, compared with a budgeted decline of 3.3 percent.

Table 5

Paper Check Product Volume Changes
(percent)

	BUDGETED 2003 CHANGE	YEAR-TO-DATE CHANGE THROUGH AUGUST 2003	ESTIMATED 2003 CHANGE
Total forward-collection[a]	-1.9	-4.8	-4.8
Forward-processed	-2.3	-4.4	-4.3
Fine-sort [a]	4.0	-15.8	-12.0
Returns	-3.3	1.0	-0.2

[a] These rates exclude electronic fine-sort volume. Including the electronic fine-sort product, fine-sort volume growth was budgeted to increase 5.1 percent in 2003 and is now estimated to increase 3.8 percent.

Electronic check presentment volumes are projected to decline for full-year 2003, as summarized in table 6. Reserve Banks provide paying banks with electronic check data or images for approximately 40 percent of the checks they collect. Image volumes are projected to increase 8.8 percent to approximately 1.5 billion check images, which represent about 9.8 percent of all checks collected by the Reserve Banks. While the total number of images increased, the increase was below the budgeted growth rate of 14.9 percent.

[9] Two Reserve Banks offer an electronic fine-sort product, which allows depository institutions to exchange fine-sort information electronically between themselves with paper checks to follow.

Table 6

Electronic Check Product Share and Volume Changes

	Volume change through August 2003 (percent)	Estimated 2003 change (percent)	Share of checks collected through August 2003 (percent)
Electronic Check Presentment[a]	-0.6	-1.9	24.0
Truncation	0.1	-1.2	5.6
Non-Truncation	-0.8	-2.2	18.4
Electronic Check Information	-6.9	-3.4	6.2
Images	8.8	8.8	9.8

[a] ECP consists of truncated and non-truncated checks. Non-truncated checks include checks presented through the MICR presentment and MICR presentment plus products.

3. *2004 Projection*—For 2004, the Reserve Banks will focus largely on opportunities to streamline further check processing and adjustment activities across the System. The multi-year check modernization project will be largely completed by the end of 2003 and will result in a standard operating platform in all remaining Reserve Bank check processing offices. In 2004, the Reserve Banks plan to reduce check costs by $21.2 million as the check modernization management and implementation teams are phased out. As the Reserve Banks complete their transitions to the standard check platform, they will reduce operating costs further. For example, through August 2003, the Reserve Banks have reduced check operating costs $13.2 million because of the greater efficiencies resulting from the check modernization projects. In addition to these anticipated cost savings, the transition to a common operating platform also will enable the Reserve Banks to improve their operating efficiency further by providing them with additional flexibility to adjust their check processing infrastructure.

Check restructuring allows the Reserve Banks to address ongoing volume changes by reducing excess capacity across the Federal Reserve System. The Reserve Banks will begin implementing the restructuring initiative this year and will continue the restructuring through 2004. While most of the one-time costs for this initiative will be accrued in 2003, significant costs also will be incurred in 2004. Check restructuring is expected to improve Reserve Bank cost effectiveness over the long term, with the current initiative reducing steady-state production costs by $60 million in 2005. The Reserve Banks will continue to assess the potential for further changes to their check processing infrastructure. Given the expected continued volume decline in the interbank check collection market and the industry's excess processing capacity, the Reserve Banks anticipate further changes to their infrastructure in 2005. As a result, the Reserve Banks' 2004 budget includes the accrual of expenses associated with further changes in their check processing infrastructure in 2005, and potential expenses for operational changes related to Check 21 in 2004. The Reserve Banks are currently developing products as well as making changes to operational workflows to address Check 21.

In addition to the operational initiatives for improving efficiency and reducing ongoing costs, the Reserve Banks will modify the price of selected products in 2004 to enhance service revenue. The Reserve Banks will increase certain fees to collect and return checks drawn on depository institutions that are distant from Federal Reserve check processing offices to reflect the Reserve Banks' costs more accurately in providing these products. Most of the price increases are targeted at markets that have become increasingly costly for the Reserve Banks to service. Depository institutions collecting checks drawn on and returning checks to depository institutions located in these markets may see a substantial increase in their check collection and return fees.

There is also a significant effort in 2004 to continue setting fees to achieve greater pricing consistency for key products across the Reserve Banks. In addition, a number of high-value products have been selected for moderate price increases for 2004. The fee changes will enhance the Reserve Banks' ability to recover costs, while maintaining the competitiveness of these products.

For 2004, the Reserve Banks are targeting an overall price increase of 5.2 percent, as shown in table 7. This increase consists of a 5.8 percent increase in forward check-collection fees, comprised of a 6.9 percent increase in forward cash letter fees and a 5.4 percent increase in per-item fees. Fees for return services will increase by 6.1 percent, which is composed of a 7.5 percent increase in return cash letter fees and a 5.1 percent increase in per-item fees. The average volume-weighted fees for payor bank services will increase 0.7 percent compared with current fees.

Table 7

2004 Fee Changes
(percent)

PRODUCT	FEE CHANGE
Total check service	5.2
Forward-collection	5.8
Returns	6.1
Payor bank services	0.7

Table 8 below summarizes ranges of selected check fees for 2003 and 2004, and shows 2004 price changes in bold type.

Table 8

Selected Check Fees

Items:	CURRENT FEE RANGES (PER ITEM)		2004 FEE RANGES (PER ITEM)	
Forward-processed				
City	$0.005 to 0.080		$0.005 to **0.078**	
RCPC	$0.003 to 0.340		**$0.005** to 0.340	
Forward fine-sort				
City	$0.005 to 0.021		$0.005 to **0.018**	
RCPC	$0.005 to 0.036		$0.005 to 0.036	
Qualified returned checks				
City	$0.08 to 0.80		$0.08 to 0.80	
RCPC	$0.10 to 1.10		$0.10 to **1.15**	
Raw returned checks				
City	$1.50 to 5.00		**$1.60** to 5.00	
RCPC	$1.30 to 5.00		$1.30 to 5.00	
Consolidated shipment [a]	$0.004 to $0.036		$0.004 to $0.036	
Cash letters:	(PER CASH LETTER)		(PER CASH LETTER)	
Forward-processed [b]	$2.00 to 37.00		**$1.50** to 37.00	
Forward fine-sort	$6.00 to 14.00		**$5.50** to **15.00**	
Returned checks: raw/qualified	$2.00 to 16.00		$2.00 to **17.00**	
Payor bank services:	(FIXED)	(PER ITEM)	(FIXED)	(PER ITEM)
MICR information	$5-15	$0.0030-0.0150	$5-15	$0.0030-0.0150
Electronic presentment	$2-15	$0.0005-0.0110	**$5**-15	**$0.0017**-0.0110
Truncation	$2-7	$0.0020-0.0180	**$5-8**	$0.0020-0.0180
Image capture	$2-15	$0.0020-0.0150	$2-**8**	$0.0020-0.0150
Image delivery	Varies[c]	$0.0020-0.0080	Varies[c]	$0.0020-**0.0070**
Image archive	n.a.	$0.0007-0.0060	n.a.	$0.0007-**0.0070**
Image retrieval	n.a.	$0.30-5.00	n.a.	$0.30-5.00

n.a. – Not applicable

[a] Per-item fees for consolidated shipments include a half mill surcharge due to higher fuel costs. Consolidated shipments are shipments of checks on Check Relay by depository institutions directly to the paying bank's Reserve Bank office.

[b] Cash letter fees for forward-processed items transported by the Reserve Banks include a fifty-cent surcharge due to higher fuel costs.

[c] Fixed fee varies by media type.

4. *2004 Cost Recovery*—For 2004, the Reserve Banks project that the check service will recover 91.9 percent of total costs, including imputed expenses, and targeted ROE. The Reserve Banks expect to recover all direct and indirect operating costs and all imputed costs of providing check services, but only a portion of the targeted return on equity.

Total adjusted costs before taxes are projected to decrease approximately $87.1 million, or 9.1 percent, from estimated 2003 expenses. The largest factor contributing to the decline is local operating costs, which are expected to decrease by $64.9 million, or 11.4 percent. This decline reflects significant reductions in personnel costs and partial year savings associated with discontinuing the processing of checks at thirteen Federal Reserve offices. Additional reductions include lower check modernization expenses and the consolidation of some local administrative functions into national support centers.

Total check revenue is projected to increase $31.6 million, or 4.2 percent, compared with the 2003 estimate. The revenue growth is driven largely by a $44.6 million increase in NICB. This increase associated with the change in methodology to calculate imputed investment income and payments of earnings credits to depository institution holders of clearing balances. Partially offsetting this increase is a projected $15.2 million, or 2.1 percent, decline in service revenue. This decline is largely attributable to a projected acceleration of the downward trend in the Reserve Banks' check volumes. The price changes will partially offset the effect of volume losses on check revenue.

In 2004, forward-processed check volume is projected to be 12.8 billion, a decrease of 8.9 percent compared with the 2003 estimate. The overall decline of paper check volume in the United States is the predominant factor for the loss of forward volume; however, the Reserve Banks also are projecting volume losses resulting from check restructuring

(which accounts for 2 percentage points of that decline) and price increases. Fine-sort check volume is expected to decline by 8.1 percent from the 2003 estimate. Return volume is projected to decrease by 7.0 percent compared with the 2003 estimate, a somewhat slower rate than forward volume. The difference in the rates of decline for forward and return volumes is a result of an increase in the Reserve Banks' share of the market for returned check processing in 2003 that is expected to continue into 2004.

The Reserve Banks expect a slight decrease in payor bank service volumes. Electronic presentment volume is expected to decline 0.8 percent in 2004. Image volume is projected to grow 5.1 percent in 2004, compared with estimated 2003 volumes. Image volume growth is expected to be driven by the increased functionality of FedImage services (for example, electronic access to archived check images using web technology).

The Board believes that the greatest risks to achieving the projected cost recovery rate for the check service are volume declines and associated revenue losses beyond System budget projections, and greater-than-expected costs associated with the check restructuring initiative.

The Board believes that the cost, volume, and revenue projections are reasonable and has approved the price changes for the Reserve Banks' check service.

D. *Automated Clearinghouse (FedACH)*—Table 9 below shows the 2002, 2003 estimate, and 2004 budgeted cost recovery performance for the commercial FedACH service.

Table 9

FedACH Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	71.8	62.5	9.3	6.5	104.1%
2003 (Estimate)	68.6	60.0	8.6	7.5	101.6%
2004 (Budget)	74.8	64.5	10.2	8.9	101.8%

1. *2002 Performance*—In 2002, the FedACH service recovered 104.1 percent of total costs, including imputed expenses, and targeted ROE, compared with a targeted recovery rate of 101.4 percent. The greater-than-budgeted cost recovery was due mainly to higher-than-expected volume. The commercial ACH origination volume processed by the Reserve Banks was 12.1 percent higher than in 2001, compared with the 7.3 percent decrease reflected in the 2002 budget. This reflects lower-than-expected volume shift to a private-sector ACH operator.

2. *2003 Estimate*—The Reserve Banks estimate that the FedACH service will recover 101.6 percent of total expenses in 2003, compared with the budgeted recovery rate of 100.3 percent. The greater-than-budgeted cost recovery is attributable mainly to lower-than-expected information technology support costs. Although the Reserve Banks estimate that 2003 volume will be 13.7 percent higher than in 2002, they estimate that revenue will be $3.2 million lower, primarily because of price reductions that became effective January 2, 2003. Through August 2003, the Reserve Banks' FedACH volume has increased 13.2 percent over the same period in 2002.

3. *2004 Pricing*—The Reserve Banks project that the FedACH service will recover 101.8 percent of its costs in 2004, including imputed expenses, and targeted ROE. The Reserve Banks are keeping fees unchanged except for a decrease in the input file processing fee from $5.00 to $3.75. *Ceteris paribus,* the lower per-file fee would reduce the Reserve Banks' FedACH revenue by about $4 million annually. The budgeted $6.2 million increase in revenue reflects 8.7 percent growth in anticipated FedACH processed origination volume, increased electronic connection revenue, and increased NICB as a result of the Reserve Banks' change in the NICB computation methodology. The year-over-year cost increase is due primarily to projects related to FedLine® for the Web and to the development of new FedACH services, including risk management and international ACH services. The Reserve Banks generally believe that nationwide ACH volume will grow somewhat faster than FedACH volume as large depository institutions continue to shift their volume to the other ACH operator.

The Board believes that the cost, volume, and revenue projections are reasonable and has approved the price changes for the Reserve Banks' FedACH service.

E. *Fedwire Funds and National Settlement Service*—Table 10 below shows the 2002, 2003 estimate, and 2004 budgeted cost recovery performance for the Fedwire funds and national settlement service.

Table 10

Fedwire Funds and National Settlement Service Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	58.7	53.5	5.2	5.5	99.6%
2003 (Estimate)	51.3	47.0	4.3	5.4	98.0%
2004 (Budget)	59.5	50.8	8.7	6.8	103.3%

1. *2002 Performance*—The Fedwire funds and national settlement service recovered 99.6 percent of total costs in 2002, including imputed expenses, and targeted ROE, less than the budgeted recovery rate of 101.1 percent. Expenses for 2002 were $3.6 million more than original budget projections, primarily because of unbudgeted costs associated with the FedLine for the Web project and a FedLine for Windows write-off. Service revenue was $2.6 million greater than budget.

2. *2003 Estimate*—For 2003, the Reserve Banks estimate that the Fedwire funds and national settlement service will recover 98.0 percent of total expenses, including imputed expenses, and target ROE, compared with a budgeted recovery rate of 101.8 percent. The underrecovery is attributed primarily to significantly lower-than-expected pension credits. Funds transfer volume through August 2003 has increased 9.4 percent relative to the same period in 2002. For the full year, the Reserve Banks estimate that volume will increase 7.3 percent compared with 2002, based on the expectation that volume growth will be flat for the remainder of the year. The Reserve Banks had originally projected zero volume growth for 2003, which was based on historical growth levels combined with anticipated losses of volume to a competitor. This shifting of volume to the competitor, however, did not materialize and, in fact, the Reserve Banks gained market share in 2003. With respect to the national settlement service, the Reserve Banks estimate that 2003 volume will be less than budget due to continued consolidations among check clearinghouses.

3. *2004 Pricing*—The Reserve Banks are keeping fees for the Fedwire funds and national settlement service unchanged from 2003.

The Reserve Banks project that the Fedwire funds and national settlement service will recover 103.3 percent of total costs in 2004, including imputed expenses, and targeted ROE. Total costs, including imputed expenses, and targeted ROE are expected to increase $5.2 million from the 2003 estimate because of higher costs related to the FedLine for the Web project, higher data communications costs, and a higher PSAF. Funds transfer volume for 2004 is expected to increase 6.8 percent compared with the 2003 estimate. National settlement volume is expected to remain flat. The Reserve Banks project total revenue to increase by $8.2 million over the 2003 estimate primarily because of continued strong volume growth, an increase in NICB attributable to the change in the calculation methodology, and higher electronic access revenue.

The Board believes that the cost, volume, and revenue projections are reasonable and has approved the price changes for the Reserve Banks' Fedwire funds and national settlement service be approved.

F. *Fedwire Securities Service*—Table 11 below shows the 2002, 2003 estimate, and 2004 budgeted cost recovery performance for the Fedwire securities service.[10]

[10] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

Table 11

Fedwire Securities Service Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	23.8	21.5	2.3	2.2	100.1%
2003 (Estimate)	21.8	18.4	3.4	2.2	106.0%
2004 (Budget)	22.3	18.4	3.9	2.9	104.7%

1. *2002 Performance*—The Fedwire securities service recovered 100.1 percent of total costs in 2002, including imputed expenses, and targeted ROE. Total costs and service revenue for 2002 were greater than budget by $1.1 million and $1.0 million, respectively.

2. *2003 Estimate*—Through August 2003, the Fedwire securities service recovered 107.4 percent of total costs, including imputed expenses, and targeted ROE. For full-year 2003, the Reserve Banks estimate that the Fedwire securities service will recover 106.0 percent of total costs, compared with a budgeted recovery rate of 100.6 percent. The overrecovery is attributed primarily to higher-than-expected volume growth.

Through August 2003, total Fedwire securities transfer volume has increased 23.7 percent relative to the same period in 2002.[11] For the full year, the Reserve Banks estimate that total Fedwire securities volume will increase 21.9 percent from 2002, compared with a budgeted 4.3 percent increase. The significantly higher-than-expected volume growth is due primarily to the continued strength of the residential mortgage financing market. The Reserve Banks expect that volume growth experienced year-to-date will level off in the remaining months of the year.

3. *2004 Pricing*—The Reserve Banks are reducing the on-line transfer origination and receipt fees from $0.40 to $0.32 and reducing the claim adjustment fee from $0.38 to $0.30.[12] The Reserve Banks will increase the off-line surcharge from $25 to $28 and increasing the joint custody surcharge from $22 to $30. The Reserve Banks will retain all other fees at their current levels.

The Reserve Banks project that the Fedwire securities service will recover 104.7 percent of costs in 2004, including imputed expenses, and targeted ROE. Total costs, including imputed expenses, and targeted ROE are expected to increase $0.7 million from the 2003 estimate.

The Reserve Banks project that total securities volume in 2004 will increase 6.8 percent from the 2003 estimate. Total revenue is projected to increase slightly from the 2003 estimate, as the expected decrease in revenue from price reductions is offset by a higher NICB attributable to the changes in calculation methodology.

The Board believes that the cost, volume, and revenue projections are reasonable and has approved the price changes for the Reserve Banks' Fedwire securities service.

G. *Noncash Collection*—Table 12 below shows the 2002, 2003 estimate, and 2004 budgeted cost recovery performance for the noncash collection service.

Table 12

Noncash Collection Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	1.7	1.5	.2	.2	100.6%
2003 (Estimate)	2.3	1.8	.5	.2	118.9%
2004 (Budget)	1.8	1.4	.4	.2	113.3%

[11] Part of this increase is due to the full-year effect of the addition of Ginnie Mae securities to the Fedwire Securities Service, which was completed in March 2002.

[12] In 2002, the Reserve Banks implemented a new automated claim adjustment feature for mortgage-backed securities. The automated claim adjustment process (ACAP) supports the settlement of claims related to failed securities transactions, interim accounting for securities with an accrual date different than the record date, and repurchase agreements. ACAP allows participants to add information to transfer messages that the Fedwire securities service can use to calculate cash payments owed to counterparties involved with related transfers.

1. *2002 Performance*—The noncash collection service recovered 100.6 percent of total expenses in 2002, including imputed expenses, and targeted ROE, exceeding the budgeted recovery rate of 94.3 percent. Volume for 2002 declined 19.2 percent from 2001 levels, as expected.

2. *2003 Estimate*—Through August 2003, the noncash collection service recovered 131.5 percent of its costs. For full-year 2003, the Reserve Banks estimate that the noncash collection service will recover 118.9 percent of costs, including imputed expenses, and targeted ROE, compared with the budgeted recovery rate of 110.9 percent. This overrecovery is attributed to higher-than-expected revenues, as volume has not decreased from 2002 as much as anticipated. Noncash volume through August has decreased 13.1 percent compared with volume during the same period in 2002. For the full year, the Reserve Banks estimate that 2003 volume will decrease 18.9 percent from 2002, compared with a budgeted decline of 21.0 percent.

3. *2004 Pricing*—The Reserve Banks are keeping fees for the noncash collection service unchanged from 2003. As the number of outstanding physical municipal securities continues to decline, the volume of coupons and bonds presented for collection also will decline. New issues of bearer municipal securities effectively ceased in 1983 after the Tax Equity and Fiscal Responsibility Act of 1982 removed tax advantages for investors. In 2004, the Reserve Banks project that the noncash collection service will recover 113.3 percent of total costs, including imputed expenses, and targeted ROE. The Reserve Banks project that volume will decrease 18.9 percent from the 2003 estimate.

The Board believes that the cost, volume, and revenue projections are reasonable and has approved the price changes for the Reserve Banks' noncash collection service.

H. *Special Cash*—Special cash services represent a *de minimis* portion (less than one tenth of one percent) of overall priced services provided by the Reserve Banks to depository institutions. In 2002, special cash services included wrapped coin, nonstandard packaging of currency orders and deposits, and, for part of the year, registered mail shipments of currency and coin. The offices that offered registered mail shipments discontinued this service in mid to late 2002. In 2003, special cash services consisted of wrapped coin for half of the year and nonstandard packaging of currency. The Helena office discontinued its wrapped coin service in June 2003, and the Seventh District will discontinue its nonstandard packaging service in December 2003. With the Helena office and the Seventh District exiting these businesses, the Reserve Banks will not provide any special cash services in 2004. Table 13 below shows 2002 and estimated 2003 cost recovery performance for special cash services.

Table 13

Special Cash Pro Forma Cost and Revenue Performance
($ millions)

Year	1 Revenue	2 Total expense	3 Net income (ROE) (1-2)	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2002	1.401	1.403	-0.003	0.074	94.8%
2003 (estimate)	0.409	0.485	-0.076	0.084	71.9%

1. *2002 Performance*—Special cash services recovered 94.8 percent of total expenses, including imputed expenses, and targeted ROE in 2002, compared with a targeted recovery rate of 103.4 percent. The underrecovery was due primarily to the Kansas City District and the Helena office discontinuing registered mail shipments of currency earlier than budgeted in 2002, but continued to incur support charges throughout the year.

2. *2003 Estimate*—Through August 2003, special cash services has recovered 72.1 percent of total expenses, including imputed expenses, and targeted ROE. For full-year 2003, the Reserve Banks project that special cash services will recover 71.9 percent of costs, compared with a targeted recovery rate of 77.3 percent. Compared with 2002, total expenses are projected to decrease $0.9 million, or 65.6 percent, and revenue is expected to decrease $1.0 million, or 70.5 percent.

3. *2004 Pricing*—There is no special cash service planned for 2004, and no costs will be allocated to this service.

II. Private-Sector Adjustment Factor

A. *Background*—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses that would have been incurred, as well as return on equity (profit) that would have been earned, if a private business firm provided the services. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest bank holding companies (BHCs).[13] The imputed costs and imputed profit are collectively referred to as the PSAF. In a comparable fashion, investment income is imputed and netted with related direct costs associated with clearing balances to estimate NICB.[14]

[13] The peer group of the fifty largest bank holding companies is selected based on total deposits.

[14] See companion notice, Federal Reserve Bank Services, elsewhere in today's **Federal Register**, on the change to the imputed investment income on clearing balances method for 2004. Using the

The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and then applying the applicable financing rates. This process requires developing a pro forma priced services balance sheet using actual Reserve Bank assets and liabilities associated with priced services and imputing the remaining elements that would exist if the Reserve Banks' priced services were provided by a private-sector business firm.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced services transactions (clearing balances), estimated based on historical data, and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis indicates that estimated risk will exceed a change in cost recovery of more than two percentage points.[15] Short-term debt is imputed only when short-term liabilities and clearing balances not used to fund long-term assets, together, are not sufficient to fund short-term assets. Equity is imputed to meet the FDIC definition of a well-capitalized institution, which is currently 5 percent of total assets and 10 percent of risk-weighted assets.

1. *Financing Rates*—Equity financing rates are based on the average of the return on equity (ROE) results of three economic models using data from the BHC model.[16] For simplicity, given that federal corporate tax rates are graduated, state tax rates vary, and various credits and deductions can apply, a specific tax rate is not calculated for Reserve Bank priced services. Instead, the use of a pre-tax ROE captures imputed taxes. The resulting ROE influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The use of the pre-tax ROE assumes 100 percent recovery of expenses, including the targeted ROE. The recommended PSAF is, therefore, based on a matching of revenues with actual and imputed costs and imputed profits. Should the pre-tax earnings be less than the targeted ROE, as projected, imputed expenses would be adjusted for the tax savings associated with the adjusted recovery. The imputed tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs have invested in municipal bonds.

2. *Other Costs*—The PSAF also includes the estimated priced services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank expenses. An assessment for FDIC insurance, when required, is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

B. *Discussion*—The increase in the 2004 PSAF is primarily due to a significant increase in clearing balances on which investments are imputed and the resulting increase in total assets. Because required imputed equity is based on five percent of total assets, priced services equity and cost of equity increased.

1. *Asset Base*—The total estimated cost of Federal Reserve assets to be used in providing priced services is reflected in table 14. Total assets have increased $1,704.6 million, or 11.0 percent from 2003. Growth of $1,283.0 million in imputed investments, growth of $131.8 million in imputed reserve requirements, which are based on the level of clearing balances, and an increase of $308.4 million in cash items in process of collection explains the majority of this increase. As shown in table 15, the assets financed through the PSAF have decreased, primarily due to the decrease in prepaid pension costs. Short-term assets funded with short-term payables and clearing balances total $102.0 million. This amount represents a decrease of $1.8 million, or 1.7 percent, from the short-term assets funded in 2003. Long-term assets funded with long-term liabilities, equity, and core clearing balances are projected to total $1,520.6 million. This amount represents a decrease of $16.8 million, or 1.1 percent, from the long-term assets funded in 2003. A decrease of $17.8 million in prepaid pension costs explains the majority of the decrease. The decrease of $15.0 million in furniture and equipment is offset by an increase in bank premises and leasehold improvements and long-term prepayments of $3.9 million and $12.1 million, respectively.

2. *Debt and Equity Costs and Taxes*—As previously mentioned, core clearing balances are available as a funding source for priced services assets. Table 15 shows that $407.2 million in clearing balances are used to fund priced services assets in 2004. The interest rate sensitivity analysis in table 16 indicates that the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of an increase in interest rates of 200 basis points produces a decrease in cost recovery of 1.3 percentage points. The established threshold for change to cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 17 shows the imputed PSAF elements, the pre-tax ROE, and other required PSAF recoveries for 2003 and proposed for 2004. The significant increase in clearing balances from which the investments are imputed increases total assets. An increase in total assets, and the resulting increase in imputed equity, increases targeted ROE. Although the pre-tax ROE rate decreased from 19.4 percent for 2003 to 18.6 percent for 2004, with increased imputed equity, the pre-tax ROE increased $9.6 million. As indicated previously, the pre-tax ROE is calculated using the combined results of three models. The effective tax rate used in 2004 also decreased to 29.8 percent from 30.4 percent in 2003. Sales taxes decreased $2.8 million from $14.8 million in 2003 to $12.0 million in 2004. Offsetting this is a $1.2 million increase in Board of Governors expenses.

3. *Capital Adequacy and FDIC Assessment*—As shown in table 14, the amount of equity imputed for the proposed 2004 PSAF is $860.8 million, an increase of $85.2 million from imputed equity of $775.6 million in

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average spread of 35 basis points over the three-month Treasury bill rate, applied to the clearing balance levels and rate assumptions used in the 2004 pricing process, NICB is projected to be $52.7 million.

[15] A portion of clearing balances is used as a funding source for priced services assets. Long-term assets are partially funded from core clearing balances, currently $4 billion. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances. The PSAF methodology includes an analysis of interest rate risk sensitivity, which compares rate-sensitive assets with rate-sensitive liabilities and measures the effect on cost recovery of a change in interest rates of up to 200 basis points.

[16] The pre-tax return on equity (ROE) is determined using the results of the comparable accounting earnings model (CAE), the discounted cash-flow model (DCF), and the capital asset pricing model (CAPM). Within the CAPM and DCF models, the ROE is weighted based on market capitalization, and within the CAE model, the ROE calculation is equally weighted. The results of the three models are averaged to impute the PSAF pre-tax ROE. When needed, to impute short- and long-term debt, the debt rates are derived based on the short-term debt and long-term debt elements in the BHC model.

2003. As noted above, equity is based on 5 percent of total assets, as required by the FDIC for a well-capitalized institution in its definition for purposes of assessing insurance premiums. In both 2004 and 2003, the capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines. As a result, no FDIC assessment is imputed for either year.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement, ''The Federal Reserve in the Payments System.'' [17] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If the change creates such an effect, the Board must further evaluate the change to assess whether its benefits ''such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while minimizing the adverse effect on competition.

The 2004 fees result in a projected ROE less than the target established using a model that is based on the consolidated results over time of the largest fifty BHCs. To the extent that these BHCs expect a mature declining business, such as check processing, to have the same ROE as the organization as a whole, the Reserve Banks' failure to set fees to achieve the target ROE could adversely affect the ability of other service providers to compete with the Reserve Banks. Based upon discussions with the industry and other anecdotal information, the Board does not believe that BHCs have such an expectation. Moreover, given the current market environment, greater fee increases are not likely to improve the Reserve Banks' cost recovery materially and might even reduce the revenue that the Reserve Banks receive as depository institutions seek lower cost alternatives. Overall, the Board believes that the fee changes and the changes to earnings credits on clearing balances are reasonable.

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[17] Federal Reserve Regulatory Service (FRRS) 9–1558.

Table 14
Comparison of Pro Forma Balance Sheets
for Federal Reserve Priced Services
(millions of dollars – average for year)

	2004	2003
Short-term assets		
Imputed reserve requirement on clearing balances	$ 1,175.6	$ 1,043.8
Receivables	74.0	77.4
Materials and supplies	2.6	3.0
Prepaid expenses	25.4	23.4
Items in process of collection	4,244.7	3,936.3
Total short-term assets	5,522.3	5,083.9
Imputed investments	$ 10,172.9	$ 8,889.9
Long-term assets		
Premises[18]	433.7	429.8
Furniture and equipment	173.3	188.3
Leasehold improvements and long-term prepayments	95.4	83.3
Prepaid pension costs	818.2	836.0
Total long-term assets	1,520.6	1,537.4
Total assets	$17,215.8	$15,511.2
Short-term liabilities[19]		
Clearing balances and balances arising from early credit of uncollected items	$11,887.1	$10,508.5
Deferred credit items	4,113.3	3,865.4
Short-term payables	61.7	77.0
Total short-term liabilities	16,062.1	14,450.9
Long-term liabilities[19]		
Postemployment/retirement benefits	292.9	284.7
Total liabilities	16,355.0	14,735.6
Equity	860.8	775.6
Total liabilities and equity	$17,215.8	$15,511.2

[18] Includes allocations of Board of Governors' assets to priced services of $1.7 million for 2004 and $1.5 million for 2003.

[19] No debt is imputed because clearing balances are used as an available funding source.

Table 15
Portion of Clearing Balances used
to Fund Priced Services Assets
(millions of dollars)

	2004		2003	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$ 74.0		$ 77.4	
Materials and supplies	2.6		3.0	
Prepaid expenses	25.4		23.4	
Total short-term assets to be financed	$102.0		$103.8	
Short-term funding sources:				
Short-term payables	61.7		77.0	
Portion of short-term assets funded with clearing balances[20]		$ 40.3		$ 26.8
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	$433.7		$429.8	
Furniture and equipment	173.3		188.3	
Leasehold improvements and long-term Prepayments	95.4		83.3	
Prepaid pension costs	818.2		836.0	
Total long-term assets to be financed	$1,520.6		$1,537.4	
Long-term funding sources:				
Postemployment/retirement benefits	292.9		284.7	
Imputed equity[21]	860.8		775.6	
Total long-term funding sources	$1,153.7		$1,060.3	
Portion of long-term assets funded with core clearing balances[20]		$366.9		$477.1
C. Total clearing balances used for funding priced-services assets		$407.2		$503.9

[20] Clearing balances shown on table 14 are available for funding priced-services assets. Using these balances reduces the amount available for investment for the net income on clearing balances calculation. Long-term assets are funded with long-term liabilities and with core clearing balances; a total of $4 billion in balances is available for this purpose. Short-term assets are funded with clearing balances not used to fund long-term assets. No short- or long-term debt is imputed.

[21] See table 17 for calculation of required imputed equity amount.

Table 16
2004 Interest Rate Sensitivity Analysis[22] (millions of dollars)

	Rate sensitive	Rate insensitive	Total
Assets			
Imputed reserve requirement on clearing balances		$1,175.6	$1,175.6
Imputed investments	$10,172.9		$10,172.9
Receivables		74.0	74.0
Materials and supplies		2.6	2.6
Prepaid expenses		25.4	25.4
Items in process of collection[23]	131.4	4,113.3	4,244.7
Long-term assets		1,520.6	1,520.6
Total assets	$10,304.3	$6,911.5	$17,215.8
Liabilities			
Clearing balances and balances arising from early credit of uncollected items[24]	$9,710.8	$2,176.3	$11,887.1
Deferred credit items		4,113.3	4,113.3
Short-term payables		61.7	61.7
Long-term liabilities		292.9	292.9
Total liabilities	$9,710.8	$6,644.2	$16,355.0

Rate change results	108 basis point decrease in rates[25]	200 basis point increase in rates
Asset yield	$(77.3)	$ 143.3
Liability cost	(96.1)	160.2
Effect of 108 basis point decrease or 200 basis point increase	$ 18.8	$ (16.9)
2004 budgeted revenue	$934.5	$934.5
Effect of change	18.8	(16.9)
Revenue adjusted for effect of interest rate change	$953.3	$917.6
2004 budgeted total expenses	886.3	886.3
2004 budgeted target ROE	112.4	112.4
Tax effect of interest rate change ($ change x 29.8%)	5.6	(5.0)
Total recovery amounts	$1,004.3	$993.7
Recovery rate before interest rate change	93.6%	93.6%
Recovery rate after interest rate change	94.9%	92.3%
Effect of interest rate change on cost recovery[26]	1.3%	-1.3%

[22] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate sensitive assets and liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of an increase or decrease in interest rates of up to 200 basis points.
[23] The amount designated rate sensitive represents the amount of cash items in process of collection that have been credited to customers prior to collection.
[24] The amount designated rate insensitive represents clearing balances on which earnings credits are not paid.
[25] The reduction is limited to the Treasury bill rate assumed in the 2004 NICB of 1.08 percent based on 2003 rates.
[26] The effect of a potential change in rates is less than a 2 percentage point change in cost recovery; therefore, no long-term debt is imputed for 2004.

Table 17
Derivation of the 2004 and 2003 PSAF
(millions of dollars)

		2004			2003	
A. Imputed elements						
Short-term debt[27]		$ 0.0			$ 0.0	
Long-term debt[28]		$ 0.0			$ 0.0	
Equity						
Total assets from table 14	$17,215.8			$15,511.2		
Required capital ratio[29]	5%			5%		
Total equity		$860.8			$775.6	
B. Cost of capital						
1. Financing rates/costs						
Short-term debt		N/A			N/A	
Long-term debt		N/A			N/A	
Pre-tax return on equity[30]		18.6%			19.4%	
2. Elements of capital costs						
Short-term debt			$ 0.0			$ 0.0
Long-term debt			0.0			0.0
Equity	$860.8 x	18.6% =	160.1	$775.6 x	19.4% =	150.5
			$160.1			$150.5
C. Other required PSAF recoveries						
Sales taxes		$12.0			$14.8	
Federal Deposit Insurance assessment		0.0			0.0	
Board of Governors expenses		7.6			6.4	
			19.6			21.2
D. Total PSAF recoveries			$179.7			$171.7
As a percent of assets		1.0%				1.1%
As a percent of expenses[31]		23.1%				22.4%
E. Tax rates		29.8%				30.4%

[27] No short-term debt is imputed because clearing balances are used as a funding source for those assets that are not funded with short-term payables.
[28] No long-term debt is imputed because clearing balances are used as a funding source.
[29] Based on the Federal Deposit Insurance Corporation's definition of a well-capitalized institution for purposes of assessing insurance premiums.
[30] One component of the pre-tax return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF. The final pre-tax rate of return on equity is determined averaging the result from this component (22.3%), along with results from a capital asset pricing model (12.2%), and a discounted cash flow model (21.3%).
[31] System 2004 budgeted priced services expenses less shipping are $779.3 million.

Table 18
Computation of 2004 Proposed Capital Adequacy
for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$1,175.6	0.0	$0.0
Imputed investments:			
Fed Funds[32]	10.2	0.2	2.0
1 – Year Treasury note[32]	5,043.3	0.0	0.0
Commercial paper (3 months)[32]	3,527.3	1.0	3,527.3
Short term corporate bond (Aa3)[33]	30.5	1.0	30.5
Money market mutual fund[33]	1,081.1	1.0	1,081.1
GNMA mutual fund[33]	480.5	0.2	96.1
Total imputed investments	$10,172.9		
Receivables	74.0	0.2	14.8
Materials and supplies	2.6	1.0	2.6
Prepaid expenses	25.4	1.0	25.4
Items in process of collection	4,244.7	0.2	848.9
Premises	433.7	1.0	433.7
Furniture and equipment	173.3	1.0	173.3
Leases, leasehold improvements & long-term prepayments	95.4	1.0	95.4
Prepaid pension costs	818.2	1.0	818.2
Total	$17,215.8		$7,149.3

Imputed equity for 2004	$860.8
Capital to risk-weighted assets	12.0%
Capital to total assets	5.0%

[32] The imputed investments are assumed to be similar to those for which rates are available on the Federal Reserve's H.15 report, which can be located at http://www.federalreserve.gov/releases/h15/data.htm.

[33] The imputed mutual fund investments are based on Vanguard's S/T Corporate Inv, Prime MMF, and Fund Investor Shares funds, which were chosen based on the investment strategies as articulated in their prospectuses. These fund returns can be located at http://flagship4.vanguard.com/VGApp/hnw/FundsByFundType#Bond_Funds.

AUTOMATED CLEARINGHOUSE FEDACH FEE SCHEDULE

EFFECTIVE JANUARY 2, 2004. BOLD INDICATES CHANGE FROM 2003 PRICES.

	Fee
Origination (per item or record):[34]	
Items in small files	$0.0030
Items in large files	$0.0025
Addenda record	$0.0010
Input file processing fee (per file):	**$3.75**
Receipt (per item or record):[35]	
Item	$0.0025
Addenda record	$0.0010
Monthly fee (per routing number):	
Account servicing fee[36]	$25.00
FedACH settlement[37]	$20.00
Information extract file	$10.00
FedLine for the Web return item/notification of change (NOC) fee:[38]	$0.50
Voice response return item/NOC fee:[39]	$2.00
Nonelectronic input/output fee:[40]	
Tape input/output	$25.00
Paper output	$15.00
Facsimile return/NOC[41]	$15.00
Canadian Cross-border fee:	
Cross-border item surcharge[42]	$0.039
Same-day recall of item at receiving gateway operator	$3.50
Same-day recall of item not at receiving gateway operator	$5.00
Item trace	$5.00
Microfiche	$3.00

[34] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from other operators.

[35] Receipt fees do not apply to items that the Reserve Banks send to other operators.

[36] The account-servicing fee applies only to routing numbers that have received or originated transactions that are processed by the Reserve Banks. Institutions that receive only U.S. government transactions or that elect to use another operator exclusively are not assessed the account-servicing fee.

[37] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.

[38] The fee includes the transaction and addenda fees in addition to the channel fee.

[39] The fee includes the transaction fee in addition to the voice-response fee.

[40] These services are offered for contingency situations only.

[41] The fee includes the transaction fee in addition to the conversion fee.

[42] The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICE FEE SCHEDULE

EFFECTIVE JANUARY 2, 2004

Fedwire Funds Service

	Fee
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 2,500 transfers per month	$0.30
Per transfer for additional transfers up to 80,000 per month	$0.20
Per transfer for every transfer over 80,000 per month	$0.10
Surcharge	
Off-line transfer originated	$15.00

National Settlement Service

Basic	
Settlement entry fee	$0.80
Settlement file fee	$14.00
Surcharge	
Off-line surcharge	$25.00
Minimum monthly charge (account maintenance)[43]	$60.00
Special settlement arrangements[44]	
Fee per day	$100.00

[43] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60.

[44] Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

FEDWIRE SECURITIES SERVICE FEE SCHEDULE (NON-TREASURY SECURITIES)

EFFECTIVE JANUARY 2, 2004. BOLD INDICATES CHANGE FROM 2003 PRICES.

	Fee
Basic transfer fee	
Transfer or reversal originated or received	**$0.32**
Surcharge	
Off-line transfer or reversal originated or received	**$28.00**
Monthly maintenance fees	
Account maintenance (per account)	$15.00
Issues maintained (per issue/per account)	$0.40
Claim adjustment fee	**$0.30**
Joint custody fee	**$30.00**

NONCASH COLLECTION FEE SCHEDULE

EFFECTIVE JANUARY 2, 2004

Coupon collection:	Fee
Cash letters fee	$13.00
Coupon envelopes	$4.50
Return items	$35.00
Bond collection (per bond):[45]	$55.00

[45] Plus actual shipping costs.

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Electronic Connection Fee Schedule

There are four types of electronic connections through which depository institutions access the Reserve Banks' priced services: FedLine®, FedMail®, FedPhone®, and computer interface

(mainframe to mainframe).[46] The Reserve Banks allocate costs and revenues associated with these electronic connections to the various priced services.

In 2004, the Reserve Banks are offering a new bundled electronic access package for a monthly fee of $150 that includes one DOS-based FedLine dial connection and one FedLine for the Web institution-level connection with three digital certificates for individual subscriptions. This package supports the Reserve Banks' strategic direction of moving to web-based electronic access, consistent with, and in response to, customers' preferences. The Reserve Banks are increasing the monthly fee for additional DOS-based FedLine dial connections from $75 to $100. This increase, the first since 1993, reflects the cost of maintaining and updating FedLine connectivity. The Reserve Banks are retaining the connection fees for FedLine for the Web access and the other existing connection fees at current levels.

BILLING CODE 6210–01–P

[46] These connections may also be used to access non-priced services provided by the Reserve Banks. No fee is assessed if a particular connection is used only to access non-priced services.

ELECTRONIC CONNECTION FEE SCHEDULE

EFFECTIVE JANUARY 2, 2004. BOLD INDICATES CHANGE FROM 2003 PRICES.

FedLine® Access Package (monthly)	**$150.00**
Includes: One Dial – DOS-based FedLine	
One FedLine for the Web Institution-level	
Three individual subscriptions	
FedLine® for the Web:	
Setup fee (one time)	$50.00
Institution-level fee (monthly)	$25.00
Individual subscriber fee (monthly)	$10.00
Additional Dial – DOS-based FedLine (monthly)	**$100.00**
FedMail® Fax (monthly per fax line)[47]	**$15.00**
Frame relay network (monthly):[48]	
Frame Relay- Less than 56 kbps	$500.00
Frame Relay-Computer Interface (CI) @ 56 kbps	$1,000.00
Frame Relay-CI @ 256 kbps	$2,000.00
Frame Relay-CI T1	$2,500.00

Test and contingency options:

CONNECTION TYPE	FULL CIRCUIT BACKUP[49]	FRAME CONNECTION ONLY[50]	REDUNDANT COMPONENT SET[51]
FedLine Less than 56 kbps	$500	$420	n.a.
FedLine Less than 56 kbps Spare Part Set	n.a.	n.a.	$155
CI @ 56 kbps	$845	$765	n.a.
CI @ 256 kbps	$1,750	$1,585	n.a.
CI T1	$2,230	$2,010	n.a.

n.a. – Not applicable

[47] FedMail Email is a free option.

[48] Some large Computer Interface customers may be required to ensure that their contingency connections to the Federal Reserve are diversely routed, and they will be expected to defray the costs incurred by the Federal Reserve of providing this network diversity. Depending on the cost of providing specific circuits, one of five tiered price points would apply: $250/$500/$1,000/$2,000/$2,500 per month.

[49] Applies to production and test systems, or production and contingency systems, that are located at separate facilities, including another bank office or a third-party contingency site. This option replicates full production technology and costs; only one set of equipment components is provided. Prices shown are for full-circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider require custom implementations.

[50] Applies to production and test systems, or production and contingency systems, that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Only one set of equipment components is provided. Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider require custom implementations.

[51] Includes a Cisco router, a digital service unit, and a link encryptor.

By order of the Board of Governors of the Federal Reserve System, October 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–27123 Filed 10–27–03; 8:45 am]

BILLING CODE 6210–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Notice Citation of Previous Announcement: September 16, 2003 (Volume 68, Number 179) [Notices] [Page 54231] from the **Federal Register** online via GPO Access.

Previously Announced Times and Dates: 8:30 a.m.–4 p.m., November 6, 2003, 8:30 a.m.–12:30 p.m., November 7, 2003.

Change in the Meeting: This meeting has been canceled.

Contact Person for More Information: R. Louise Floyd, D.S.N., R.N., Executive Secretary, Fetal Alcohol Syndrome Prevention Team, Division on Birth Defects and Developmental Disabilities, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–86, Atlanta, Georgia 30333, telephone 404/498–3923, fax 404/498–3040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–27106 Filed 10–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: April 2004 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of the data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be able to leave the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	47,000	1	.0246	1156

Estimated Total Annual Burden Hours: 1156.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hss.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 21, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–27084 Filed 10–27–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0263]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 28, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency

Under the pesticide tolerance reassessment process that the Environmental Protection Agency (EPA) was mandated to carry out under the Food Quality Protection Act of 1996 (FQPA), EPA is expected to revoke, suspend, or modify tolerances for the pesticide chemicals on various food commodities. Section 408(l)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 346a) includes a provision, referred to as the ''channels of trade provision,'' that addresses the circumstances under which a food will not be deemed unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain the previously mentioned pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, e.g., packed or processed, during the acceptable timeframes cited in the draft guidance by providing appropriate documentation to the agency as discussed in the draft guidance document. FDA is not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation which FDA anticipates will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

In the **Federal Register** of July 23, 2003 (68 FR 43535), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received that did not pertain to this information collection.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
652	1	652	3	1,956

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA does not know which pesticide chemicals will have their tolerances revoked, suspended, or modified in the future. Instead of calculating the paperwork burden for any one pesticide, FDA calculated the cost for an ''average''' pesticide by looking at test results for 417 pesticide chemicals on domestic products and 450 pesticide chemicals on imported products. FDA then used the average percent of samples found with residues as a substitute for the rate of residues found from a specific pesticide chemical.

The estimated annual reporting burden was determined using the average percent of samples found with residues for all pesticides for domestic and imported products. Using 1999 pesticide monitoring data, domestic products were tested for residues of 417 pesticide chemicals. On average, 1.02 percent of samples tested positive for a given pesticide chemical. For 450 pesticides tested for residues on imported products, on average 2.40 percent of samples contained a given pesticide chemical residue. This rate of positive findings for product samples was applied to the number of potentially affected establishments, 3,730 importers and 23,201 domestic businesses, giving an expected number of 326 potentially-affected businesses per revocation, suspension, or modification of a tolerance. FDA expects this number to be an overestimate of the number of affected businesses for two reasons. First, the positive residue test may be below the new tolerance. Second, tolerances may not be altered for all products. If the tolerance was altered for only vegetables but not fruit, then the number of affected establishments would be smaller. We assume two pesticide tolerances are altered per year, resulting in 652 businesses reporting per year. To date, tolerances have been revoked for two pesticide chemicals. However, FDA expects the total number of pesticide tolerances that are revoked, suspended, or modified by EPA to increase.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Capital Costs
65	1	65	16	1,042	$32,571

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In determining the estimated annual recordkeeping burden, FDA estimated that at least 90 percent of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms that may not currently be maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. For firms that do not maintain documentation, such as batch records and inventory records, as part of their normal manufacturing operations, it was estimated that with $500 or less, the necessary software and hardcopy filing systems could be obtained to implement a system.

Dated: October 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27120 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1994N–0418]

Medical Devices; Reclassification of Automated External Defibrillators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity to submit information and comments concerning FDA's intent to initiate a proceeding to reclassify automated external defibrillators (AEDs) from class III (premarket approval) to class II (special controls). AEDs are devices that deliver an electric shock to correct an arrhythmia.

DATES: Submit written or electronic information or comments by January 26, 2004.

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

FOR FURTHER INFORMATION CONTACT: Megan Moynahan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 180.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) (FDA published two updated orders in the **Federal Register** of June 13, 1997 (62 FR 32352 and 32355)). The orders describe in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would either support reclassification or indicate that a device should be retained in class III. The orders also scheduled the required submissions in groups, at 6-month intervals, beginning on August 14, 1996. Arrhythmia detectors and alarms, which included AEDs, were among the devices for which information was to be submitted.

In response to this document, FDA received three petitions to reclassify arrhythmia detectors and alarms from the following petitioners: (1) Health Industry Manufacturers Association (HIMA) (now known as Advamed), (2) Quinton Instrument Co., and (3) Zymed Medical Instrumentation. The Advamed petition also requested reclassification of AEDs. Additionally, Datascope Corp., Hogan and Hartson L.L.P., Life Sensing Instrument Co., Medical Data Electronics, Inc., Mennen Medical Ltd., Mortara Instrument, Inc., and Olsson, Frank, and Weeda, P.C. submitted safety and effectiveness information (515(i) submissions).

In the **Federal Register** of December 13, 2002 (67 FR 76706), FDA proposed to reclassify arrhythmia detector and alarm devices from class III to class II. These devices are used to monitor an electrocardiogram and to produce a visible or audible signal or alarm when an atrial or ventricular arrhythmia exists. FDA also proposed to separate AEDs from the identification of the arrhythmia detector and alarm. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying arrhythmia detector and alarm devices into class II with a special controls guidance document. The final rule also establishes a separate classification regulation for AEDs.

AEDs, primarily designed for an intended use (i.e., to correct an arrhythmia) different from arrhythmia detector and alarm devices, have a shock advisory algorithm, automatically detect a shockable cardiac rhythm, and automatically deliver an electric shock (fully automated device) or deliver a shock when activated by the operator (semiautomated device). FDA regulates AEDs as class III devices. In response to Advamed's petition (Ref. 1), FDA stated that it would publish a notice of a panel meeting that would discuss the possible reclassification of AEDs. In the December 13, 2002, proposed rule (67 FR 76706), FDA stated that it intended to propose the reclassification of the AED at a later time.

FDA is publishing this document to provide interested persons with an opportunity to submit any new information concerning the safety and effectiveness of AEDs. After FDA reviews any information that it receives in response to this notice, FDA will determine whether it should go forward with the reclassification of AEDs and whether a panel meeting is necessary before taking any action.

II. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**). Interested persons may view this reference between 9 a.m. and 4 p.m., Monday through Friday.

1. HIMA (Health Industry Manufacturers Association) (now known as Advamed), reclassification petition, Docket No. 1994N–0418, vol. 1–7, Washington, DC, August 14, 1996.

Dated: October 2, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27116 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2003M–0045, 2003M–0122, 2003M–0010, 2003M–0040, 2003M–0086, 2003M–0116, 2003M–0049, 2003M–0070, 2003M–0011, 2003M–0046, 2003M–0114, 2003M–0115]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA revised 21 CFR 814.44(d) and 814.45(d) (63 FR 4571) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information to FDA's home page at *http://www.fda.gov* on the Internet. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2003, through March 31, 2003. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JANUARY 1, 2003, THROUGH MARCH 31, 2003

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P990071/03M–0045	Biosense Webster, Inc.	STOCKERT 70 RF GENERATOR FOR CARDIAC ABLATION	May 31, 2000.
P980048/03M–0122	Sulzer Spine-Tech	BAK/CERVICAL (BAK/C) INTERBODY FUSION SYSTEM	April 20, 2001.
P990065/03M–0010	Sirtex Medical, Inc.	SIR-SPHERES	March 5, 2002.
P010002/03M–0040	United States Surgical Corp.	INDERMIL TISSUE ADHESIVE	May 22, 2002.
P010041/03M–0086	Edwards Lifesciences, LLC	CARPENTIER-EDWARDS S.A.V. BIOPROSTHESIS, MODEL 2650 (AORTIC)	June 24, 2002.
P020009/03M–0116	Boston Scientific, Scimed, Inc.	EXPRESS/EXPRESS 2 MONOTRAIL AND OVER THE WIRE CORONARY STENT SYSTEMS	September 11, 2002.
P010068/03M–0049	Biosense Webster, Inc.	NAVISTAR DS/CELSIUS DS DIAGNOSTIC ABLATION CATHETERS, STOCKERT 70 GENERATOR, AND CATHETER INTERFACE CABLES	September 27, 2002.
P020011/03M–0070	Gen-Probe, Inc.	VERSANT HCV RNA QUALITATIVE ASSAY	November 7, 2002.
P020008/03M–0011	Karl Storz Endoscopy-America	KARL STORZ AUTOFLUORESCENCE SYSTEM	December 12, 2002.
P020027/03M–0046	Dade Behring, Inc.	DIMENSION FPSA FLEX REAGENT CARTRIDGE AND DIMENSION T/F PSA CALIBRATOR FOR DIMENSION RXL AND XPAND SYSTEMS	January 24, 2003.
P800022(S50)/03M–0114	Inamed Corp.	COSMODERM 1 & COSMOPLAST HUMAN-BASED COLLAGEN	March 11, 2003.
P010065/03M–0115	E Med Future	NEEDLE ZAP	March 14, 2003.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: October 6, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27119 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0077]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 008; 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 April 28, 2003 (68 FR 22391). The document announced a publication entitled ''FDA Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number: 008.'' The publication contains modifications the agency is making to the list of standards FDA recognizes for use in the premarket reviews. The document was published with inadvertent errors. This document corrects those errors and provides clarification.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION: FDA also intended to note that it is limiting its recognition of standards 31 and 32 to the use of 25 symbols for labeling of in vitro diagnostic (IVD) devices used by professional IVD users. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of a draft guidance document concerning the use of these symbols in labeling of IVDs.

In FR Doc. 03–10417, appearing on page 22391 in the **Federal Register** of Monday, April 28, 2003, the following corrections are made:

1. On page 22398, under ''*B. General*'', correct the table to read:

Item No.	Title of Standard	Reference No. and Date
30	Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatability—Requirements and Tests	ANSI/AAMI/IEC 60601–1–2:2001
31	Symbols to be Used With Medical Device Labels, Labeling and Information to be Supplied	ISO 15223:2000
32	Graphical Symbols for Use in the Labeling of Medical Devices	EN 980:1996+A1:1999+A2:2001

2. On page 22399, in the first table, the entries for item nos. 30, 31, and 32 are removed.

Dated: October 2, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27118 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0421]

Guidance for Industry and FDA Staff on Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm.'' This guidance document describes a means by which arrhythmia detector and alarm devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify these devices from class III into class II (special controls).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, CDRH (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext 177.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 13, 2002 (67 FR 76749), FDA announced the availability of a draft of this guidance document and invited interested persons to comment on it by

March 13, 2003. FDA received one comment. The comment suggested that FDA rely on more recent technical standards and, in some cases, suggested alternate methods and standards to those FDA cited in the draft guidance. FDA revised the guidance to reflect the updated technical standards, but declined to incorporate the alternate standards and methods suggested. As discussed next, however, a firm may meet the recommendations of the guidance or in some other way provide equivalent assurances.

The guidance document describes a means by which arrhythmia detector and alarm (including ST-segment measurement and alarm) devices may comply with the requirement of special controls for class II devices. Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for the device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Also in the **Federal Register** of December 13, 2002 (67 FR 76706), FDA proposed to reclassify the arrhythmia detector and alarm into class II with this guidance document as the special control. FDA did not receive any comments on the proposed rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify the arrhythmia detector and alarm from class III (premarket approval) to class II (special controls).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the FDA's current thinking on arrhythmia detector and alarm devices. The guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1363) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

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

Dated: October 2, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27114 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0383]

Draft Guidance for Industry and FDA Staff; Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' This document provides guidance on the use of selected symbols in place of text to convey some of the information required for in vitro diagnostic devices (IVDs) intended for professional use by FDA's labeling requirements for IVDs. This draft guidance is not final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by November 28, 2003, to ensure adequate consideration of the comments in the preparation of a final guidance. However, you may submit comments at any time. Submit written or electronic comments on the proposed information collection provisions by December 29, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the draft guidance document entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. You may also submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research , Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709

or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning the draft guidance and the proposed information collections provisions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance and the proposed information collection provisions to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Paula G. Silberberg, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–1217; or Sheryl A. Kochman, Center for Biologics Evaluation and Research (HFM–390), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

SUPPLEMENTARY INFORMATION:

I. Background

The market for in vitro diagnostic devices is international. European Union (EU) member countries have attempted to harmonize their national legislation governing IVDs through the EU's IVD Directive. The EU's IVD Directive is in full effect as of December 8, 2003. As of that date, IVD products marketed in the EU must comply with the IVD Directive and bear the CE mark (mark showing that the product is certified for sale in the European community) to indicate compliance.

The EU's IVD Directive and FDA regulations in § 809.10 (21 CFR 809.10) and parts 610 and 660 (21 CFR parts 610 and 660) all require substantial information to appear on the IVD itself and/or in its labeling. The IVD Directive specifically allows each EU member State to require that such information appear in its national language, so that a single IVD could be required to bear labeling in multiple languages in order to be sold in the EU. As an alternative, the IVD Directive encourages the use of symbols from harmonized standards to convey the required information in place of text. Given that the use of national languages may be required by individual member States and that most IVDs and their packaging are quite small, the IVD Directive's symbols provision represents an avenue through which manufacturers can achieve compliance in an international marketplace.

Similarly, the use of symbols helps IVD manufacturers to create uniform labels and labeling for the United States and the EU (and any other countries that may permit use of symbols from these international standards), instead of needing designated labels for each marketplace. Because symbols take up less space than the text for which they may substitute, the use of symbols promotes less crowded and more legible IVD labels. An additional advantage is that there are likely to be fewer labeling errors when using a single label, rather than having one set of labels for use in the United States and another set for use in the EU. Of course, it is essential that the symbol convey the substance of the deleted text and be widely understood.

Therefore, in accordance with the consensus standards recognition process, established by section 514(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d(c)), elsewhere in this issue of the **Federal Register**, FDA recognizes 25 symbols from the two international consensus standards:

- ISO 15223, Medical Devices—Symbols to be Used With Medical Device Labels, Labeling and Information to be Supplied, and
- EN 980, Graphical Symbols for Use in the Labeling of Medical Devices.

This document provides guidance on the use of those recognized symbols.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on the use of symbols on the labels and in labeling only of IVDs intended for professional use, and not for over-the-counter or prescription home-use IVDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (4444) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available from CBER at *http://www.fda.gov/cber/guidelines.htm* or on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Sections VII and VIII of the guidance propose new recommended collections of information. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Title: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

Description: This document provides guidance on the voluntary use of selected symbols in place of text to convey some of the information required for IVDs intended for professional use under § 809.10 (FDA's labeling requirements for in vitro diagnostic devices) and parts 610 and 660 (FDA's labeling requirements for biologics (including IVDs)) that are licensed under the Public Health Service (PHS) Act. Use of these symbols will not result in a new collection of information but is a means of fulfilling underlying labeling requirements that are subject to OMB clearance. Under section 502(c) of the act (21 U.S.C. 352), a drug or device is misbranded ''If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' This guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, this guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and the educational outreach help to ensure that IVD users will have enough general familiarity with the symbols, as well as quick reference materials available, to be likely to understand the symbols used in IVD labeling, further ensuring that such labeling satisfies the requirements of section 502(c) of the act.

Respondents: The likely respondents are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

FDA estimates the burden of the collection of information in table 1:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	1,742	1	1,742	4	6,968[2]
Educational outreach	1,742	1	1,742	16	27,872
Total					34,840

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]One-time burden.

The glossary and educational outreach activities would be carried out by domestic and foreign IVD manufacturers. The CDRH Information Retrieval System's Registration and Listing Information database provided the number of IVD manufacturers as 1,742; 1,206 are domestic IVD manufacturers and 536 are foreign manufacturers. Consequently, FDA has based its burden estimate on the maximum possible number of manufacturers choosing to implement the use of symbols in labeling. The number of hours per response for the glossary and educational outreach activities were derived from consultation with a trade association and FDA personnel. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary, as shown in the draft guidance, for the specific symbols used in labels or labeling for the IVDs they manufacture. The 16-hour estimate for educational outreach includes activities manufacturers will use to educate the various professional users of IVDs about the meaning of the IVD symbols. This estimate is based on FDA 's expectation that IVD manufacturers will jointly sponsor many educational outreach activities.

This draft guidance document also refers to labeling requirements, annual reporting requirements, and other information collections established under existing regulations. The collections of information described in section III of this guidance that result from § 809.10 were approved under OMB control number 0910–0485. The collections of information described in section III of the guidance that result from §§ 610.60, 610.61, and 610.62 were approved under OMB control number 0910–0338. In accordance with section 3506(c)(2)(A) of the PRA, a 60-day notice soliciting public comment on the collections of information described in section III of the guidance that result from part 660 (§§ 660.2, 660.28, 660.35, 660.45, and 660.55) published in the **Federal Register** on July 22, 2003 (68 FR 43359). The collections of information described in section X of the guidance, regarding annual reports, were approved under OMB control numbers 0910–0231 and 0910–0315. The collections of information described in section X of this guidance, regarding adverse event reporting, were approved under OMB control numbers 0910–0437 and 0910–0291.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit comments on the collection of information. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two hard copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 2, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27117 Filed 10–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

Proposed Project: Web-Based Semi Annual Report (SAR) (OMB No. 0915–0262): Revision

The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC), plans to collect the annual reporting requirements for the primary care grantees funded by BPHC using the web-based Semi Annual Report (SAR). The SAR includes reporting requirements for grantees of the following primary care programs: State Primary Care Associations and State Primary Care Offices. Authorizing legislation is found in Section 330(m) of the Public Health Service Act, as amended.

BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected semi-annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The SAR has been a valuable instrument for collecting this information from grantees. The SAR provides data on services, characteristics of populations, leveraged funds, and services that fall within the scope of the grant.

The estimated burden is a follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
SAR	106	2	18	3816

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 16, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–27122 Filed 10–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Maternal and Child Health Research Grants Review Committee.

Dates and Times: November 19, 2003, 8:30 a.m. to 9:30 a.m.-open.

November 19, 2003, 9:30 a.m. to 5 p.m.-closed.

November 20, 2003, 8:30 a.m. to 5 p.m.-closed.

November 21, 2003, 8:30 a.m. to 5 p.m.-closed.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Status: The meeting will be open to the public on Wednesday, November 19, 2003, from 8:30 a.m. to 9:30 a.m. The remainder of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination of the Associate Administrator for Management and Program Support, Health Resources and Services Administration (HRSA), pursuant to section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463).

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA).

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, MCHB, HRSA, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The closed portion of the meeting will involve the review, discussion, and evaluation of grant applications containing information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For Further Information Contact: Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact M. Ann Drum, D.D.S., M.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2207.

Dated: October 20, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–27121 Filed 10–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Evaluation of User Satisfaction With NIH Internet Sites

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Evaluation of User Satisfaction with NIH Internet Sites. *Type of Information Collection Request:* Renewal. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct online customer satisfaction surveys. Since the late 1980's, the NIH has seized the

opportunity to disseminate information and materials via the Internet. Today, rapid technological changes of the World-Wide Web warrant on-going constituent and resource analysis. With survey data, the NIH is enabled to serve, and respond to, the ever-changing demand by the public. The 'public' includes individuals (such as patients, health professionals, educators, and scientists), interested communities (such as national or local organizations/institutions) and businesses. Survey information will augment current Web content, delivery, and design research that is used to understand the needs of the Web user, and more specifically, the NIH user community. Primary objectives are to: (1) Classify NIH Internet users; (2) summarize and better understand customer needs; and (3) quantify the effectiveness/efficiency of current tools and delivery. Overall, the Institutes, Centers, and Offices of the NIH will use the survey results to identify strengths and weaknesses in current Internet strategies. Findings will help to: (1) Understand the user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) realize how to align Web offerings with identified user need(s); and (4) explore methods to offer and deliver information with efficacy and equity. *Frequency of Response:* On occasion [As needed on an on-going and potentially concurrent basis (by Institute, Center, or Office)]. *Affected Public:* Users of the Internet. Primarily, this is an individual at their place(s) of access including, but not limited to, home and/or work environments. *Type of Respondents:* Public users of the NIH Internet site, *www.nih.gov*, which may include organizations; medical researchers; physicians and other health care providers; librarians; students; and the general public. *Estimated Number of Respondents:* 104,000. *Number of Respondents Per Respondent:* 1. *Average Burden Hours Per Response:* 0.0835. *Burden Hours Requested:* 8684. Total annualized cost to respondents is estimated at $130,260. There are no capital costs, operating costs and/or maintenance costs to report.

SURVEY TITLE: WEB CUSTOMER SATISFACTION SURVEY ANNUAL REPORTING BURDEN

[Web-based; Required for Federal Register requests under PRA, Paperwork Reduction Act]

Survey area	Number of respondents	Frequency of response	Avg. burden per response (hours)	Burden hours
NIH Organization-wide (1 entity)	4,000			334
Overall customer satisfaction	2,000	1	0.1002	200
Specific indicator: Top-level/Entry pages	1,000	1	0.0668	67
Specific indicator: Tools and initiatives	1,000	1	0.0668	67
Individual Institutes/Centers/Offices (25 entities)	100,000			8,350
Overall customer satisfaction	50,000	1	0.1002	5,010
Specific indicator: Top-level/Entry pages	25,000	1	0.0668	1,670
Specific indicator: Tools and initiatives	25,000	1	0.0668	1,670
Total	104,000		0.084	8,684

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.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact Dennis Rodrigues, NIH Office of Communications and Public Liaison, 9000 Rockville Pike, Bldg. 31, Rm. 5B58, Bethesda, Maryland 20892–2094, or call non toll-free at (301) 435–2932. You may also e-mail your request to *dr3p@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 29, 2003.

John Burklow,

Acting Associate Director for Communications, Office of the Director, National Institutes of Health.

[FR Doc. 03–27082 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development

Special Emphasis Panel, Research into Mechanisms of Fetal Growth Restriction.

Date: November 20–21, 2003.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg, Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27076 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, ''Biomechanical Modeling of Movement''.

Date: November 19–20, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27077 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Center #2.

Date: October 28–30, 2003.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@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, Cellular Aging of the Musculoskeletal System.

Date: October 30–31, 2003.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott-Ann Arbor, 3205 Boardwalk, Ann Arbor, MI 48108.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7708, *binia@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, Health Indexes.

Date: November 5, 2003.

Time: 12 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, DNA Repair and Cellular Aging.

Date: November 13–14, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7708, *binia@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, Energy Metabolism & Aging in Non-Human Primates.

Date: November 16–17, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 4402 E. Washington Avenue, Madison, WI 53704.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Functional & Metabolic Effects of Bedrest.

Date: November 18–19, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Springhill Suites Little Rock, 306 Markham Center Drive, Little Rock, AR 72205.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific

Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Anatomic, Physiologic, and Pathology of AD.

Date: November 24–25, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Estrogen and Brain.

Date: December 2–3, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, AD and Transgenic Mice.

Date: December 8–9, 2003.

Time: 7 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–7705.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27078 Filed 10–27–03; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, HANDLS.

Date: November 12, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27079 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, molecular basis of teratospermia in feline models.

Date: November 14, 2003.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27081 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(A) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: November 18, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Potomac Room, Bethesda, MD 20814.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Information is also available on the Institute's/Center's home page: *http://*

www4.od.nih.gov/orwh/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93,232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS).

Dated: October 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–27080 Filed 10–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–16327]

Collections of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: (1) 1625–0074 (Formerly 2115–0617), (2) 1625–0041 (Formerly 2115–0518), (3) 1625–0064 (Formerly 2115–0589), (4) 1625–0049 (Formerly 2115–0552), and (5) 1625–0007 (Formerly 2115–0016).

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels, (2) Certificates and Documents for Safety under Various International Agreements, (3) Plan Approval and Records for Rules on Subdivision and Stability, (4) Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas, and (5) Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before December 29, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–16327] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG 2003–16327], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. They may lead us to change the estimated ''information'' burden.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Information Collection Requests

1. *Title:* Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 1625–0074.

Summary: This collection requires the submission of identifying information such as a vessel's name and identification number, and of the owner's choice whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

Need: The Omnibus Reconciliation Act of 1990, which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we get

that information and manage it efficiently.

Respondents: Owners of vessels.

Frequency: Annually.

Burden: The estimated burden is 3,167 hours a year.

2. *Title:* Certificates and Documents for Safety under Various International Agreements.

OMB Control Number: 1625–0041.

Summary: The information collected aids in the prevention of pollution from ships. An International Oil Pollution Prevention Certificate and other records enable the Coast Guard to verify ships' compliance with certain international and domestic rules on shipping.

Need: 33 U.S.C. 1901–1911 require that domestic rules implement requirements of MARPOL 73/78.

Respondents: Owners and operators of vessels.

Frequency: On occasion and every five years.

Burden: The estimated burden is 6,616 hours a year.

3. *Title:* Plan Approval and Records for Rules on Subdivision and Stability, 46 CFR subchapter S.

OMB Control Number: 1625–0064.

Summary: This collection of information requires owners, operators, or masters of certain inspected vessels to obtain or post various documents as part of the Coast Guard's program for safety of commercial vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for the safety of certain vessels. 46 CFR subchapter S contains the rules regarding subdivision and stability.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Burden: The estimated burden is 10,003 hours a year.

4. *Title:* Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

OMB Control Number: 1625–0049.

Summary: LNG and LHG present a risk to the public when handled at waterfront facilities. These rules should either prevent accidental releases at waterfront facilities or mitigate their results. They are necessary to promote and verify compliance with safety standards.

Need: 33 CFR part 127 prescribes standards for the safe design, construction, equipment, operations, maintenance, personnel training, and fire protection at waterfront facilities handling LNG or LHG.

Respondents: Owners and operators of waterfront facilities that transfer LNG or LHG.

Frequency: On occasion.

Burden: The estimated burden is 3,540 hours a year.

5. *Title:* Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water.

OMB Control Number: 1625–0007.

Summary: The Coast Guard requires manufacturers of new chemicals to submit data on new materials. From these data, the Coast Guard determines the appropriate precautions to take.

Need: 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must move by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Burden: The estimated burden is 129 hours a year.

Dated: October 20, 2003.

Dave McLeish,

Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 03–27127 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1430–DR]

Commonwealth of the Northern Mariana Islands; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1430–DR), dated August 6, 2002, and related determinations.

EFFECTIVE DATE: October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated August 6, 2002, Federal funding for the Hazard Mitigation Grant Program has now been increased from 90 percent to 100 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands. This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–27053 Filed 10–27–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by November 28, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

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

TE077853–0

Applicant: J. Logan Williams, North Carolina Department of Transportation—Project Development, Raleigh, North Carolina

The applicant requests authorization to take (handle and release) the Appalachian elktoe (*Alasmidonta raveneliana*) and the James spinymussel (*Pleurobema collina*) while conducting presence/absence surveys for transportation projects in Stokes and Rockingham Counties, North Carolina.

TE077865–0

Applicant: Audubon Nature Institute, Betsy L. Dresser, New Orleans, Louisiana

The applicant requests authorization to take (permanently house in captivity, naturally breed, artificially inseminate, use costume chick for rearing, and provide rehabilitation treatment) to the Mississippi sandhill crane (*Grus canadensis pulla*) and the Whooping crane (*Grus Americana*) while participating in a captive propagation program to enhance the wild population in cooperation with the U.S. Fish and Wildlife Service. Capture propagation will take place at the Audubon Nature Institute, Center for Research of Endangered Species, Freeport-McMoRan Audubon Species Survival Center, New Orleans, Louisiana.

Dated: October 10, 2003.

Sam D. Hamilton,

Regional Director.

[FR Doc. 03–27105 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Dry Creek Rancheria Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Dry Creek Rancheria Liquor Ordinance. The ordinance regulates and controls distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Dry Creek Rancheria.

EFFECTIVE DATE: This Code is effective on October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Southwest Regional Office, Branch of Tribal Government, P.O. Box 26567, Albuquerque, New Mexico 87125–6567, Telephone (505) 346–7592, or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW, MS–320–SIB, Washington, DC 20245, Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Dry Creek Rancheria adopted Tribal Ordinance No. 02–090–21–001 on September 21, 2002. The purpose of this ordinance is to govern the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Dry Creek Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs.

I certify that Liquor Ordinance No. 02–09–21–001 was duly adopted by the Tribal Council of the Dry Creek Rancheria on September 21, 2002.

Dated: October 7, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

Ordinance No. 02–09–21–001

Alcohol Policy

Dry Creek Rancheria Band of Pomo Indians of California

Preamble

This ordinance is for the purpose of providing rules and procedures related to the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Dry Creek Rancheria. It is hereby ordained by the Tribal Council (Membership) of the Dry Creek Rancheria that the following rules and procedures shall apply to the authority, responsibility, legal compliance with local, state and federal laws, and for the protection of the welfare and being of Tribal Members that the following ordinance is hereby adopted:

Article I—Findings and Policy

The Tribe finds that:

1. The introduction, possession, and sale of alcoholic beverages on the Tribe's lands are matters of special concern to the Tribe.

2. Under the authority of Article VII the Tribe's Articles of Association and in conformance with Federal Law and the laws of the State of California as required by 18 U.S.C. 1161 and the Tribe's Gaming Compact, and under the inherent sovereignty of the Tribe, this Ordinance shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe.

3. The Tribe's policy is to assure that any possession, importation, sale, or consumption of an alcoholic beverage within the Tribe's jurisdiction shall occur under the regulation and control of the Tribe as set forth in this Ordinance.

4. This Ordinance shall be construed to comply with federal and tribal laws and with applicable state laws (''Applicable Laws'').

Article II—Definitions

The stated terms are defined as follows unless a different meaning is expressly provided or the context clearly indicates otherwise:

1. *Alcoholic Beverage* or *Liquor* shall include alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains

one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall further mean any intoxicating liquor, beer or any wine, as defined under the provisions of this Ordinance or other applicable law.

2. *Tribal Council* shall mean the Tribal Council of the Dry Creek Rancheria, which includes all eligible voters and is its governing body.

3. *Legal Age* shall mean the same as the age requirements of the State of California, which is currently 21 years. If the drinking age for the State of California is repealed or amended to raise or lower the legal age for drinking within California, the Tribal Council is authorized to amend this Article to match the age limit imposed by applicable state law.

4. *Licensed Retailer, Importer,* or *Wholesaler* shall mean any Person (hereinafter defined) who is duly licensed to sell liquor by the Tribal Council and the State of California.

5. *Person* shall mean any individual, firm, partnership, joint venture, association, corporation, trust, or any other group of combination acting as a unit.

6. *Sale* shall mean the exchange of property and/or any transfer of ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. Sale includes optional sales contracts, leases with options to purchase and other contracts under which possession of property is given to purchaser, buyer, or consumer but title is retained as security for the payment of the purchase price, and includes any transaction whereby, or any consideration, title to alcoholic beverages is transferred from one person to another.

7. *Tribal Lands* shall include those lands within the exterior boundaries of the Tribe's Rancheria and other Indian Lands over which the Tribe has jurisdiction.

Article III—General Prohibition

It shall be a violation of Tribal law for any person on those lands under the jurisdiction and control of the Tribe to manufacture for sale, to sell, offer or keep for sale, possess, transport, or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Ordinance.

Article IV—Powers of Enforcement

The Tribe, through the Tribal Council or its duly authorized representatives in respect to the enforcement of this Ordinance, shall have the following powers and duties:

1. To develop, approve, publish, enforce and interpret such rules and regulations as may be necessary for enforcement of this Ordinance regarding the sale, manufacture, and distribution of alcoholic beverages on all Tribal Lands over which the Tribe has jurisdiction;

2. To employ managers, accountants, security personnel, attorneys, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions;

3. To issue licenses permitting the sale or manufacture or distribution of alcohol on the lands over which the Tribe has jurisdiction;

4. To hold hearings on violations of this Ordinance, as well as hearings for the issuance, denial, suspension, or revocation of licenses hereunder. Notice and the opportunity to be heard will be provided by the Tribe in such cases;

5. To bring suit in the appropriate court of competent jurisdiction to enforce this Ordinance as necessary;

6. To establish, determine, and levy fines and seek damages for violation of this Ordinance;

7. To collect taxes and fees levied or set by the Tribal Council and to keep records, books, and accounts; and

8. To confiscate liquor sold, possessed or introduced in violation of this Ordinance and to sell or otherwise dispose of such confiscated liquor for the benefit of the Tribe.

Article V—Right To Inspect and Search

The premises on which alcoholic beverages are sold or distributed shall be open for inspection by the Tribe, through the Tribal Council or its duly authorized representatives, at all reasonable times for the purpose of ascertaining compliance with the provisions and requirements of this Ordinance. Where warranted, the Tribe shall conduct reasonable searches and may seize goods.

Article VI—Sales and Possession of Alcohol

The sale and possession of alcohol on tribal lands shall be governed by Tribal and applicable Federal and State Laws and shall be subject to the following limitations:

1. The possession or introduction of alcoholic beverages on Tribal Lands shall be lawful if such possession or introduction is in conformity with Applicable Laws.

2. The sale of alcoholic beverages by business entities owned by and subject to the control of the Tribe shall be lawful; provided that such sales are in conformity with Applicable Laws.

Article VII—Licensing and Enforcement

No tribal license shall issue under this Ordinance except upon a sworn application filed with the Tribe containing full and complete information as required by such application and is subject to the following:

1. Any license granted can be transferred only with the written consent of the Tribe.

2. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

3. All applicants must provide satisfactory proof that the applicant is or will be duly licensed by the State of California.

4. The Tribe may revoke, suspend, or deny a license at any time, based upon a violation, misrepresentation, failure to renew in a timely manner, failure to provide information requested by the Tribe, and other good cause shown. Applicants or licensees whose licenses are denied, suspended, or revoked may request a hearing before the Tribe.

5. Any person determined by the Tribe to be in violation of the Ordinance shall be subject to civil fines and penalties, based on a schedule of fines applicable to such violations. Penalties may include the imposition of criminal sanctions and penalties, as warranted, consistent with all applicable law.

6. In investigating applicants, the Tribe shall consider whether the applicant is in compliance with all Applicable Laws, and whether such licensing will serve the best interests of the Tribe. All applicants must prove their suitability to obtain a tribal license and to qualify for a state liquor license.

7. Applicant has the burden of providing satisfactory proof that applicant is of good character, has a good reputation in the tribal and local community, and that applicant is financially responsible and meets all other licensing standards established by the Tribe.

Article VIII—Licensing Hearings

All applications for a tribal liquor license shall be reviewed and considered by the Tribe, and the Tribe may convene a hearing to take evidence regarding the application. The Tribal Council shall determine whether to grant or deny the application based on the following criteria:

1. Whether all suitability requirements have been met.

2. Whether all requirements of this Ordinance have been addressed; and

3. Whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event applicant is a member of the Tribal Council, the member shall not vote on the application or participate in the hearings as a Tribal Council member.

Article IX—Conditions of the Tribal License

Any tribal license issued under this Ordinance shall be subject to such conditions as the Tribal Council shall establish, including but not limited to the following:

1. The licensee shall at all times maintain an orderly, clean establishment, both inside and outside the licensed premises.

2. The licensed premises shall be subject to patrol and inspection by duly authorized tribal enforcement or other tribal officials or their designee, and by such other law enforcement officials as may be authorized by law at all times during regular business hours, and after hours as deemed necessary and prudent by such officials.

3. No alcoholic beverages shall be sold, served, disposed of, delivered or consumed on the licensed premises except in conformity with the hours and days prescribed by the Tribal Council and by the laws of the State of California to the extent applicable.

4. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Article X—Tribally-Owned Establishments

The Tribal Council may issue, by resolution, an appropriate license to a tribally-owned establishment upon such determination as is necessary to assure compliance with applicable laws.

Article XI—Sovereign Immunity

Nothing contained in this Ordinance is intended, nor does it in any way limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies from unconsented suit or other such action of any kind.

Article XII—Severability, Prior Enactments, Amendment, Compliance With Law, and Effective Date

1. If any provision or application of this Ordinance is determined by an agency or court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Ordinance shall remain and be unaffected thereby.

2. All prior tribal laws, ordinances, or resolutions that are or may be determined to be inconsistent with the provisions of this Ordinance are hereby repealed to the extent inconsistent with this Ordinance.

3. This Ordinance may be amended by majority vote of the Tribal Council at any time at a duly noticed meeting. Any such amendment shall become effective upon publication by the Secretary of the Interior in the **Federal Register**, unless the applicable law does not require such publication for the amendment to become effective.

4. All provisions of this Ordinance shall comply with 18 U.S.C. 1161.

5. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Certification

This is to certify that the foregoing ordinance was duly enacted by the vote of the Tribal Council of Dry Creek Rancheria by a vote of *72* for, *10* against, and *0* abstentions, at a duly held Regular General Meeting of the Tribal Council on Saturday, *21 September 2002,* and that this ordinance has not been amended in any manner.

Attest

Elizabeth Elgin DeRouen, Chairperson
Dated: September 21, 2002.
Margie Rojes, Secretary/Treasurer
Dated: September 21, 2002.

[FR Doc. 03–27104 Filed 10–27–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–76578]

Notice of Realty Action: Segregation Terminated, Modified Competitive Sale of Public Lands, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described lands in Amargosa Valley, Nye County, Nevada, have been examined and found suitable for sale utilizing a modified competitive bid sale.

DATES: Comments must be submitted by December 12, 2003.

ADDRESSES: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Seley, Realty Specialist, at the above address or at (775) 482–7806.

SUPPLEMENTARY INFORMATION: The following described lands are appraised at the fair market value (FMV) of $480,000.00;

Mount Diablo Meridian, Nevada,

T. 17 S., R. 49 E., sec. 10, S½

Totaling 320 acres more or less.

The subject lands were segregated for exchange purposes on October 1, 1997 under serial number N–61968. The exchange segregation on the subject lands will be terminated and replaced with a new segregation for sale purposes on October 28, 2003.

Authority for the sale is section 203 and section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1713, 1719). The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended, and Executive Order 6910. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, geothermal, mineral materials under the 1947 Materials Act and Public Law 167, and the right to prospect and mine for such minerals.

3. Subject to valid existing rights.

In the event of a sale, any mineral interest not reserved to the United States, will be conveyed simultaneously with the sale of the land. The remaining unreserved mineral interests have no known mineral value. Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The public lands described in this notice are bounded on three sides by lands owned by the designated bidder, Rockview Farms—Ponderosa Dairy. The existing use of adjacent properties includes wastewater lagoons and agricultural uses including the application of bio-solids. The subject parcels are appropriate for modified competitive bid sale procedures to assure compatibility with existing uses pursuant to 43 CFR 2710.0–6(c)(3)(ii). The designated bidder will be given a preference and will be allowed to meet the highest bid pursuant to 43 CFR 2711.3–2. Sealed bidding is the only acceptable method of bidding. Sealed bids must be received in the Tonopah Field Station, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada, by 4:30 p.m., December 29, 2003. All sealed bids must be accompanied by a payment of not less than 20 percent of the total bid or $96,000. Minimum bid amount of $480,000. All bidders must be U.S. citizens, 18 years or older, legally chartered U.S. corporations authorized to own real estate in the State of Nevada, or other legal entity capable of holding title to land. Payment must be in the form of a certified check, money order, or cashier's check made payable to: Department of the Interior—BLM. The apparent high bidder will be allowed 180 days from the date of sale to submit the remainder of the purchase price and the $50.00 fee to cover the administrative cost of purchasing the available mineral estate. Failure to remit payments within the time allowed will disqualify the apparent high bidder and the deposit will be forfeited. If the apparent high bidder is disqualified the next highest qualified bid will be honored or the land re-offered under competitive procedures.

The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts of omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now or in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other

actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind be given or implied as to the potential use of the land offered for sale. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. The sale parcel is currently without legal access. Any land lacking access from a public road or highway is conveyed as such. Future acquisition of access is the responsibility of the buyer.

This parcel of land located in Amargosa Valley, Nevada, is being offered for sale through modified competitive bid sale procedures. The adjacent land uses and general location of the subject parcel make this tract of land difficult and uneconomic to manage as part of the public lands. As such, the sale parcel meets the disposal criteria found under Title 43 CFR 2710.0–3(a)(3). The proposed action is consistent with the objectives, goals, and decisions of the Las Vegas Resource Management Plan. An appraisal report has been prepared by a certified appraiser for the purposes of establishing fair market value. The appraisal report is available for review at the address shown above.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or July 26, 2004, which ever occurs first. The segregation for exchange purposes is being terminated and replaced by the new segregation in order to allow for sale. For a period until December 12, 2003, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until December 29, 2003.

Dated: September 18, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–27000 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–76579

Notice of Realty Action: Segregation Terminated, Direct Sale of Public Lands, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described lands in Amargosa Valley, Nye County, Nevada, have been examined and found suitable for sale utilizing direct sale procedures.

DATES: Comments must be submitted by December 12, 2003.

ADDRESSES: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Seley, Realty Specialist, at the above address or at (775) 482–7806.

SUPPLEMENTARY INFORMATION: The following described lands are appraised at no less than the fair market value (FMV) of $144,000.00:

Mount Diablo Meridian, Nevada,

T. 17 S., R. 49 E., sec. 9, SW¼SE¼;
sec 10, SE¼NE¼, SE¼NW¼;

Totaling 120 acres more or less.

This land is being offered for direct sale to Rockview Farms, Ponderosa Dairy. The lands are being offered through direct sale, pursuant to 43 CFR 2711.3–3(a)(5), to resolve inadvertent unauthorized use and development.

The subject lands were segregated for exchange purposes on October 1, 1997 under serial number N–61968. The exchange segregation on the subject lands will be terminated and replaced with the segregation for sale described in this notice. The segregation for exchange purposes is being terminated in order to allow for sale. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1713, 1719). The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended, and Executive Order 6910. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, geothermal, mineral materials under the 1947 Materials Act and Public Law 167, and the right to prospect and mine for such materials.

3. Subject to valid existing rights.

The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now or in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State laws. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind shall be given or implied as to the potential use of the land offered for sale. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. The sale parcel is currently without legal access. Any land lacking access from a public road or highway is conveyed as such. Future acquisition of access is the responsibility of the buyer. In the event of a sale, the unreserved mineral interest will be conveyed simultaneously with the sale of the

land. The remaining unreserved mineral interests have no known mineral value. Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and submit a deposit of 30 percent of the purchase price, the $50.00 filing fee for the conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashier's check, payable to U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

This parcel of land located in Amargosa Valley, Nevada, is being offered for sale through direct sale procedures. The adjacent land uses, unauthorized agricultural development, and general location of the subject parcels make these tracts of land difficult and uneconomic to manage as part of the public lands. As such, these lands meet the criteria found under 43 CFR 2710.0–3(a)(3). The proposed action is consistent with the objectives, goals, and decisions of the Las Vegas Resource Management Plan. An appraisal report has been prepared by a certified appraiser for the purposes of establishing fair market value (FMV). The appraisal report is available for review at the address shown above.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or on July 26, 2004, whichever occurs first.

For a period until December 12, 2003, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until December 29, 2003.

Dated: September 18, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–27001 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 190 in the Central Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed notice of sale for proposed sale 190.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 190 in the Central GOM OCS. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 190 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 17, 2004.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 190 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: October 20, 2003.

R. M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 03–27170 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on July 24, 2003. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will

be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 28, 2003, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 28, 2003, notice.

Definitions of Abbreviations Used in This Document

BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
SOD—Safety of Dams
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

Modified contract action:

17. *West Extension ID, Umatilla Project, Oregon:* Amendatory repayment contract for long-term boundary expansions to include lands outside of federally recognized district boundaries.

Completed contract action:

17. *Hermiston ID, Umatilla Project, Oregon:* Amendatory repayment contract for long-term boundary expansions to include lands outside of federally recognized district boundaries. Contract executed on August 14, 2003.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

45. *Centinella WD, CVP, California:* Proposed assignment of up to 2,500 acre-feet of Centinella WD's CVP water to Westlands WD for irrigation use.

46. *Melvin D. and Mardella Hughes, CVP, California:* Assignment of water service contract to Tranquility Public Utility District for agricultural use.

Completed contract action:

6. *Mountain Gate Community Services District, CVP, California:* Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Pub. L. 102–575. Interim renewal contract executed on July 28, 2003.

12. *M&T, Inc., Sacramento River Water Rights Contractors, CVP, California:* A proposed exchange agreement with M&T, Inc., to take Butte Creek water rights water from the Sacramento River in exchange for CVP water to facilitate habitat restoration. Exchange agreement executed on July 15, 2003.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

54. *Arizona American Water Company (Sun City Division), CAP, Arizona:* Subcontract with Central Arizona Water Conservation District for water service of 4,189 acre-feet of M&I water.

55. *Arizona American Water Company (Sun City West Division), CAP, Arizona:* Subcontract with Central Arizona Water Conservation District for water service of 2,372 acre-feet of M&I water.

56. *Arizona American Water Company (Agua Fria Division), CAP, Arizona:* Subcontract with Central Arizona Water Conservation District for water service of 11,092 acre-feet of M&I water.

57. *Fisher's Landing Water and Sewer Works, LLC, BCP, Arizona:* Contract for 53 acre-feet of Colorado River water to be used to account for domestic water use on residential properties located within the Castle Dome area of Martinez Lake.

58. *Green Valley Water Company, CAP, Arizona:* Assignment of subcontract entitlement of 1,900 acre-feet of M&I water to Green Valley Domestic Improvement District.

59. *Midvale Farms Water Company, CAP, Arizona:* Assignment of allocation for 1,500 acre-feet of M&I water to the City of Tucson.

Modified contract action:

1. *Milton and Jean Phillips, John J. Peach, and Sunkist Growers, Inc., BCP, Arizona:* Colorado River water delivery contracts, as recommended by the Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 3,168 acre-feet per year total.

7. *Beattie Farms SW, BCP, Arizona:* Contract for 1,110 acre-feet per year of fourth priority water.

Discontinued contract action:

1. *Milton and Jean Phillips, Cameron Brothers Construction Co., Ogram Farms, John J. Peach, Sunkist Growers, Inc., BCP, Arizona:* Colorado River water delivery contracts, as recommended by the Arizona Department of Water Resources, with

agricultural entities located near the Colorado River for up to 3,168 acre-feet per year total. Recommendation for Cameron Brothers Construction Co., was rescinded by the Arizona Department of Water Resources.

Completed contract actions:

1. *Milton and Jean Phillips, Cameron Brothers Construction Co., Ogram Farms, John J. Peach, Sunkist Growers, Inc., BCP, Arizona:* Colorado River water delivery contracts, as recommended by the Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 3,168 acre-feet per year total. Contract with Ogram Farms for 480 acre-feet per year has been executed.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract action:

27. *Russell, Harrison F. and Patricia E.; Aspinall Unit; CRSP; Colorado:* Contract for 1 acre-foot of water to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including home lawn and livestock watering (non-commercial).

Completed contract actions:

1. (e) *Upper Gunnison Water Conservancy District, Aspinall Storage Unit, CRSP, Colorado:* Due to the continued extreme drought conditions in the Upper Gunnison River Basin, the District has requested a temporary 1-year water service contract for up to a maximum of 3,000 acre-feet of water out of Blue Mesa Reservoir to be resold by the District under temporary, 1-year, third-party contracts to water users located within the District's boundaries. Contract executed on April 1, 2003.

(f) *Town of Lake City, Aspinall Storage Unit, CRSP, Colorado:* Lake City has requested a 40-year water service contract for an additional 25 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation. Lake City is working with the State of Colorado, Water Division 4 to develop a specific plan for using the augmentation water in accord with Colorado water law. Reclamation and Lake City have an existing 40-year contract, No. 9–07–40–R0790, dated May 5, 1989, for 25 acre-feet of water out of Blue Mesa Reservoir. Contract executed on July 16, 2003.

(g) *Lazear Domestic Water Company, Aspinall Storage Unit, CRSP, Colorado:* Lazear has requested a 40-year water service contract for an additional 44 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation, Case No. 02WC253, District Court, Water Division 4. Reclamation and Lazear have an existing 25-year contract, No. 98–07–40–R5000, dated January 29, 1998, for 44 acre-feet of water out of Blue Mesa Reservoir. Contract executed on August 16, 2003.

26. *Paul Hudgeons, Aspinall Storage Unit, CRSP, Colorado:* Mr. Hudgeons has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir to support his plan of augmentation, Case No. 02WC283, District Court, Water Division 4. Contract executed on June 12, 2003.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7790.

Modified contract actions:

3. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

5. *City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota:* Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract has been executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir. Legislation is pending for change in the authorized use of Pactola storage.

15. *Lower Marias Unit, P–SMBP, Montana:* Water service contract with Robert A. Sisk, Sisk Ranch, expired in July 1998. Initiating long-term contract for the use of up to 552 acre-feet of storage water from Tiber Reservoir to irrigate 276 acres. This action will combine the two contracts presently held by Robert Sisk. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

16. *Lower Marias Unit, P–SMBP, Montana:* Negotiating for a long-term water service contract with Julie Peterson for the use of up to 717 acre-feet of storage water from Tiber Reservoir to irrigate 239 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

22. *Glendo Unit, P–SMBP, Wyoming:* Amendments to long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company to extend the contract term.

23. *Glendo Unit, P–SMBP, Nebraska:* Amendments to long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID to extend the contract term.

29. *Park Board, P–SMBP, Dickinson Unit, North Dakota:* A temporary contract has been negotiated with the Park Board for minor amounts of water from Dickinson Dam. Negotiate a long-term water service contract with the Park Board for minor amounts of water from Dickinson Dam.

33. *Lower Marias Unit, P–SMBP, Montana:* Initiating long-term water service contract with Allen Brown as Tiber Enterprises for up to 1,388 acre-feet of storage water from Tiber Reservoir to irrigate 694 acres. This action will combine the two contracts presently held by Tiber Enterprises. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

Completed contract actions:

3. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use; contract with the Colorado Water Conservation Board and U.S. Fish and Wildlife Service for 10,825 acre-feet for endangered fishes. Contract with the Colorado Water Conservation Board and the U.S. Fish and Wildlife Service executed on June 24, 2003.

24. *Belle Fourche ID, Belle Fourche Project, South Dakota:* Belle Fourche ID has requested a $25,000 reduction in construction repayment. Contract amendment executed on June 2, 2003.

39. *Belle Fourche ID, Belle Fourche Project, South Dakota:* Negotiate a temporary contract for additional supplemental water for up to 10,000 acre-feet from Keyhole Reservoir. Negotiate an amendment to the District's Keyhole Dam repayment contract for increased storage space to store additional amounts of water. A temporary 1-year contract for supplemental water from Keyhole Reservoir was executed on June 2, 2003. An amendment to the Keyhole Dam repayment contract may still be required in the future.

45. *Frenchman Valley ID, Frenchman Unit, P–SMBP, Nebraska:* Proposed contract amendment—request for deferment of annual payment due to severe drought. Contract amendment executed on July 14, 2003.

Dated: October 14, 2003.

Roseann Gonzales,

Acting Deputy Director, Office of Program and Policy Services.

[FR Doc.03–27108 Filed 10–27–03; 8:45am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Freeport Regional Water Project, Sacramento, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of comment period for review of Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation), the lead Federal agency; the United States Army Corps of Engineers, a cooperating Federal agency; and the Freeport Regional Water Authority (FRWA), the State lead agency, are extending the review period for the Draft EIS/EIR to December 15, 2003. The notice of availability of the Draft EIS/EIR and notice of public workshop and notice of public hearing was published in the **Federal Register** on August 8, 2003 (68 FR 47363). The public review period was originally to end on October 7, 2003.

DATES: Submit comments on the Draft EIS/EIR on or before December 15, 2003.

ADDRESSES: Written comments on the Draft EIS/EIR are to be addressed to Mr. Kurt Kroner, Freeport Regional Water Project, Freeport Regional Water Authority, 1510 J Street #140, Sacramento, CA 95814, Fax: 916–444–2137.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Schroeder, Reclamation, at 916–989–7274, TDD 916–989–7285, or e-mail: *rschroeder@mp.usbr.gov*; or Mr. Kurt Kroner, at 916–326–5489, or e-mail: *k.kroner@frwa.com*.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 7, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–27154 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1057 (Preliminary)]

Certain Processed Hazelnuts From Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a Preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1057 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of certain processed hazelnuts, provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 5, 2003. The Commission's views are due at Commerce within five business days thereafter, or by December 12, 2003.

For further information concerning the conduct of this investigation 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 and B (19 CFR part 207).

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 21, 2003, by Westnut LLC, Dundee, OR; Northwest Hazelnut Co., Hubbard, OR; Hazelnut Growers of Oregon, Cornelius, OR; Willamette Filbert Growers, Newberg, OR; Evergreen Orchards, McMinnville, OR; and Evonuk Orchards, Eugene, OR.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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 investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a

conference in connection with this investigation for 9:30 a.m. on November 12, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis, (202) 205–3185, not later than November 7, 2003, to list their appearance and witnesses (if any). Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 17, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must 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 rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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 investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–27112 Filed 10–27–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

SPA Dynamic Wholesalers: Denial of Request for Registration to Handle List I Chemicals

On May 1, 2001, Spa Dynamic Wholesalers (Respondent) applied to be registered with the Drug Enforcement Administration (DEA) as a distributor of the List I chemicals ephedrine, pseudoephedrine and phenylpropanolamine (PPA), Control Number K2202014201J. On April 24, 2002, after an investigation by DEA investigators, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause (OTSC) why DEA should not deny Respondent's application. Prior to the issuance of the OTSC, on March 13, 2002, Respondent's owner Ann Marie Tess Wrigley (Ms. Wrigley) left a voicemail message at DEA regarding the status of her application. The call-back number left by Ms. Wrigley turned out to be a number for a facsimile machine. A DEA investigator used the number to send a facsimile to Ms. Wrigley, asking her to contact the investigator at DEA. Ms. Wrigley did not respond to the fax, and has not contacted DEA since that time.

The OTSC was sent by certified mail to the latest address provided by Ms. Wrigley to DEA. The OTSC was not claimed, indicating that Respondent was no longer at the latest address provided by Ms. Wrigley, and had left no forwarding address.Since the OTSC was issued, Ms. Wrigley has not contacted DEA concerning the status of her application.

Therefore, the Acting Deputy Administrator, finding that DEA has made reasonable attempts to serve the OTSC on Respondent, and no request for a hearing has been received, concludes that Respondent is deemed to have waived its hearing right. The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1301.43 and 21 CFR 1301.46, based upon the following finding of fact and conclusions.

The Acting Deputy Administrator finds that the List I chemicals ephedrine and pseudoephedrine are legitimate chemicals that also may be used in the illicit manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34), 21 CFR 1310.02(a). Both chemicals are commonly used to illegally manufacture methamphetamine, a schedule II controlled substance.

The Food and Drug Administration (FDA) has approved ephedrine for over-the-counter (OTC) use as a bronchodilator for the treatment of asthma. Ephedrine is also lawfully marketed as a nasal decongestant. Ephedrine is also used lawfully in hospitals in the treatment of hypotensive crisis and acute bronchospasm. Physicians have also used ephedrine to promote urinary continence. OTC ephedrine products have also been misused for their stimulant properties and for use as diet aids. FDA has not approved these products for such uses.

Pseudoephedrine is lawfully marketed under the Federal Food Drug and Cosmetic Act provisions for OTC use as a decongestant. It is often found in combination with other active ingredients such as antihistamines, expectorants and/or antitussives.

On November 6, 2000, the FDA issued a public health advisory warning of the dangers associated with the use of PPA, including, but not limited to, the risk of hemorrhagic stroke. The FDA advised that it was taking steps to remove PPA from all drug products and requested that all drug companies discontinue the sale of products containing this listed chemicals.

DEA has observed nationwide that the vast majority of sales of ephedrine and pseudoephedrine drug products destined for end users are made in supermarkets, drug stores, and large discount stores. An extremely small amount of face-to-face purchases are made in smaller retail outlets. DEA has observed that many smaller or non-traditional stores, such as liquor stores, gas stations, and some small markets, purchase inordinate amounts of these products and become conduits for the diversion of listed chemicals into illicit drug manufacturing.

During March 2001, DEA utilized an expert in the field of retail marketing and statistics to analyze national sales data for over-the-counter non-prescription drugs. Using official Government and commercially available sales data, he was able to construct a model of the traditional market for pseudoephedrine in the retail sector. His study showed that over 90% of all sales of non-prescription drug products occurred in drug stores, grocery stores and large discount merchandisers. A very small percentage of such sales occurred in convenience stores. Additionally, this expert analyzed expected sales of non-prescription drugs by convenience stores and found that they constituted about 2% of their total

sales. This analysis was consistent with sales data provided by the convenience store industry.

DEA clandestine laboratory teams continue to note the trend in laboratories toward smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller laboratories and the ability to acquire listed chemical precursor product from smaller sources. Small capacity labs continue to dominate law enforcement seizures and environmental cleanups. Small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals.

DEA investigators have learned that the primarily market shares for sales of combination ephedrine products belong to the manufacturers of Primatene and Bronkaid products. The national sales of these products in tablet forms have been on the decline for several years, since end-users prefer an inhalant version. In addition, DEA knows that the nationwide sales of combination ephedrine in the traditional market are much smaller than the market for other traditional cough and cold remedies, including products containing pseudoephedrine.

On May 1, 2001, Ms. Wrigley submitted, on behalf of her company, an application for DEA registration as a distributor of the List I chemicals ephedrine, pseudoephedrine and PPA. Respondent's listed address on the application was in 7636 Village Trail, Dallas, Texas 75240. The application was received by the Dallas Field Division.

DEA investigators learned that in early 2001, Ms. Wrigley applied for a Precursor Chemical/Laboratory Apparatus Business permit with the Texas Department of Public Safety (DPS) under the name Dynamic Wholesalers, at a listed address of 840 Central Parkway East, #120, in Plano Texas. A subsequent inspection of the physical location revealed that Ms. Wrigley had not physically occupied the premises, and the telephone number listed on the application was found to be fictitious.

On December 11, 2001, Ms. Wrigley filed a second application for licensure to DPS under the name Spa Dynamic Wholesalers, with a business address of 1108 Summit Avenue #6, Plano, Texas. Ms. Wrigley subsequently informed DEA that she would seek registration at this location, and not the location provided in her May 2001 application for DEA registration. On December 11, 2001, DEA investigators accompanied a DPS investigator during DPS's inspection of Respondent at the Summit Avenue location. When the investigators arrived at that location, they found it unlocked and vacant, without furniture or telephone service. The property manager at the location told the investigators that Ms. Wrigley failed to sign a contract and had not taken possession of the location. The property manager also said that on the previous day, Ms. Wrigley stated that she would not be occupying the Summit Avenue location for business purposes.

On December 11, 2001, DEA investigators contacted Ms. Wrigley, informed her of their concerns, and requested that she withdraw her application. Ms. Wrigley refused to withdraw, and informed the investigators that her company would be ready for a pre-registrant inspection on December 20, 2001.

On December 20, 2001, DEA investigators went to Respondent's physical location on Summit Avenue and conducted a pre-registration investigation of Respondent. Ms. Wrigley informed the investigators that Respondent intended to distribute List I chemicals to convenience stores in the Dallas Metropolitan area. She estimated that List I chemicals would comprise 30 to 45 percent of her business. Ms. Wrigley stated that she had no experience with sales of OTC medications or listed chemicals. She informed the investigators that her brother in Kansas owned a wholesale establishment selling similar products and was ''making a lot of money,'' so she wanted to do the same.

Ms. Wrigley also admitted that she had no experience in reporting suspicious orders. The investigators advised her of the reporting requirements and provided her by facsimile a copy of the threshold regulations. The investigators advised Ms. Wrigley of the necessity of identifying and verifying customers, and of DEA recordkeeping requirements. The investigators inspected the security measures at Respondent's location and found that security was adequate.

When asked which brands of List I chemicals she intended to sell, Ms. Wrigley provided a list of brand names, many of which are manufactured by companies whose products had been found in methamphetamine lab dump sites. Moreover, the list of products provided by Ms. Wrigley contained only ephedrine and ephedrine combination products. The list showed that Ms. Wrigley intended to sell, among other things, 60 count bottles of ephedrine. This is significant in that this type of packaging is not normally seen in traditional retail establishments, and is the packaging favored by methamphetamine manufacturers.

When asked about the identity of her customers, Ms. Wrigley provided the investigators with a list of five customers. When called by the investigators, three of the five customers had either never heard of Respondent or Ms. Wrigley, or indicated that they would not by buying from Respondent. One customer was waiting for Respondent to mail him its inventory so that he could determine whether he would become a customer of Respondent. One customer indicated that she would buy from Respondent.

Ms. Wrigley also provided a ''cold call list'' that she had purchased. She said that she intended to use the list to obtain more customers. A review of the list by DEA investigators showed that most of the potential customers on the list were convenience stores.

Based upon the above, the Acting Deputy Administrator will now consider the factors used by DEA to determine whether the issuance of a DEA Certificate of Registration is in the public interest. Under 21 U.S.C. 823(h), the Attorney General shall register an applicant to distribute a List I chemical unless the Attorney General determines that the registration of the applicant is inconsistent with the public interest. (This function has been delegated to Administrator of DEA.) In considering the public interest, the Acting Deputy Administrator shall consider

1. Maintenance by the applicant of effective controls against diversion of listed chemical into other than legitimate channels;

2. Compliance by the applicant with applicable Federal, State, and local laws;

3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

4. Any past experience of the applicant in the manufacture and distribution of chemicals and

5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weighs against Respondent. Security was adequate at the physical location of the business that the DEA investigators visited. Based upon the investigators' inability to contact Ms. Wrigley in

February 2002, it appears that Ms. Wrigley is no longer at the location that the DEA investigators inspected. Accordingly, DEA has no knowledge of Respondent's current security measures.

With regard to the second factor, there is no evidence that Ms. Wrigley has failed to comply with Federal, State or local law. As for the third factor, there is no evidence that Ms. Wrigley has any prior convictions related to controlled substances or chemicals. Accordingly, the second and third factors weigh in Respondent's favor. Addressing the fourth factor, Ms. Wrigley has no experience in the manufacture or distribution of chemicals, which weights against Respondent.

With regard to the fifth factor, many considerations weigh heavily against registering Respondent as a distributor of List I chemicals. The great majority of Respondent's potential customers will be convene stores. Convenience stores are considered part of the gray market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine. Ms. Wrigley admitted that a portion of her sales will consist of 60 count bottle of ephedrine, the favored packaging of illicit methamphetamine manufactures.

The Acting Deputy Administrator also finds that Respondent's frequent changes of address weigh against Respondent in its attempt to obtain a DEA registration. The changes of address create the impression that Respondent is an unstable, ''fly by night'' concern. Ms. Wrigley's failure to notify DEA of changes of address indicates a serious failure to comprehend the responsibilities of the holder of a DEA Certificate of Registration. The Acting Deputy Administrator finds that Ms. Wrigley's lack of a criminal record and compliance with the law are far outweighed by her lack of experience with selling List I chemicals, DEA's lack of knowledge concerning Respondent's current security system and her frequent changes of address without notice to DEA. Moreover, Respondent's product mix and potential sales of combination ephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type. Therefore Respondent would be serving an illegitimate market for these products, and registration of Respondent as a distributor of List I chemicals would likely lead to increased diversion of List I chemicals.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that registration of Respondent as a distributor of List I chemicals is not in the public interest. The Acting Deputy Administrator hereby orders that the application for a DEA Certificate of Registration and any requests for renewal or modification submitted by Respondent Spa Dynamics Wholesalers be, and hereby are, denied.

Dated: October 9, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–27085 Filed 10–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of Proposed Amendment to PTE 81–6 and Proposed Restatement and Redesignation of PTE 82–63; Correction

AGENCY: Employee Benefits Security Administration, DOL.

ACTION: Correction.

SUMMARY: In notice document 03–26694 beginning on page 60715 in the issue of Thursday, October 23, 2003, make the following correction:

On page 60721, in the third column, in the next to the last paragraph, the last sentence should read this provision is expected to require 1,393 hours and $42,000 annually.

On page 60722, in the first column, the number for Total Responses was listed at 83,478. This number should be changed to 69,565.

On the same page, in the first column, the number for Estimated Total Burden Hours was listed at 16,735. This number should be changed to 16,273.

On the same page, in the first column, the number for Estimated Burden Cost was listed at $56,000. This number should be changed to $52,313.

Dated: October 23, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations.

[FR Doc. 03–27110 Filed 10–27–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Exemption 80–83—Securities Purchases for Debt Reduction or Retirement

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 80–83.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before December 29, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 80–83 provides an exemption from prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits, under certain conditions, an employee benefit plan to purchase securities when proceeds from the sale of the securities may be used to

reduce or retire indebtedness to a party in interest with respect to such plans.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of plans that are involved in such transactions as well as the party in interest.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 80–83; Securities Purchases for Debt Reduction or Retirement.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0064.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 25.

Responses: 25.

Average Response Time: 5 minutes.

Estimated Total Burden Hours: 2 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: October 21, 2003.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 03–27109 Filed 10–27–03; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–135]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Nancy Kaplan, Code AO, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: GLOBE Program Evaluation.

OMB Number: 2700–.

Type of Review: New collection.

Need and Uses: The information collected is needed to guide implementation of the GLOBE Program based on feedback from participating teachers, students, and partners in order to help meet the Program's goal of improving student achievement in mathematics and science.

Affected Public: Individuals or households.

Number of Respondents: 2,361.

Annual Responses: 499.

Hours Per Request: 30–90 minutes each.

Annual Burden Hours: 373.

Frequency of Report: Once.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–27075 Filed 10–27–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Prepare a Comprehensive Environmental Evaluation (CEE) for the Development and Implementation of Overland Traverse Capabilities in Antarctica

AGENCY: National Science Foundation.

SUMMARY: The National Science Foundation proposes to develop and implement overland traverse capabilities in Antarctica to meet various logistical and scientific goals of the United States Antarctic Program (USAP). The purpose of this Comprehensive Environmental Evaluation (CEE) is to identify the potential environmental impacts associated with USAP's performance of overland traverses and foster the development of a transportation strategy which optimizes a combination of airlift and overland traverse capabilities as conditions warrant.

The ability of the USAP to use overland traverses will enhance current logistical capabilities (*e.g.,* transportation of cargo) by supplementing existing airlift mechanisms needed to support various facilities and science in Antarctica. In addition, the overland traverse capability will provide a continued means and expertise to support future advanced land-based scientific studies at remote locations in Antarctica. The methodology and equipment to conduct overland traverses in Antarctica is currently available. Various Antarctic Treaty nations, including the United States, have successfully performed traverses to meet numerous logistical and scientific goals.

The United States has periodically performed overland traverses in Antarctica on a limited basis since the 1957–58 International Geophysical Year (IGY). In recent years, the USAP has conducted annual overland traverses to resupply two small outlying facilities within 100 kilometers of McMurdo Station (*i.e.,* Black Island Telecommunications Facility, Marble Point Refueling Facility). Since 1999, the U.S. has been a participant in the International Trans Antarctic Scientific Expedition (ITASE) along with 19 other nations and performed overland

traverses in Antarctica for research data gathering purposes.

The USAP intends to develop and utilize an overland traverse capability to cost-effectively complement existing airlift resources for the resupply of South Pole station, in the process develop the equipment, knowledge and expertise to complement the support for future scientific research similar to the recent ITASE experience. Each year, the USAP provides extensive logistical support to resupply existing facilities, establish or decommission temporary field camps, and provide specialized support to scientific research at numerous field sites. Because the overland traverse and airlift transport mechanisms are complementary, the USAP intends to fully develop the surface traverse capability and utilize one or a combination of the two, depending on the specific needs of the mission and the environmental conditions.

For example, the USAP currently relies exclusively on the use of ski-equipped LC–130 cargo aircraft to transport personnel, fuel, construction materials, and other supplies 1,600 kilometers from McMurdo Station to the Amundsen-Scott Station at the South Pole. The LC–130 aircraft transport cargo quickly and reliably but in the case of the South Pole, the aircraft consumes more fuel for each liter of fuel delivered vs the surface traverse. In other words, the benefits of the aircraft's speed in transporting cargo may be offset by its relatively high fuel consumption particularly when the time sensitive delivery of cargo is not a necessity. The USAP intends to have the overland traverse capability available and utilize it to transport cargo to the South Pole or other locations where airlift support may not be the optimum transport choice. In so doing, the USAP anticipates the increased availability of airlift support to expand science and related missions in Antarctica.

The Director of the Office of Polar Programs of the National Science Foundation intends to prepare a Comprehensive Environmental Evaluation (CEE) within the procedures of the Protocol on Environmental Protection to the Antarctic Treaty and consistent with implementing regulations for the National Environmental Policy Act (NEPA) for the decision to develop overland traverse capabilities in Antarctica.

DATES: The final Comprehensive Environmental Evaluation is expected to be available to the public approximately mid-January 2004. Comments on this notice of intent will be of most use if they are received before December 10, 2003.

ADDRESSES: Written comments should be submitted to: Dr. Polly A. Penhale, Program Manager, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the Office of Polar Programs, National Science Foundation TEL: (703) 292–8033, FAX: (703) 292–9080, EMAIL: *ppenhale@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF) manages and funds United States activities in Antarctica. The NSF is responsible for the U.S. Antarctic Program (USAP) as well as operation of three active U.S. research stations in Antarctica and a number of outlying facilities and unmanned instrumentation sites. These facilities are operated to support research efforts in aeronomy and astrophysics, biology and medicine, ocean and climate studies, geology and geophysics, glaciology and the Long-Term Ecological Research (LTER) program. McMurdo Station is the USAP's largest facility and a central supply hub supporting many of these outlying facilities.

Each year the USAP operates various aircraft in Antarctica to logistically support scientific research on the continent. The USAP operates ski-equipped LC–130 Hercules aircraft (for heavyweight or bulky cargo missions) as well as Dehaviland Twin Otter aircraft. Helicopters are also operated and, due to their limited range and transport capability, are primarily assigned missions in the McMurdo area and Dry Valleys. The aircraft are only flown during the austral summer operating season, typically from October through February. In general, larger field camps that are used as base facilities for scientific research activities are only established at locations which can be safely accessed by aircraft, while smaller field camps (i.e., tent camps) may be supported by aircraft or small tracked vehicles (e.g., Spryte, Pisten Bully, snowmobiles) operating from a base camp.

The LC–130 is the largest ski-equipped cargo aircraft available to the USAP that is capable of operating on snow-covered field sites in Antarctica. The LC–130 has 105 m^3 of cargo space (12.3 m long, 3.1 m wide, 2.7 m high) and can safely transport up to and 11,800 kg of cargo.

During the past several years, the USAP has operated an average of 400 LC–130 missions per year representing approximately 3,000 flight hours. The majority of these LC–130 missions were conducted at the South Pole (280 missions), while the remainder (120 missions) were flown to a variety of locations providing support to outlying facilities and research activities. The Amundsen-Scott Station is supported exclusively by the LC–130 aircraft and in recent years has received 3,500,000 kilograms of cargo annually. The surface capability would change the ratio of missions.

The USAP currently maintains a limited overland traverse capability. Traverses are performed annually to resupply the Black Island Telecommunications facility, located approximately 35 kilometers from McMurdo Station, and the Marble Point Refueling Facility, approximately 100 kilometers from McMurdo. Since 1999, the U.S. has participated in traverse activities for scientific research applications (ITASE). To support the ITASE science traverse, LC–130 aircraft provided airdrops of fuel and other materials at strategic locations in the field.

The USAP is currently engaged in a ''proof of concept'' program to evaluate equipment and procedures needed to support a traverse capability and a route from McMurdo Station to the South Pole over the Leverett Glacier. Based on the experience gained through the proof of concept and from previous traverses conducted by the U.S. and other nations, the USAP intends to develop a traverse capability and enhance the program's transportation strategy by optimally combining airlift and overland traverse capabilities to suit the specific needs and conditions of the mission. In addition, the successful development of overland traverse resources may allow the USAP to provide logistical support or perform research activities at locations or during time periods which are not currently possible.

Relative to this environmental review, the scale of an overland traverse intended to be used for resupply or scientific research missions would typically include several motorized tracked vehicles towing sleds or trailers which contain fuel for the tractors, living and working modules for the traverse personnel, and cargo. Overland traverses used for resupply missions would typically follow established routes. Traverses used for scientific purposes would follow routes based on the intended research and may depend on airdrops or strategically placed caches for periodic resupply.

Each traverse would have the resources and equipment to refuel the

tractors, perform routine maintenance, and collect all wastes (e.g., nonhazardous, hazardous, sanitary) for subsequent disposition at supporting stations. In some cases, sanitary wastewater may be discharged in snow covered areas as allowed by the Antarctic Treaty.

Alternative A for the proposed action involves the USAP's development of a traverse capability and the routine use of this resource to optimally complement existing airlift support mechanisms. Other alternatives considered in this environmental review include the development of the traverse capability and use of it on a minimal frequency basis only (Alternative B), or under reduced intensity operating conditions (Alternative C), or with minimal support from remote resources in the field such as caches, depots, or airdrops (Alternative D). Although it may be possible to operate overland traverses only on established routes (Alternative E) this could preclude or severely limit the use of traverses for scientific research applications. The No Action Alternative, that is not proceeding with development of an overland traverse capability, is Alternative F. Several other alternatives were identified but were eliminated from detailed analysis because they either failed to meet the required level of performance or the specific parameters needed to identify and evaluate all associated environmental impacts could not be adequately identified.

The potential environmental impacts of the proposed action that will be identified and evaluated in detail in the Comprehensive Environmental Evaluation include:

- Physical disturbance to the snow and ice environment
- Air emissions
- Releases to the snow and environment
- Impacts to McMurdo Station operations
- Impacts to operations at other USAP facilities
- Impacts to other scientific research in the USAP

Selected mitigating measures, representing specific actions or options that would be taken to reduce or avoid impacts to the environment, will be identified in the Comprehensive Environmental Evaluation, as well as additional measures that will be under consideration during the implementation of the Project activities.

The public is invited to comment on any aspect of the proposal. The comment period on the draft comprehensive environmental evaluation will be a minimum of 90 days from the date the National Science Foundation publishes the notice of availability in the **Federal Register**.

Polly A. Penhale,

Program Manager.

[FR Doc. 03–27156 Filed 10–27–03; 8:45 am]

BILLING CODE 7555–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08838]

Notice of Consideration of Amendment Request for the Jefferson Proving Ground Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License SUB–1435 issued to the U.S. Army for the Jefferson Proving Ground site in Madison, IN. On September 22, 2003, NRC received a request from the Army for a license amendment that would create a 5-year renewable possession-only license. On October 21, 2003, NRC determined that the information provided by the Army was sufficient to begin a technical review. The technical review may identify omissions in the submitted information or technical issues not identified in the administrative acceptance review that require additional information.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a safety evaluation report and either an environmental assessment or an environmental impact statement.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary by mail or facsimile (301–415–1101) addressed to: The Rulemaking and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff; or by e-mail to *hearingdocket@nrc.gov*. The request may also be filed by personal delivery to the Rulemaking and Adjudications Staff at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, Department of the Army, U.S. Army Chemical Materials Agency, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424, Attention: Dr. John Ferriter, and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of the continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile (301–415–3725), or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION CONTACT: The application for the license amendment and supporting documentation are available for inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) under accession number ML032731017. ADAMS is accessible from the NRC Web site at

http://www.nrc.gov/NRC/ADAMS/index.html. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 21st day of October 2003.

For the Nuclear Regulatory Commission.

Tom McLaughlin,

Project Manager, Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–27134 Filed 10–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30249]

Environmental Assessment and Finding of No Significant Impact Related to Materials License No. 42–26928–01, Core Laboratories, Inc. (dba Protechnics) of Houston, TX, License Amendment Request for Approval of an Alternate Disposal Method

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a license amendment for a proposal made by Core Laboratories, Inc. (dba ProTechnics) of Houston, Texas. Core Laboratories requested an amendment to Materials License No. 42–26928–01 to allow an additional disposal alternative pursuant to 10 CFR 20.2002 to inject well returns containing radioactive tracer material into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by State agencies. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of the license amendment request, in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI).

II. Environmental Assessment

Related to the Core Laboratories, Inc. Request for an Alternate Disposal Method to Inject Well-Logging Waste into Class II Disposal Wells.

Summary: The NRC considered a license amendment request for approval for an alternate disposal method for well-logging waste produced under NRC Byproduct Materials License No. 42–26928–01. Core Laboratories, Inc. (dba ProTechnics) requested NRC approval to allow fracturing sand well returns containing residual material to be injected into Class II disposal wells. These Class II wells would have been approved under permits to accept non-hazardous oil and gas waste by State agencies. Approval of this license amendment request is based upon the NRC's review and evaluation of the merits of the licensee's proposal, current alternatives, and waste disposal regulations in 10 CFR part 20. The NRC staff has evaluated the licensee's proposal and has developed an EA in accordance with the requirements of 10 CFR part 51.

1.0 Introduction

Core Laboratories, Inc., is based in Houston, Texas, and conducts well-logging operations with radioactive materials in oil and natural gas fields worldwide. Core Laboratories is licensed to conduct tracer operations where the NRC has jurisdiction and in Agreement States including Louisiana, Texas, Colorado, Utah, California, Oklahoma, and New Mexico. Core Laboratories performs over 3,000 well-logging fracturing jobs a year in the United States using various radioactive tracer materials with half-lives of less than 120 days. In general, Core Laboratories injects three radioactive materials during its tracer operations: Iridium-192, scandium-46, and antimony-124. The longest half-life of these materials is 84 days. Core Laboratories procedures require that 1,000 pounds of sand be mixed with every 0.4 millicuries of tracer material prior to injection into a well.

Core Laboratories is authorized to use only well-logging beads patented as a Zero-Wash product. Zero-Wash is a well-logging bead that is insoluble (*i.e.*, the radioactivity will not migrate or leach into groundwater). These waste materials are not classified as hazardous or mixed waste by the U.S. Environmental Protection Agency (EPA) regulations. The purpose of the tracer material is to enhance the performance of the oil well fracturing procedures. Using the information provided by the tracer material, the well operator can maximize the production from the well. Approximately 10 percent of the fracturing jobs result in the backflow of injected tracer material to the surface. This phenomena is called sandout or well-logging returns. The amount of the well-logging returns can range from a few gallons (20 pounds) to a tanker truck load (50,000 pounds). The concentration of radioactive material in the well-logging returns is low because the tracer material is mixed into fracturing sand prior to being injected into the well.

Currently, Core Laboratories is allowed to hold radioactive material with a half-life of less than 120 days for decay-in-storage before unrestricted disposal. Under this authorization, the well-logging returns are transported by truck to a storage facility that is distant (sometimes 30 miles or more) from the original tracer injection point. Additionally, the sandout waste may be shipped to an approved waste site for burial. On December 18, 1995, the NRC approved Core Laboratories' generic 10 CFR 20.2002 onsite disposal request for burying radioactive wastes from well-logging sandouts, flowbacks, or any other form into shallow earthen pits at the well site pursuant to 10 CFR 20.2002.

On August 23, 2000, Core Laboratories requested a license amendment to allow fracturing sand well returns to be injected in Class II disposal wells. All the sandout well-logging returns containing tracer radioactive materials would be recovered and contained in Class II disposal wells that met the State's and EPA's regulations. Core Laboratories proposes to dispose of material into Class II wells with radioactivity concentrations that are less than 30 percent of the levels in 10 CFR part 20, appendix B, table 2, column 2. These radioactive concentrations are not radioactive waste as defined in the EPA regulation 40 CFR 144.3. Class II disposal wells are described in part in EPA regulations under 40 CFR 144.6 as ''Wells which inject fluids which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production.'' Some of the EPA requirements imposed on Class II disposal well operators are found in 40 CFR 144.28 and address compliance with the Safe Drinking Water Act, 24-hour reporting of noncompliance, well plugging and abandonment planning, financial assurance, well casing and cementing, operating and monitoring requirements, records retention, and change of ownership and operational control.

2.0 Proposed Action

The proposed action is to issue a license amendment to Byproduct Materials License No. 42–26928–01 for approval of an alternate disposal method for well-logging waste produced as a result of fracturing sand well-logging operations. The licensee seeks approval to allow fracturing sand well returns to be injected into Class II disposal wells that have been approved

under permits to accept non-hazardous oil and gas waste by State agencies. These wells have been approved for the disposal of non-hazardous oil field waste materials including naturally occurring radioactive material (NORM). This method of disposal would be used as an alternative to existing methods of disposal authorized by the NRC in the current license.

3.0 Purpose and Need for the Proposed Action

The purpose of the proposed action is to allow the licensee an additional disposal alternative due to the fact that some locations where the tracer operations are conducted do not allow shallow pits to be used for well waste disposals. This proposed action would allow the continued use of tracer materials in those areas and allow the efficient production of oil and gas, thereby reducing the cost of recovery to the well operators. The NRC is fulfilling its responsibility under the Atomic Energy Act to make a decision for the proposed action that ensures protection of the public health and safety and the environment.

4.0 Alternative to the Proposed Action

The only alternative to the proposed action of allowing the alternative disposal in Class II disposal wells is no action. The no-action alternative would be to allow the licensee to maintain waste as discussed above as authorized in the current NRC license.

5.0 The Affected Environment and Environmental Impacts

The NRC staff has reviewed the proposed action and the alternatives and examined their impacts.

5.1 Proposed Action

The proposed action would authorize the use of state approved Class II disposal wells already permitted and in operation where materials are injected below the water table. The depth of Class II disposal wells range from 5,000 to 15,000 feet which is well below usable groundwater. Because this disposal method would use existing approved structures, there would be no significant impact to historic and cultural resources, ecological resources, land use or visual resources. In addition, due to the design of the patented Zero-Wash product (no wash off of radioactive material), the crush strength of the Zero-Wash product (*i.e.*, greater than 10,000 psi), and the design of these Class II wells, the waste would not contaminate groundwater and would not migrate from the formation where injected. Because the proposed action will only use pre-existing Class II disposal wells, there would be no increased air emissions or noise, and there would be no significant impacts on local or regional business conditions, populations or demographics. During the permitting process for Class II disposal wells, potential socioeconomic and environmental impacts are investigated as part of the National Environmental Policy Act process. In general, Class II disposal wells are not located in populated or business areas.

If approved, Core Laboratories' generic 10 CFR 20.2002 waste disposal authorization would contain the following provisions: (1) A requirement to assure that the radioactive concentration of waste would be less than 1,000 picocuries/gram (pCi/g); (2) the half-life of the radioactive material being disposed would be less than 120 days and include only the following tracers: Sodium-24, chromium-51, rubidium-86, iodine-131, xenon-133, scandium-46, zirconium-95, antimony-124, and iridium-192; and (3) Core Laboratories would maintain a written agreement with the Class II disposal well owner or operator to control access to the well until the radioactivity has decayed to unrestricted release levels.

Increased radiation exposure to the general public from transporting waste containing residual tracer material to the disposal site would be negligible. There are two routes of exposure possible, external and internal. The internal exposure would be from ingestion of the material. The particle size is such that it is not respirable. The material is not soluble in the body thereby reducing the resident time in the body. At the concentrations expected, an individual would need to ingest 200 pounds of the material to receive one-tenth of the regulatory annual limit of intake specified in 10 CFR part 20, appendix B. The maximum radiation exposure level, at a distance of 1-foot from a vehicle transporting this waste, would be on the order of 0.1 mR/hr. The radiation level in the cab of the transport vehicle would be on the order of 0.004 mR/hr. Using an average transport time of 1-hour and assuming the same driver was used for all of the expected disposals (10 per year), the exposure to the driver of the vehicle would be 0.04 mR. Due to its low radiation level and radioactive concentration, an accident causing the release of the waste returns from the transport vehicle would result in little exposure to workers or members of the public during the subsequent cleanup efforts.

Tracer injection operations at the disposal wells are automated to minimize the time required for personnel to be in the immediate area of the injected material. Assuming an injection time of 4 hours per disposal, and an individual within 1-foot of the radioactive material during the injection operation, the total exposure per year would not be expected to exceed 4 mR from this operation. The disposal site would be surveyed to meet the NRC criteria for unrestricted use in accordance with 10 CFR part 20 after the sandout material is injected into a Class II disposal well.

Radioactive material as defined by Department of Transportation regulation 49 CFR 173.403 is material that exceeds a concentration of 2,000 pCi/g. The residual radioactive material concentrations being shipped are below this limit. There would be no increase in the number of transport vehicles on the highways due to this proposed aspect of well-logging operations. The current practice of transporting well-logging returns to a decay-in-storage facility or shallow disposal pit requires that at least one transport vehicle be used. Procedures would be in place to handle any emergency situation arising from any incident involving the handling or transportation of this material.

Overall, the environmental impacts resulting from the release of this material into Class II disposal wells are expected to be insignificant. The NRC staff concluded that the State's and EPA's requirements for permitting the operation of Class II disposal wells were stringent and thoroughly covered any radiological or non-radiological environmental concern. There are no additional activities which would result in cumulative impacts to the environment.

5.2 Alternative

When compared to the Class II disposal well proposal, the no-action alternative would result in increased risk of exposing occupational workers and the members of the public to radioactive material. Core Laboratories' use of shallow earthen pits and decay-in-storage facilities requires additional handling of the radioactive material and increases the potential for individuals to access radioactive material. Core Laboratories would continue use of shallow earthen pits, transporting the sandout material to the new pits, covering the disposal pits with at least 2 feet of soil, and marking the disposal sites in order to control access to the public. Additionally, Core Laboratories would continue to maintain sandout material in leased decay-in-storage facilities. In addition to radiological

impacts, non-radiological impacts to land use, soils, visual resources, transportation, water resources, noise, air quality, cultural resources, threatened and endangered species could occur because Core Laboratories would continue decay-in-storage before unrestricted disposal or burial in shallow earthen pits. Additionally, the cost of storage facilities and the cost for burial at an approved disposal site are not economical considering the fact that there are no costs associated with disposals at Class II wells.

6.0 Agencies and Persons Consulted

The NRC staff has prepared this EA with input from the Alaska Oil & Gas Conservation Commission (AOGCC) and the Texas Bureau of Radiation Control (TBRC) regarding permitting of Class II disposal wells and Zero-Wash product.

Because the proposed action is entirely within existing Class II wells, the NRC has concluded that there is no potential to affect threatened or endangered species or historic resources. Therefore, consultation with the U.S. Fish & Wildlife Service and State Historic Preservation Officers is not necessary.

The NRC staff provided a draft of this EA to the following states for review and comment: Alaska (ML031540273), California (ML031540246), Colorado (ML031540327), Louisiana (ML031540301), New Mexico (ML031540339), Oklahoma (ML031540221), Texas (ML031540332), Utah (ML031540352), and Wyoming (ML031540355). This EA has been revised to reflect the States' input where appropriate.

7.0 Conclusions

The NRC staff concluded that the proposed action complies with 10 CFR part 20 and 10 CFR part 30. Pursuant to 10 CFR part 51, the NRC staff has prepared this EA in support of the proposed license amendment for approval to allow fracturing sand well returns to be injected in Class II disposal wells that have been approved under permits to accept non-hazardous oil and gas waste by State agencies. On the basis of this EA, the NRC has concluded that the environmental impacts from the proposed action would not have any significant effect on the quality of the human environment; therefore, an environmental impact statement for the proposed action is not warranted.

8.0 List of Preparers

This EA was prepared by Louis C. Carson II, Senior Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, and reviewed by Jack E. Whitten, Chief, Materials Licensing Branch, Division of Nuclear Materials Safety.

9.0 List of References

1. NRC, ''Radiological Criteria for License Termination,'' 10 CFR part 20, subpart E, 62FR39088, July 21, 1997.

2. NRC, ''Waste Disposal,'' 10 CFR part 20, subpart K, 56FR23403, May 21, 1991.

3. NRC, ''Consolidated NMSS Decommissioning Guidance,'' NUREG–1757, Volume 1, September 2002.

4. NRC, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, September 2003.

5. Alaska Oil & Gas Conservation Commission (AOGCC) and the letter dated January 11, 2002, from the AOGCC to Marathon Oil Company.

6. ProTechnics Division of Core Laboratories Texas Bureau of Radiation Control License No. L03835, Amendment No. 37, expiration date August 31, 2005.

7. Utah Department of Environmental Quality letter to the NRC dated June 30, 2003 (ML032660184).

8. Colorado Department of Health letter to the NRC dated July 1, 2003 (ML031900577).

9. Texas Department of Health letter to the NRC dated July 17, 2003 (ML032060480).

III. Finding of No Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the Commission has determined that there will not be a significant effect on the quality of the environment resulting from the approval of Core Laboratories' requested amendment for an additional disposal alternative pursuant to 10 CFR 20.2002 to inject well returns containing radioactive tracer material into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by State agencies. Accordingly, the preparation of an Environmental Impact Statement is not required for the proposed amendment to Materials License No. 42–26928–01, which would add the alternative disposal method to the license. This determination is based on the foregoing EA performed in accordance with the procedures and criteria in 10 CFR part 51.

IV. Further Information

The licensee's request for the proposed action (ADAMS Accession No: ML003758270) and the NRC's complete Environmental Assessment (ADAMS Accession No.: ML032680636), and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents, along with most others referenced in the EA, are available electronically for public review in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

Any questions with respect to this action should be referred to Louis C. Carson II, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, Arlington, Texas 76011–4005. Telephone: (817) 860–8221.

Dated at Arlington, Texas, this 20th day of October 2003.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–27132 Filed 10–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33944]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 37–30247–01, White Eagle Toxicology Laboratories, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406; telephone (610) 337–5251; fax (610) 337–5269; or by e-mail: *KAD@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to

White Eagle Toxicology Laboratories, Inc. for Materials License No. 37–30247–01, to authorize release of its facility in Doylestown, Pennsylvania for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Doylestown, Pennsylvania facility for unrestricted use. White Eagle Toxicology Laboratories, Inc., was authorized by NRC from September 20, 1995 to use radioactive materials for research and development purposes at the site. On May 27, 2003, White Eagle Toxicology Laboratories, Inc. requested that NRC release the facility for unrestricted use. White Eagle Toxicology Laboratories, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated White Eagle Toxicology Laboratories, Inc.'s request and the results of the surveys and has concluded that the completed action complies with 10 CFR Part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. 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. ML032930181, ML031631110 and ML032260158). 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.

Dated at King of Prussia, Pennsylvania this 20th day of October, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–27133 Filed 10–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 27, November 3, 10, 17, 24, December 1, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 27, 2003

Wednesday, October 29, 2003

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1).

Week of November 3, 2003—Tentative

There are no meetings scheduled for the Week of November 3, 2003.

Week of November 10, 2003—Tentative

Wednesday, November 12, 2003

2 p.m.
Discussion of Intergovernmental Issues (Closed—Ex. 9).

Week of November 17, 2003—Tentative

Thursday, November 20, 2003

12:45 p.m.
Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of November 24, 2003—Tentative

There are no meetings scheduled for the Week of November 24, 2003.

Week of December 1, 2003—Tentative

There are no meetings scheduled for the Week of December 1, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 3–0 on October 17 and 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Fansteel, Inc. (Muskogee, Oklahoma, Site), Docket No. 40–7580–LT. State of Oklahoma's Request for Hearing and Terminating the Adjudicatory Proceeding'' be held on October 23, and on less than one week's notice to the public.

By a vote of 3–0 on October 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2)'' be held on October 23, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 23, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–27214 Filed 10–24–03; 10:56 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from October 3,

2003, through October 16, 2003. The last biweekly notice was published on October 14, 2003 (68 FR 59212).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 28, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 15, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to require one containment sump monitor and one containment atmosphere particulate radioactivity monitor to be operable in Modes 1, 2, 3, and 4. The amendments would eliminate the gaseous channel from Limiting Condition for Operation (LCO) 3.4.15 and restrict the LCO for the containment atmosphere radioactivity monitor to the particulate channel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed change does not make any hardware changes and does not alter the configuration of any plant system, structure or component (SSC). The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the operability requirement for TS LCO 3.4.15. The containment radiation monitors are not initiators of any accident; therefore, the probability of occurrence of an accident is not increased. The TS will continue to require diverse means of leakage detection equipment, thus ensuring that leakage due to cracks would continue to be identified prior to breakage and the plant shutdown accordingly. Therefore, the consequences of an accident are not increased.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The proposed change does not affect any SSC associated with an accident initiator. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change does not make any alteration to any RCS leakage detection components. The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the operability requirement for TS LCO 3.4.15, since the level of radioactivity in the Byron/Braidwood Stations reactor coolant has become much lower than what was assumed in the Byron/Braidwood Stations UFSAR [Updated Final Safety Analysis Report] and the gaseous channel l can no longer promptly detect a small RCS leak consistent with the technical basis in the approved leak-before-break analysis for Byron and Braidwood Stations. The proposed amendment continues to require, in the TS, diverse means of leakage detection equipment with capability to promptly detect RCS leakage. Although not required by TS, additional diverse means of leakage detection capability are available. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: September 18, 2003.

Description of amendment request: This amendment would revise the licensing bases to utilize the alternate source term (AST) as allowed in 10 CFR 50.67 for reanalysis of the radiological consequences of the Updated Final Safety Analysis Report Chapter 15 accidents. The established Regulatory Guide 1.183 AST methodology is being used to calculate the radiological consequences in the control room and offsite. The AST results are used to support the habitability program of the control room by addressing the radiological impact of increased control room unfiltered air in-leakage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Alternative source term calculations have been performed for St. Lucie Unit 1 that demonstrate the dose consequences remain below limits specified in NRC Regulatory Guide 1.183 and 10 CFR 50.67. The proposed change does not modify the design or operation of the plant. The use of an AST changes only the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. The AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed changes to the Technical Specifications, demonstrate that the dose consequences of these limiting events are all within the regulatory limits. The proposed Technical Specification changes to the RCS [reactor coolant system] operational leakage limits and to the shield building bypass leakage rate acceptance criterion result in more restrictive requirements and support the AST revisions to the limiting design basis accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. The alternative source term and the more restrictive proposed leakage limits do not have the capability to initiate accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC Regulatory Guide 1.183. The Technical Specification changes to the RCS operational leakage limits and to the shield building bypass leakage rate acceptance criterion result in more restrictive requirements and support revisions to the radiological analyses of the limiting design basis accidents. Conservative methodologies, per the guidance of RG 1.183, have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the control room are within the corresponding regulatory limits of RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: September 18, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for control room ventilation systems to model NUREG–1432, Combustion Engineering Standard Technical Specifications (CE STSs). The change includes replacing the detailed filter testing surveillance requirements currently in the St. Lucie Units 1 and 2 control room ventilation systems TSs with a requirement to test in accordance with the Ventilation Filter Testing Program.

In addition, the proposed amendments would revise TS Table 3.3–6, Radiation Monitoring Instrumentation, for St. Lucie Units 1 and 2, to resolve inconsistencies due to changes associated with TS Amendments 184 (Unit 1) and 127 (Unit 2).

The proposed amendments also include minor miscellaneous editorial corrections to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the St. Lucie Unit 1 & 2 Technical Specifications will adopt the format of the NUREG–1432 Combustion Engineering Standard Technical Specifications for the Unit 1 control room emergency ventilation system and the Unit 2 control room emergency air cleanup system. Additionally, the Ventilation Filter Testing Program of the CE STS is being adopted for the aforementioned ventilation systems. No changes are being made to the methods of testing, testing scope, or acceptance criteria.

The proposed changes also correct mode applicability requirements for the containment isolation radiation monitor (both units) and the fuel storage pool gaseous and particulate monitors (both units). These corrections are necessary in order to restore consistency with related technical specification requirements for the containment isolation system and associated fuel pool area ventilation systems.

The equipment and systems involved are associated with accident mitigation. The surveillance testing of this equipment has no bearing on the initiation of an accident previously evaluated nor on the probability of any accident previously evaluated.

Implementing the proposed changes does not significantly increase the consequences of an accident previously evaluated. The performance requirements and acceptance criteria for the affected ventilation systems are not being changed. The ability of the affected systems to mitigate the effects of postulated accidents is not diminished by the proposed changes.

The changes being proposed do not affect assumptions contained in the plants' safety analyses or the physical design of the plants, nor do they affect other technical specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendments do not involve any changes to the operation or performance requirements of the affected systems, nor do they involve the addition or modification of any plant equipment. As such, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced. There will be no decrease in the ability of the affected systems to perform their intended safety functions as assumed in accident analyses. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification related to the establishment of or maintenance of a safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: September 18, 2003.

Description of amendment request: This amendment would revise the licensing bases for St. Lucie Unit 2 to utilize the alternate source term (AST) as allowed in 10 CFR 50.67 for reanalysis of the radiological consequences of the Updated Final Safety Analysis Report (UFSAR) Chapter 15 accidents. The established Regulatory Guide 1.183 AST methodology is being used to calculate the radiological consequences in the control room and offsite. The AST results are used to support the habitability program of the control room by addressing the radiological impact of increased control room unfiltered air in-leakage. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Alternative source term analyses have been performed for St. Lucie Unit 2 that demonstrate the dose consequences remain below limits specified in NRC Regulatory Guide 1.183 and 10 CFR 50.67. The proposed change does not modify the design or operation of the plant. The use of an AST changes only the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. The AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed changes to the Technical Specifications, demonstrate that the dose consequences of these limiting events are all within the regulatory limits.

The proposed Technical Specification changes to the RCS operational leakage limits, the shield building bypass leakage rate acceptance criterion, and the ECCS ventilation system surveillance requirements result in more restrictive requirements and support the AST revisions to the limiting design basis accidents. The ECCS area ventilation system does not initiate any design basis accidents. Thus, performing additional surveillance tests do not increase the probability of any previously evaluated accident. The additional surveillance tests will not increase the consequence of any previously evaluated accident, rather the surveillance tests provide additional assurance that the HEPA filters are capable of mitigating the consequences of accidents consistent with AST assumptions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. The alternative source term, the more restrictive proposed leakage limits, and the ECCS filter surveillance do not have the capability to initiate accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC Regulatory Guide 1.183. The Technical Specification changes to the RCS operational leakage limits, the shield building bypass leakage rate acceptance criterion, and the ECCS ventilation system surveillance requirement, result in more restrictive requirements and support revisions to the radiological analyses of the limiting design basis accidents. Conservative RG 1.183 methodologies have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the control room are within the corresponding regulatory limits of RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 15, 2003.

Description of amendment request: The proposed license amendment request would revise technical specification surveillance requirement 3.6.4.2.1 for locked, sealed, or secured secondary containment isolation valves (SCIVs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not affect the SCIV design or function. In addition, mis-positioned or failed SCIVs are not the initiator of any event. The position of a locked, sealed or secured valve and blind flange is verified at the time it is locked, sealed or secured. Further, since the change impacts only the frequency of verification of the blind flange and valve position, it does not result in any change in the response of the equipment to an accident.

Based on the above, NPPD concludes that changing the frequency for verifying the position of a locked, sealed or secured SCIV does not affect the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

This change does not add any new equipment or result in any changes to equipment design or capabilities. This change also does not result in any changes to the operation of the plant. The position of a locked, sealed or secured blind flange and valve is verified at the time it is locked, sealed or secured. Further, since the change impacts only the frequency of verification of the blind flange and valve position, it does not result in any change in the response of the equipment to an accident.

Based on the above, NPPD concludes that changing the frequency for verifying the position of a locked, sealed or secured SCIV does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The SCIVs are administratively controlled and their operation is a non-routine event. The position of a locked, sealed or secured

blind flange and valve is verified at the time it is locked, sealed or secured. Additionally, industry experience has shown the valves are generally found to be in the correct position. Since the change impacts only the frequency of verification of the blind flange and valve position, the proposed change will provide a similar level of assurance of correct SCIV position as the current frequency of verification.

Based on the above, NPPD concludes that changing the frequency for verifying the position of a locked, sealed or secured SCIV does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 16, 2003.

Description of amendment request: The proposed amendment would change the Unit 2 Technical Specifications (TSs) by revising the Unit 2 Cycle 12 (U2C12) Minimum Critical Power Ratio (MCPR) Safety Limits in Section 2.1.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change to the MCPR Safety Limits does not directly or indirectly affect any plant system, equipment, component, or change the processes used to operate the plant. Further, the revised U2C12 MCPR Safety Limits are generated using NRC approved methodology and meet the applicable acceptance criteria. Thus, this proposed amendment does not involve a significant increase in the probability of occurrence of an accident previously evaluated.

The U2C12 licensing analyses were performed (using NRC approved methodology referenced in Technical Specification Section 5.6.5.b) to determine changes in the critical power ratio as a result of anticipated operational occurrences. These results are added to the revised MCPR Safety Limit values proposed herein to generate MCPR operating limits for a revised U2C12 COLR. The COLR operating limits thus assure that the MCPR Safety Limits will not be exceeded during normal operation or anticipated operational occurrences. Postulated accidents were also analyzed and the results shown to be within NRC approved criteria.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change to the MCPR Safety Limits does not directly or indirectly affect any plant system, equipment, or component and therefore does not affect the failure modes of any of these items. Thus, the proposed changes do not create the possibility of a previously unevaluated operator error or a new single failure.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the proposed changes do not alter any plant system, equipment, component, or the processes used to operate the plant, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The proposed MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections, because the MCPR Safety Limits calculated for U2C12 preserve the required margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc, General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101,1179.

NRC Section Chief: Richard J. Laufer.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 2 and 3, Limestone County, Alabama

Date of amendment request: September 18, 2003.

Description of amendment request: The proposed amendments would revise the reactor pressure vessel pressure-temperature (P–T) limit curves depicted in Technical Specifications (TS) Figure 3.4.9–1 and add a new TS Figure 3.4.9–2. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed Unit 2 and Unit 3 changes deal exclusively with the reactor vessel P–T curves, which define the permissible regions for operation and testing. Failure of the reactor vessel is not considered as a design basis accident. Through the design conservatisms used to calculate the P-T curves, reactor vessel failure has a low probability of occurrence and is not considered in the safety analyses. The proposed changes adjust the reference temperature for the limiting material to account for irradiation effects and provide the same level of protection as previously evaluated and approved. The adjusted reference temperature calculations were performed in accordance with the requirements of 10 CFR 50 Appendix G using the guidance contained in Regulatory Guide 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' to reflect use of the operating limits to no more than 30 Effective Full Power Years (EFPY) for Unit 2 or 28 EFPY for Unit 3. These changes do not alter or prevent the operation of equipment required to mitigate any accident analyzed in the BFN Final Safety Analysis Report. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to the Unit 2 and Unit 3 reactor vessel P–T curves do not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system, and no new system interactions are introduced by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed curves conform to the guidance contained in Regulatory Guide 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' and maintain the safety margins specified in 10 CFR 50 Appendix G. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant Unit 3, Limestone County, Alabama

Date of amendment request: October 1, 2003.

Description of amendment request: The proposed amendment would revise the numeric value of the safety limit minimum critical power ratio (SLMCPR) in Technical Specification (TS) 2.1.1.2 for one and two recirculation loop operation to incorporate the results of the Unit 3 Cycle 12 core reload analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment establishes a revised SLMCPR value for one and two recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPR values preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPR values have been determined using NRC-approved methods and procedures. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed license amendment involves a revision of the SLMCPR value for one and two recirculation loop operation based on the results of an analysis of the Cycle 12 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The margin of safety as defined in the TS bases will remain the same. The new SLMCPR values were calculated using NRC-approved methods and procedures, which are in accordance with the fuel design and licensing criteria. The SLMCPR remains high enough to ensure that greater than 99.9 percent of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: September 8, 2003, as supplemented September 11, 2003.

Brief description of amendments: The Updated Final Safety Analysis Report will be revised to reflect a change in the postulated primary-to-secondary leakage rate in a faulted steam generator in the main steamline break analysis.

*Date of publication of individual notice in the **Federal Register:*** September 18, 2003 (68 FR 54745).

Expiration date of individual notice: October 20, 2003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety

Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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.* 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.*

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: December 20, 2002, as supplemented by letter dated May 30, 2003.

Brief description of amendments: The amendments modify the basis for licensee's compliance with the requirements of Appendix H to 10 CFR 50, ''Reactor Vessel Material Surveillance Program Requirements'' for Dresden Units 2 and 3. The amendment approves the licensee to implement the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program.

Date of issuance: September 29, 2003.

Effective date: As of the date of issuance and shall be implemented prior to the next reactor vessel surveillance capsule removal.

Amendment Nos.: 202/194.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Facility Operating Licenses and the Update Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5669). The May 30, 2003, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 14, 2003, as supplemented by letter dated August 8, 2003.

Brief description of amendments: The amendments relax the Technical Specifications (TSs) surveillance requirement (SR) for reactor instrumentation line excess flow check valves (EFCVs). Currently, TSs require testing of each reactor instrumentation line EFCV on a 24 month frequency. The proposed TS SR requires that a representative sample of reactor instrumentation line EFCVs be tested every 24 months, such that each EFCV will be tested nominally once every 10 years.

Date of issuance: October 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 203/195, 218/212.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 13, 2003 (68 FR 25654). The August 8, 2003, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: February 26, 2003.

Brief description of amendments: The amendments authorize changes to the Updated Final Safety Analysis Report (UFSAR) to describe a load drop analysis performed for handling reactor cavity shield blocks weighing greater than 110 tons with the Unit 2/3 reactor building crane during power operation.

Date of issuance: October 10, 2003.

Effective date: As of the date of issuance and shall be implemented prior to handling reactor cavity shield blocks weighing greater than 110 tons with the Unit 2/3 reactor building crane for refueling outage D2R18.

Amendment Nos.: 204 and 196.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the UFSAR.

Date of initial notice in ***Federal Register:*** June 24, 2003 (68 FR 37576). The June 12, July 25, September 11, and October 9, 2003, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 23, 2003, as supplemented September 4, 2003.

Brief description of amendment: The amendment revised the Technical Specifications for the safety limit minimum critical power ratio.

Date of issuance: October 3, 2003.

Effective date: As of date of issuance and shall be implemented prior to startup for Cycle 15 operations, scheduled for October 2003.

Amendment No.: 252.

Facility Operating License No. DPR–56: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 5, 2003 (68 FR 46243). The September 4, 2003, letter provided information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 1, 2001, as supplemented by letters dated April 30, and May 6, 2003.

Brief description of amendment: The proposed changes involve Technical Specification (TS) 3/4.3.1, ''Reactor Protection System (RPS) Instrumentation,'' TS 3/4.3.2.1, ''Safety Features Actuation System (SFAS) Instrumentation,'' and TS 3/4.3.2.2, ''Steam and Feedwater Rupture Control System (SFRCS) Instrumentation.'' The

proposed changes to TS Table 3.3–3, ''SFAS Instrumentation,'' and Table 3.3–11, ''SFRCS Instrumentation,'' will allow an 8-hour delay in entering an action statement when an SFAS or SFRCS instrumentation channel is undergoing channel functional testing, and will clarify the term ''total bypass function'' for Surveillance Requirement (SR) 4.3.1.1.2, SR 4.3.2.1.2, and SR 4.3.2.2.2. In addition, the proposed changes will revise Bases 3/4.3.1 and 3/4.3.2 to reflect the above-described TS changes.

Date of issuance: September 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 259.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29356). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 20, 2002.

Brief description of amendment: The amendment updates the title of the onsite review committee in Technical Specification (TS) sections 6.7, 6.14, and 6.15, and updates the version of Regulatory Guide 1.33 referenced in TS section 6.8.

Date of issuance: October 2, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 260.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 4, 2003 (68 FR 10279). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2003.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 23, 2002, as supplemented July 25 and August 11, 2003.

Brief description of amendment: The amendment revises Crystal River Unit 3 Improved Technical Specifications (ITS) 4.2.1, ''Fuel Assemblies,'' and ITS 4.2.2, ''Control Rods,'' to permit the use of Framatome ANP M5 advanced alloy for fuel rod cladding and fuel assembly structural components.

Date of issuance: October 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 210.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 805). The supplements dated July 25 and August 11, 2003, provided clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 2003.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 19, 2002, as supplemented May 9, June 9, July 15, July 31, and October 1, 2003.

Brief description of amendment: The amendment revises Crystal River Unit 3 Improved Technical Specification (ITS) 2.1.1, ''Reactor Core Safety Limits.'' The proposed change will permit the use of the BHTP correlation, which is needed to utilize the Framatome ANP high thermal performance (HTP) spacer grid design.

Date of issuance: October 16, 2003.

Effective date: October 16, 2003.

Amendment No.: 211.

Facility Operating License No. DPR–72: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* February 4, 2003 (68 FR 5677). The supplements dated May 9, June 9, July 15, July 31, and October 1, 2003, provided clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 3, 2003.

Description of amendment request: The amendment revises Technical Specification (TS) 3/4.7.1.4, ''Turbine Cycle-Specific Activity,'' and its associated bases. With the exception of TS 4.0.4, wording similar to that presented in the improved Standard Technical Specifications will be adopted. The amendment inserts an exception to the requirements of TS 4.0.4 when entering MODE 4, along with conditions for when the surveillance requirement must be satisfied in MODE 4. Additionally, there are editorial changes to the TS Index, reflecting the changes made by the amendment.

Date of issuance: October 3, 2003.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 92.

Facility Operating License No. NPF–86: Amendment revised the TS.

Date of initial notice in ***Federal Register****:* April 29, 2003 (68 FR 22748). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002, as supplemented by letter dated May 29, 2003.

Description of amendment request: The amendment relocates Technical Specifications (TSs) Sections 3.1.2.1, ''Reactivity Control Systems-Boration Systems-Flow Paths-Shutdown;'' 3.1.2.2, ''Reactivity Control Systems-Boration Systems-Flow Paths-Operating;'' 3.1.2.3, ''Reactivity Control Systems-Boration Systems-Charging Pumps-Shutdown;'' 3.1.2.4, ''Reactivity Control Systems-Boration Systems-Charging Pumps-Operating;'' 3.1.2.5, ''Reactivity Control Systems-Boration Systems-Borated Water Sources-Shutdown;'' 3.1.2.6, ''Reactivity Control Systems-Boration Systems-Borated Water Sources-Operating;'' and 3.4.7, ''Reactor Coolant System-Chemistry,'' to the Seabrook Station Technical

Requirements Manual (SSTR). The amendment also revises TS 3.1.2.7, ''Reactivity Control Systems-Boration Systems-Isolation of Unborated Water Sources-Shutdown.''

The amendment also revises TSs 3.4.1.2, ''Reactor Coolant System-Reactor Coolant Loops and Coolant Recirculation-Hot Standby;'' 3.4.3, ''Reactor Coolant System-Pressurizer;'' 3.4.7, ''Reactor Coolant System-Chemistry;'' and 3.9.2, ''Refueling Operations-Instrumentation,'' to adopt wording that more closely resembles NUREG–1431, Revision 2, ''Standard Technical Specifications.'' The revision to TS 3/4.9.2 also involves surveillance changes. The associated Bases have been modified as a result of the changes.

Date of issuance: October 3, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 93.

Facility Operating License No. NPF–86: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75880). The May 29, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002, as supplemented by letters dated May 30, 2003 (two letters), July 16, 2003, August 18, 2003, September 9, 2003, and September 15, 2003.

Description of amendment request: The amendment revises Technical Specification (TS) 3/4.9.4, Containment Building Penetrations,'' to permit the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment. Specifically, the applicability of the TS would be modified to apply only to the movement of recently irradiated fuel assemblies. Recently irradiated fuel assemblies would be described in the bases as fuel that has occupied part of a critical reactor core within the past 80 hours.

Date of issuance: October 3, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 94.

Facility Operating License No. NPF–86: Amendment revises the TS.

Date of initial notice in ***Federal Register****:* November 26, 2002 (67 FR 70766). The May 30, 2003, July 16, 2003, August 18, 2003, September 9, 2003, and September 15, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002, as supplemented by letters dated July 16, 2003, July 17, 2003, August 18, 2003, August 25, 2003, September 9, 2003, and September 15, 2003.

Description of amendment request: The amendment revises Technical Specification (TS) 3/4.9.3, ''Decay Time,'' reducing the minimum time irradiated fuel must decay after occupying part of a critical core from 100 to 80 hours.

Date of issuance: October 3, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 95.

Facility Operating License No. NPF–86: Amendment revises the TS.

Date of initial notice in ***Federal Register****:* November 26, 2002 (67 FR 70767). The July 16, 2003, July 17, 2003, August 18, 2003, August 25, 2003, September 9, 2003, and September 15, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 3, 2003.

Brief description of amendments: The amendments revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.6.5.1.d to replace the phrase ''Each ice basket'' with the phrase ''Ice baskets.'' This change makes the LCO consistent with associated TS Surveillance Requirement (SR) 4.6.5.1.b.2 and allows the SR to define the detailed requirements for ice basket weight.

Date of issuance: October 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 280 and 262.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* September 10, 2003 (68 FR 53402). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 3, 2003, as supplemented by letters dated September 9 and 23, 2003.

Brief description of amendments: These amendments revised the Technical Specifications, Section 3.8.1, ''AC [alternating current] Sources—Operating,'' to extend the allowable Completion Time for Required Actions for one offsite circuit inoperable, from 72 hours to 10 days on a one-time basis.

Date of issuance: October 10, 2003.

Effective date: Upon issuance and shall be implemented by October 31, 2003.

Amendment Nos.: 214 and 189.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 22, 2003. (68 FR 43392). The supplemental letters dated September 9 and 23, 2003, provided clarifying information that did not expand the scope of the requested action as described in the initial **Federal Register** notice, and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 14, 2003, as supplemented June 24, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.1, ''Reactor Trip System Instrumentation,'' and TS 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow DNB [Departure from Nucleate Boiling] Limits.'' The revised TS allows the measurement of RCS flow using the elbow flow tap methodology as an alternative to the current flow calorimetric method.

Date of issuance: October 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 47.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* June 24, 2003 (68 FR 37584). The supplemental letter provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 30, 2003, as supplemented August 18, September 10, September 30, and October 3, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.5.1, ''Accumulators,'' TS 3.5.4, ''Refueling Water Storage Tank (RWST)'' and TS 4.2.1, ''Fuel Assemblies,'' to revise the minimum and maximum accumulator and RWST boron concentration and to limit the maximum number of tritium producing burnable absorber rods (TPBARs) that can be loaded into the reactor core accordingly. The requested change would also add the cycle-specific number of TPBARs to the Core Operating Limits Report. The licensee is revising the corresponding TS Bases pages.

Date of issuance: October 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 48.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 8, 2003 (68 FR 40720). The supplemental letters provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2003.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: July 10, 2003, as supplemented by letter dated August 28, 2003.

Brief description of amendments: The amendments revise the Technical Specification (TS) reflecting approval of a one-time extension for each unit of allowable outage time for restoring the operability of control room emergency filtration system boundary.

Date of issuance: October 2, 2003.

Effective date: As of the date of issuance. The TS shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 108 and 108.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the TS.

Date of initial notice in **Federal Register***:* August 5, 2003 (68 FR 46246)

The August 28, 2003, supplemental letter provided clarifying information and did not change the scope of the original **Federal Register** notice or the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2003.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 3, 2002.

Brief description of amendment: The amendment revises Tables 3.3.1–1 (Reactor Trip System (RTS) Instrumentation) and 3.3.2–1 (Engineered Safety Feature Actuation System (ESFAS) Instrumentation) of Limiting Conditions for Operation 3.3.1, ''RTS Instrumentation,'' and 3.3.2, ''ESFAS Instrumentation,'' of the TSs. The revisions are for the SG water level low-low (adverse and normal containment environment) functions.

Date of issuance: October 2, 2003.

Effective date: October 2, 2003, and shall be implemented within 60 days of the date of issuance.

Amendment No.: 157.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 26, 2003 (67 FR 70770). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: November 5, 2002, as supplemented February 14 and June 9, 2003.

Brief Description of amendments: These amendments revise the technical specifications to delete the monthly analog rod position test for the control rod bottom bistables.

Date of issuance: October 1, 2003.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 237 and 236.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications surveillance requirements.

Date of initial notice in ***Federal Register****:* February 4, 2003 (68 FR 5683). The February 14 and June 9, 2003, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 20th day of October, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26890 Filed 10–27–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Flat Mail Identification Code System (FICS)

ACTION: Notice.

AGENCY: Postal Service.

SUMMARY: This notice announces a new system that the United States Postal Service (USPS) plans to deploy for

applying unique USPS identification (ID) codes (or ''tags'') to flat-size mailpieces not bearing POSTNET barcodes. Deployment is scheduled for early 2004. Once the initial ID code is applied to the mailpiece, subsequent sorting will recognize the code and sort the flat-size piece without need for further manual keying. The ID code provides reference to access a database containing the original keying results. The application of these codes onto mailpieces will have no impact on current mailing standards or preparation requirements for flat-size mail.

FOR FURTHER INFORMATION CONTACT: George Coupar, (703) 280–7437, Engineering, United States Postal Service.

SUPPLEMENTARY INFORMATION: The manual video keying of nonbarcoded flat-size mailpieces by Postal Service employees represents a significant cost to the Postal Service. Currently, the keying of a mailpiece by video keying operators can occur several additional times as the nonbarcoded piece is sorted through stages of mail processing. In order to reduce the costs associated with this labor-intensive manual keying, the Postal Service has developed a system that should eliminate most of the additional keying.

This new system, called the Flat Mail Identification Code System (FICS), applies a unique USPS identification (ID) code (tag) to flat-size mailpieces not bearing a POSTNET barcode. The ID code, printed on a label, will be mechanically applied to the address side of the mailpiece in the bottom right or top left corner, before the address is manually resolved by a video keying operator. The FICS saves the initially keyed information in a database along with the corresponding ID code assigned to the piece. Once the FICS ID code is generated and a label containing that code is applied to the mailpiece, further manual keying will not be required for that piece as it moves through additional mail processing operations. Moreover, because a label bearing the ID code will be placed on individual flat-size pieces, this new system will provide additional capabilities in tracking and tracing these coded (tagged) flat-size pieces.

The FICS physical ID code consists of a black, International Mailing Standard, 4-state barcode printed on a white pressure-sensitive label measuring ½ inch high by 3 inches wide or ½ inch high by 4⅜ inches wide. The label is applied to the address side of nonbarcoded flats. The label, which can be manually peeled from the mailpiece, is made of the same material as is currently used by the USPS Letter Mail Labeling Machine (LMLM) which affixes labels on certain types of letter mail pieces, such as postcards.

Preproduction testing is currently in progress and the USPS expects to deploy the system nationally in the second quarter of fiscal year 2004. The USPS does not plan to introduce new mailing requirements related to FICS.

Neva R. Watson,

Attorney, Legislative, Office of Legal Policy and Ratemaking.

[FR Doc. 03–27087 Filed 10–27–03; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26229; File No. 812–12989]

Merrill Lynch Life Insurance Company, et al.; Notice of Application

October 22, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application (the ''Application'') for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving a substitution of securities and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

APPLICANTS: Merrill Lynch Life Insurance Company (''MLLIC''), Merrill Lynch Variable Life Separate Account (''Separate Account 1''), Merrill Lynch Life Variable Life Separate Account II (''Separate Account 2''), Merrill Lynch Life Variable Annuity Separate Account A (''Separate Account 3''), ML Life Insurance Company of New York (''MLNY''), ML of New York Variable Life Separate Account (''Separate Account 4''), ML of New York Variable Life Separate Account II (''Separate Account 5''), ML of New York Variable Annuity Separate Account A (''Separate Account 6''), and, only for the purpose of seeking an order of exemption pursuant to Section 17(b) of the 1940 Act, MLIG Variable Insurance Trust (''MLIG Trust'') (except for MLLIC, MLNY, and MLIG Trust, each a ''Separate Account;'' Separate Accounts 1 through 6 collectively referred to herein as the ''Separate Accounts'') (all foregoing parties, with the exception of MLIG Trust, collectively referred to herein as the ''Applicants'') (all foregoing parties, with the inclusion of MLIG Trust, collectively referred to herein as the ''Section 17(b) Applicants'').

SUMMARY OF APPLICATION: The Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of certain portfolios of the MLIG Trust (the ''Replacement Portfolios'') for shares of certain portfolios of the AllianceBernstein Variable Products Series Fund, Inc. (''AllianceBernstein Fund''), the Delaware VIP Trust (''Delaware Trust''), and the MFS® Variable Insurance Trust℠ (''MFS Trust'') (collectively, the ''Substituted Portfolios'') currently held by those unit investment trusts. The Section 17(b) Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit MLLIC and MLNY to carry out substitutions by redeeming shares issued by AllianceBernstein Fund, Delaware Trust, and MFS Trust in-kind and using the proceeds to purchase shares issued by MLIG Trust.

FILING DATE: The Application was filed on July 18, 2003 and was amended and restated on October 9, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants (including Section 17(b) Applicants) with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 12, 2003, and should be accompanied by proof of service on Applicants (including Section 17(b) Applicants), in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants (including Section 17(b) Applicants), c/o Edward W. Diffin, Jr., Esq., Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. Copies to Stephen E. Roth, Esq. and Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: H. Yuna Peng, at (202) 942–0676, or Lorna J. MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MLLIC is a stock life insurance company that is domiciled in Arkansas. Its operations include both life insurance and annuity products. MLLIC was incorporated under the laws of the State of Washington on January 27, 1986 and redomesticated to the State of Arkansas on August 31, 1991. As of December 31, 2002, MLLIC had assets of approximately $13.1 billion. MLLIC is authorized to operate as a life insurance company in forty-nine states, the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico. MLLIC is a wholly owned subsidiary of Merrill Lynch Insurance Group, Inc. (''MLIG, Inc.''). MLLIC is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a publicly held company whose shares are traded on the New York Stock Exchange. MLLIC is the depositor and sponsor of Separate Accounts 1 through 3.

2. Separate Account 1 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as a funding vehicle for certain variable life insurance contracts issued by MLLIC (the ''Second Generation MLLIC VLI Contracts''). Under the Second Generation MLLIC VLI Contracts and in the prospectuses for the Second Generation MLLIC VLI Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 1 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 2 serves as a funding vehicle for certain variable life insurance contracts issued by MLLIC (the ''First Generation MLLIC VLI Contracts''). Under the First Generation MLLIC VLI Contracts and in the prospectuses for the First Generation MLLIC VLI Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 2 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

4. Separate Account 3 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for variable annuity contracts issued by MLLIC (the ''MLLIC Annuity Contracts''). Under the MLLIC Annuity Contracts and in the prospectuses for the MLLIC Annuity Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 3 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

5. MLNY is a stock life insurance company that is organized under the laws of the State of New York. MLNY is a wholly owned subsidiary of MLIG, Inc. MLNY is also an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. MLNY had approximately $1.1 billion of assets under management as of December 31, 2002. MLNY is authorized to sell life insurance and annuities in nine states. MLNY is the depositor and sponsor of Separate Accounts 4 through 6.

6. Separate Account 4 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 4 serves as a funding vehicle for certain variable life insurance contracts issued by MLNY (the ''First Generation MLNY VLI Contracts''). Under the First Generation MLNY VLI Contracts and in the prospectuses for the First Generation MLNY VLI Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 4 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

7. Separate Account 5 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 5 serves as a funding vehicle for certain variable life insurance contracts issued by MLNY (the ''Second Generation MLNY VLI Contracts''). Under the Second Generation MLNY VLI Contracts and in the prospectuses for the Second Generation MLNY VLI Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 5 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

8. Separate Account 6 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 6 serves as a funding vehicle for variable annuity contracts issued by MLNY (the ''MLNY Annuity Contracts''). Under the MLNY Annuity Contracts and in the prospectuses for the MLNY Annuity Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 6 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

9. Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S'') serves as principal underwriter and distributor for the Variable Contracts. MLPF&S was organized in 1958 under the laws of the State of Delaware and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''). It is a member of the NASD. MLPF&S may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized by applicable law to sell the Variable Contracts.

10. AllianceBernstein Variable Products Series Fund, Inc. (''AllianceBernstein Fund'') is registered as an open-end management investment company under the 1940 Act and currently offers 19 separate investment portfolios, one of which would be involved in the proposed substitutions. The AllianceBernstein Fund issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the Securities Act of 1933 (''1933 Act'') on Form N–1A. Each separate series offers only two classes of shares, Class A shares and Class B shares. The distinction between Class A shares and Class B shares is the imposition of a distribution fee of an annual rate of 0.25% (capped at a maximum annual rate of 0.50%) of each series' average daily net assets attributable to the Class B shares pursuant to Rule 12b–1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Class A shares of the Substituted Portfolio. Alliance Capital Management, L.P. (''Alliance'') serves as the investment adviser to each portfolio of the AllianceBernstein Fund. Alliance Capital Management Corporation, the sole general partner of Alliance, is an indirect wholly owned subsidiary of The Equitable Life Assurance Society of the United States, which is in turn a wholly owned subsidiary of AXA Financial, Inc., a holding company which is controlled by AXA. Alliance receives an investment advisory fee from each portfolio it manages.

11. Delaware VIP Trust (''Delaware Trust'') is registered as an open-end management investment company under the 1940 Act and currently offers

19 separate investment portfolios, one of which would be involved in the proposed substitutions. Delaware Trust issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Each separate series offers only two classes of shares, Standard Class shares and Service Class shares. The distinction between Standard Class shares and Service Class shares is the imposition of a distribution fee of an annual rate of 0.25% (capped at a maximum annual rate of 0.50%) of each series' average daily net assets attributable to the Service Class shares pursuant to Rule 12b–1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Standard Class shares of the Substituted Portfolio. Delaware Management Company (''DMC'') serves as the investment adviser to each portfolio of Delaware Trust. DMC is a series of Delaware Management Business Trust, which is an indirect, wholly owned subsidiary of Delaware Management Holdings, Inc. DMC is paid fees by the Delaware VIP Trend Series.

12. MFS® Variable Insurance Trust℠ (''MFS Trust'') is registered as an open-end management investment company under the 1940 Act and currently offers 15 separate investment portfolios, two of which would be involved in the proposed substitutions. MFS Trust issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Each separate series offers only two classes of shares, Initial Class shares and Service Class shares. The distinction between Initial Class shares and Service Class shares is the imposition of a distribution fee of an annual rate of 0.25% of each series' average daily net assets attributable to the Service Class shares pursuant to Rule 12b–1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Initial Class shares of the Substituted Portfolios. Massachusetts Financial Services Company (''MFS'') serves as the investment adviser to each of the portfolios of the MFS Trust. MFS is a subsidiary of Sun Life of Canada (U.S.) Financial Services Holdings, Inc., which, in turn, is a indirect wholly owned subsidiary of Sun Life Assurance Company of Canada. MFS is paid fees by each of the MFS Trust portfolios for its services.

13. MLIG Variable Insurance Trust (''MLIG Trust'') is registered as an open-end management investment company under the 1940 Act and currently offers 24 separate investment portfolios, two of which would be involved in the proposed substitutions. MLIG Trust issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Each separate series offers only one class of shares, and has not adopted a plan pursuant to Rule 12b–1 under the 1940 Act. Roszel Advisors, LLC (''Roszel Advisors'') serves as the investment manager of the MLIG Trust and each of the portfolios therein. Roszel Advisors is a wholly owned subsidiary of MLIG, Inc. Roszel Advisors receives management fees from each of the portfolios. DMC is the subadviser to the Roszel/Delaware Trend Portfolio. PIMCO Advisors Retail Holdings LLC and Cadence Capital Management LLC (''PIMCO'' and ''Cadence,'' respectively) are the subadvisers to the Roszel/PIMCO CCM Capital Appreciation Portfolio.

14. The MLIG Trust and Roszel Advisors obtained an order from the Commission pursuant to Section 6(c) of the 1940 Act exempting them from Section 15(a) of the 1940 Act and Rule 18f–2 under the 1940 Act, with respect to subadvisory agreements (the ''Manager of Managers Order''). The Manager of Managers Order permits the MLIG Trust and Roszel Advisors to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval. The relief granted in the Manager of Managers Order extends to all of the portfolios of the MLIG Trust that will be involved in the proposed substitutions.

15. The following chart sets out the investment objectives and certain policies of each Substituted Portfolio and each Replacement Portfolio, as stated in their respective prospectuses and statements of additional information.

Substituted portfolios	Replacement portfolios
AllianceBernstein Quasar Portfolio of the AllianceBernstein Fund	Roszel/Delaware Trend Portfolio of the MLIG Trust.
Investment Objective—To seek growth of capital by pursuing aggressive investment policies. The portfolio treats current income as incidental to its objective.	Investment Objective—To seek long-term capital appreciation.
Investment Policies—Generally, the portfolio invests in a widely diversified mix of equity securities across many industries that offer the possibility of above-average earnings growth. Currently, the portfolio's investment adviser emphasizes investing in small cap companies, and it invests both in well-known and established companies and in new and unseasoned companies. The portfolio may invest in any securities with the potential for capital appreciation. In choosing securities, the portfolio's investment adviser considers the economic and political outlook, management capabilities and practices, and trends in the determinants of corporate profits, among others. The portfolio may also invest in non-convertible bonds, preferred stocks, and foreign securities.	Investment Policies—The portfolio invests at least 65% of total assets in small cap equities of companies believed to have potential for high earnings growth. The portfolio's investment adviser seeks small companies that offer substantial opportunities for long-term price appreciation because they are poised to benefit from changing and dominant social and political trends. The portfolio's investment adviser evaluates company management, product development and sales and earnings, and it seeks market leaders, strong product cycles, innovative concepts, and industry trends. Also considered are a company's price-to-earning ratio, estimated growth rates, market cap, and cash flows to determine the company's attractiveness. To reduce the risk of investing in small cap companies, the portfolio invests in a well-diversified portfolio of different stocks representing a wide array of industries. The portfolio uses the Russell 2500 Growth Index as a performance benchmark. The portfolio may invest up to 25% of total assets in foreign securities.
Delaware VIP Trend Series of the Delaware Trust.	
Investment Objective—To seek long-term capital appreciation.	

Substituted portfolios	Replacement portfolios
Investment Policies—The Series invests mainly in stocks of small, growth-oriented or emerging companies that the portfolio's investment adviser believes are responsive to changes in the marketplace and have prospects for continued growth. The portfolio's investment adviser looks for market leaders, strong product cycles, innovative concepts, and industry trends, and also examines price-to-earnings ratios, estimated growth rates, market caps, and cash flow when it selects stocks for investment.	
MFS Research Series of the MFS Trust	Roszel/PIMCO CCM Capital Appreciation Portfolio of the MLIG Trust.
Investment Objective—To seek long-term growth of capital and future income.	Investment Objective—To seek long-term capital appreciation.
Investment Policies—Normally, the Series invests at least 80% of its net assets in common stocks and related securities (preferred stocks, convertible securities and depositary receipts for those securities), and focuses on companies, regardless of size, believed to have favorable prospects for long-term growth, attractive valuations based on current and expected earnings or cash flow, dominant or growing market share, and superior management. The Series may also invest in junk bonds and in foreign securities (including emerging markets securities). The Series' assets are allocated among various industries.	Investment Policies—The portfolio invests at least 65% of total assets in large cap stocks of companies believed to have potential for high earnings growth. These companies are generally well-established issuers with strong business franchises and favorable long-term growth prospects. The portfolio's investment adviser seeks to achieve a consistent, favorable balance of growth and value with stocks of companies in the Russell 1000 and the S&P 500 Indexes. In choosing companies to invest in, the portfolio's investment adviser first looks at dividend growth, earnings growth, relative growth of earnings over time, the company's history of meeting earnings targets, and price-to-earnings ratios and other ratios that reveal value. The most promising companies are then evaluated on the basis of management strength, competitiveness in their industries, business prospects, and profitability. The portfolio sells stocks when their price declines relative to other stocks invested in by the portfolio or to other companies in the same business industry or when the issuer's earnings decline. The portfolio may invest up to 10% of total assets in foreign securities. The portfolio uses the S&P 500 Index as a benchmark index.
MFS Investors Trust Series of the MFS Trust.	
Investment Objective—To provide long-term growth of capital, with reasonable current income as a secondary objective.	
Investment Policies—Normally, the Series invests at least 65% of net assets in common stocks and related securities (preferred stocks, convertible securities and depositary receipts for those securities). The portfolio's investment adviser generally focuses on companies with larger market caps (although it may invest in companies of any size) believed to have sustainable growth prospects and attractive valuations based on current and expected earnings or cash flow. The portfolio's investment adviser will attempt to generate gross current income equal to about 90% of the dividend yield on the Standard & Poor's 500 Composite Stock Index. The portfolio's investment adviser selects securities by analyzing earnings, cash flows, competitive position and management's abilities. The Series may invest in foreign equity securities.	

16. The following chart describes the fees payable for advisory services (before any waivers and reimbursements) for the year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by each Substituted Portfolio and each Replacement Portfolio.

Substituted portfolios	Percent	Replacement portfolios	Percent
AllianceBernstein Quasar Portfolio, Annual Advisory Fees ...	1.00	Roszel/Delaware Trend Portfolio, Annual Advisory Fees	0.85
Delaware VIP Trend Series, Annual Advisory Fees	0.75		
MFS Research Series, Annual Advisory Fees	0.75	Roszel/PIMCO CCM Capital Appreciation Portfolio, Annual Advisory Fees.	0.80
MFS Investors Trust Series, Annual Advisory Fees	0.75	.....	

17. The following charts compare the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of each Substituted Portfolio and each Replacement Portfolio. None of the relevant classes of shares of the Replacement Portfolios have adopted a plan pursuant to Rule 12b–1 under the 1940 Act.

Substituted portfolios (in percent)			Replacement portfolios (in percent)
	AllianceBernstein Quasar Portfolio	Delaware VIP Trend series	Roszel/Delaware Trend Portfolio
Management fees	1.00	0.75	0.85
12b–1 fees	N/A	N/A	N/A
Other expenses	0.25	0.09	0.97
Total operating expenses	1.25	0.84	1.82
Less expense waivers and reimbursements	N/A	N/A	(0.67)
Net operating expenses	1.25	0.84	1.15
	MFS Research series	MFS Investors Trust series	Roszel/PIMCO CCM Capital Appreciation Portfolio
Management Fees	0.75	0.75	0.80
12b–1 fees	N/A	N/A	N/A
Other expenses	0.12	0.13	0.97
Total operating expenses	0.87	0.88	1.77
Less expense waivers and reimbursements	N/A	N/A	(0.67)
Net operating expenses	0.87	0.88	1.10

18. ''Other Expenses'' for the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio are based on estimates for the fiscal year ended December 31, 2003. In addition, MLIG Trust has entered into an expense limitation arrangement with Roszel Advisors whereby Roszel Advisors will reimburse the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio to the extent total operating expenses (excluding interest, taxes, brokerage commissions, expenses in the form of fees paid to the Trust service providers by brokers in connection with directed brokerage arrangements, other expenditures that are capitalized in accordance with generally accepted accounting principles, and other extraordinary expenses not incurred in the ordinary course of each Portfolio's business) exceed certain limits. The expense limitation agreement is effective through April 30, 2004, and is expected to continue from year to year, conditioned upon approval for continuance by the board of trustees of the MLIG Trust. Net Operating Expenses for the AllianceBernstein Quasar Portfolio do not reflect fees waived or expenses assumed by Alliance during the year ended December 31, 2002. Such waivers and assumption of expenses were made on a voluntary basis, and Alliance has discontinued this waiver. During the fiscal year ended December 31, 2002, Alliance waived management fees totaling 0.12% and other expenses totaling 0.02% for the AllianceBernstein Quasar Portfolio. After considering such reimbursements, actual Net Operating Expenses were 1.11%. DMC, the adviser to the Series, has contracted to waive fees and pay expenses through April 30, 2004 in order to prevent the Series' total operating expenses (excluding any 12b–1 fees, taxes, interest, brokerage fees, and extraordinary expenses) from exceeding 0.95% of average daily net assets.

19. Pursuant to their authority under the respective Variable Contracts and the prospectuses describing the same, and subject to the approval of the Commission under Section 26(c) of the 1940 Act, MLLIC and MLNY propose to substitute shares of the Replacement Portfolios for shares of the Substituted Portfolios in the Separate Accounts (the ''Substitutions'').

20. The Substitutions are part of an overall business plan involving the management of MLLIC and MLNY to make their respective products, including the Variable Contracts, more competitive (both in terms of new sales, as well as with regard to the retention of existing blocks of business) and more efficient to administer and oversee. The proposed Substitutions are consistent with this business plan and involve mutual funds with similar investment objectives.

21. Over the past several years, MLLIC and MLNY have engaged in a thorough review of the efficiencies and structures of all of the investment options they offer under the Variable Contracts. As part of this ongoing effort to make the Variable Contracts more competitive, the Applicants engaged in certain substitutions on May 1, 2002. Based on their continuing evaluation of the available investment options, MLLIC and MLNY believe that more concentrated and streamlined operations for investment options could result in increased operational and administrative efficiencies and economies of scale for the Companies. More specifically, MLLIC and MLNY feel that streamlining the number of nonproprietary fund families available through the Variable Contracts and altering the available portfolios will simplify the administration of the Variable Contracts, particularly with regard to communications with the fund families and the preparation of various reports and disclosure documents. This streamlining will allow them to enhance their communication efforts to Variable Contract owners and sales representatives regarding the available portfolios, and may provide for more enhanced and timely reporting to MLLIC and MLNY from fund families and therefore from MLLIC and MLNY to Variable Contract owners. Furthermore, reducing the number of nonproprietary fund families also will provide MLLIC and MLNY with more control over fund changes that affect their Variable Contracts, allowing for appropriate long-term strategic planning.

22. During this continuing evaluation of the available investment options, MLLIC and MLNY also have engaged in a thorough review of the quality of all of the investment options offered under the Variable Contracts. This due diligence review involved an evaluation of the investment performance, the investment process, and the investment

teams responsible for the management of the Substituted Portfolios. Ultimately, MLLIC and MLNY concluded that the Substituted Portfolios offered under the Variable Contracts warrant replacement and that it would be preferable to make alternative investment options available to both current and future Variable Contract owners. Consequently, MLLIC and MLNY identified certain investment options (*i.e.*, the Replacement Portfolios) that MLLIC and MLNY feel would be more competitive and more attractive to Variable Contract owners. In fact, under certain of the Variable Contracts (where administratively feasible), MLLIC and MLNY closed the subaccounts investing in the Substituted Portfolios to the allocation of premium and contract value on May 1, 2003, and simultaneously added new investment options that invest in the Replacement Portfolios.

23. MLLIC and MLNY also feel that these options would better promote their goals of increasing administrative efficiency of, and control over, their Variable Contracts if they were a part of their affiliated fund families. For example, one of the proposed Substitutions involves the Roszel/Delaware Trend Portfolio, which is modeled on one of its corresponding Substituted Portfolios, the Delaware VIP Trend Series; this Replacement Portfolio also shares an identical investment objective and substantially similar policies, restrictions, and risks as this Substituted Portfolio. In addition, as the Replacement Portfolios operate pursuant to the Manager of Managers Order, the Substitutions would provide protection to Variable Contract owners by giving Roszel Advisors the agility and flexibility to change the subadvisers of the Replacement Portfolios should such a change become warranted or advisable.

24. MLLIC and MLNY will effect the Substitutions as soon as practicable following the issuance of the requested order as follows. As of the effective date of the Substitutions (''Effective Date''), each Separate Account will redeem shares of the applicable Substituted Portfolios in-kind. The proceeds of such redemptions will then be used to purchase shares of the corresponding Replacement Portfolios, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Substituted Portfolios in the applicable Replacement Portfolios. Following these transactions, certain Separate Accounts may have two subaccounts holding shares of the Replacement Portfolios. Each Separate Account will combine the two subaccounts holding shares of each Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect of the Substitutions will be to eliminate the subaccount in each Separate Account relating to the Substituted Portfolios.

25. Redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. All redemptions of shares of the Substituted Portfolios and purchases of shares of the Replacement Portfolios will be effected in accordance with Rule 22c–1 of the 1940 Act.

26. The Substitutions will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Variable Contract owners will not incur any additional fees or charges as a result of the Substitutions, nor will their rights or MLLIC's and MLNY's obligations under the Variable Contracts be altered in any way (although Variable Contract owners will lose their right to vote on whether the MLIG Trust and Roszel Advisors may enter into and materially amend investment subadvisory agreements relating to the Replacement Portfolios, pursuant to the Manager of Managers Order described above). All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by MLLIC or MLNY. In addition, the Substitutions will not impose any tax liability on Variable Contract owners. The Substitutions will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitutions than before the Substitutions. Neither MLLIC nor MLNY will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitutions. To the extent that the total operating expenses of either of the Replacement Portfolios (taking into account any expense waiver or reimbursement), for each fiscal quarter during the twenty-four months following the Substitutions, exceed on an annualized basis the net expense level of the corresponding Substituted Portfolio for the fiscal year ended December 31, 2002, MLLIC and MLNY will, for each Variable Contract outstanding on the date of the Substitutions, make a corresponding reduction in Separate Account expenses on the last day of such fiscal quarter, such that the amount of the Replacement Portfolio's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Substituted Portfolio and the expenses of the Separate Account for the 2002 fiscal year. In addition, for twenty-four months following the Substitutions, MLLIC and MLNY will not increase asset-based fees or charges for Variable Contracts outstanding on the day of the Substitutions. Thereafter, expenses of the Replacement Portfolios will vary from year to year and may exceed those of their corresponding Substituted Portfolios. The procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitutions shall be equal to the cash value immediately before the Substitutions, and that the Substitutions will not affect the value of the interests of those owners of other MLLIC and MLNY variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the AllianceBernstein Fund, the Delaware Trust, the MFS Trust, or the MLIG Trust.

27. Variable Contract owners have been notified of the Application by means of a supplement to the prospectus for each of the Variable Contracts that discloses that the Applicants have filed the Application and seek approval for the Substitutions (''Pre-Substitution Notice''). The Pre-Substitution Notice set forth the anticipated Effective Date and advised Variable Contract owners that contract values attributable to investments in the Substituted Portfolios will be transferred to the Replacement Portfolios, without charge (including sales charges or surrender charges) and without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice stated that, from the date the initial application was filed with the Commission through the date thirty (30) days after the Substitutions, Variable Contract owners may make one transfer of contract value from the subaccounts investing in the Substituted Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other subaccount without charge (including sales charges or surrender charges) and without that transfer counting toward the number

permitted without charge under the Variable Contract.

28. In addition, MLLIC will solicit approval of the proposed Substitutions from MLLIC Variable Contract owners and MLNY will solicit approval of the proposed Substitutions from MLNY Variable Contract owners. Such approval will be sought from the owners of First Generation MLLIC VLI Contracts, Second Generation MLLIC VLI Contracts, MLLIC Annuity Contracts, First Generation MLNY VLI Contracts, Second Generation MLNY VLI Contracts, and MLNY Annuity Contracts, each voting as a separate group. This solicitation will make clear that approval of the proposed Substitutions signifies approval of the Replacement Portfolios' reliance on the Manager of Managers Order described above. If MLLIC and MLNY do not receive approval for the Substitutions (and in effect, the Replacement Portfolios' reliance on the Manager of Managers Order) for all groups of Contracts, MLLIC and MLNY may decide to effect the Substitutions only for some or all of those groups whose owners approve them. Similarly, if MLLIC and MLNY do not receive approval for all of the Substitutions, MLLIC and MLNY may decide to effect only those Substitutions that were approved by Variable Contract owners. Neither MLLIC nor MLNY will effect any proposed Substitution for any group of Contracts that has not approved that Substitution. Approval will be obtained by the affirmative vote of the lesser of: (1) A majority of the outstanding interests in each applicable subaccount investing in the relevant Substituted Portfolio (measured by the dollar value of accumulation units), or (2) 67% of such outstanding interests voted, if votes received represent a majority of such interests. MLLIC and MLNY will solicit approval of Variable Contract owners by sending them written voting forms accompanied by a voting information statement and other disclosure documents in a manner generally consistent with applicable requirements of Regulation 14A under the 1934 Act (collectively, ''voting materials''). In particular, the relevant information statement will disclose, in substance, the information required by applicable items of Form N–14. Any beneficial financial interest that MLLIC or MLNY may have in any of the Separate Accounts is immaterial in relation to the interests of Variable Contract owners and neither MLLIC nor MLNY will cast any votes. Pursuant to Rule 20a–1 under the 1940 Act, the voting materials have been filed with the Commission as proxy materials. Applicants anticipate that voting materials will be sent to Variable Contract owners on October 10, 2003. Unless extended by either MLLIC or MLNY, votes must be received by November 7, 2003 to be counted.

29. All Variable Contract owners will have received a copy of the most recent Replacement Portfolio prospectuses prior to the Substitutions.

30. Finally, within five (5) days after the Substitutions, Variable Contract owners will be notified, by means of a supplement to the prospectus for each of the Variable Contracts, that the Substitutions were carried out (''Post-Substitution Notice''). The Post-Substitution Notice will restate the information set forth in the Pre-Substitution Notice (*e.g.*, advising Variable Contract owners of the ''free'' transfer right).

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision. In addition, the Applicants submit that the proposed Substitutions meet the standards that the Commission and its Staff have applied to substitutions that have been approved in the past.

3. The replacement of the Substituted Portfolios with the Replacement Portfolios is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act. The Substitutions will provide Variable Contract owners with comparable investment vehicles.

4. Although not always identical, the investment objectives, policies, and strategies of the Replacement Portfolios are comparable to those of their respective Substituted Portfolios.

5. In each proposed Substitution, the types of investment advisory and administrative services provided to the Replacement Portfolios by their various investment advisers are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolios by their respective investment advisers. Variable Contract owners invested in the Delaware VIP Trend Series (one of the Substituted Portfolios) will enjoy continuity of their investment adviser due to the ''manager of managers'' approach employed by Roszel Advisors, the investment adviser to the corresponding Replacement Portfolio. The Replacement Portfolio will be managed overall by Roszel Advisors, but much of the day-to-day management activity will be handled by the subadviser, DMC, the investment adviser currently managing the Delaware VIP Trend Series. While Variable Contract owners invested in the AllianceBernstein Quasar Portfolio, whose investment adviser is currently Alliance, would be managed by a new investment adviser and a new subadviser, as stated above, the types of investment advisory and administrative services provided after the Substitution will be comparable to those received before the Substitution. Similarly, the same will be true of the Substitution of shares of the Roszel/PIMCO CCM Capital Appreciation Portfolio (the Replacement Portfolio), whose investment adviser will be Roszel Advisors and whose subadvisers will be PIMCO and Cadence, for shares of the MFS Research Series and MFS Investors Trust Series, whose investment adviser is MFS.

6. Although the Delaware VIP Trend Series' advisory fee and total operating expenses are lower than those of the Roszel/Delaware Trend Portfolio (before any waivers and reimbursements), the AllianceBernstein Quasar Portfolio's advisory fee and total operating expenses are higher than those of the Roszel/Delaware Trend Portfolio (before

any waivers and reimbursements). Moreover, the proposed Substitutions will be effected only with the approval of Variable Contract owners. Finally, MLLIC and MLNY will agree that, for two years from the date of the Substitutions, they will reduce Separate Account expenses to the extent the annualized expenses for either Replacement Portfolio for any fiscal quarter exceed the 2002 net expense level of its corresponding Substituted Portfolio. Similarly, although the advisory fee and total operating expenses of the MFS Research Series and the MFS Investors Trust Series are lower than those of the Roszel/PIMCO CCM Capital Appreciation Portfolio (before any waivers and reimbursements), MLLIC and MLNY will effect the proposed Substitutions only if Variable Contract owner approval is received. And, MLLIC and MLNY will agree that, for two years from the date of the Substitutions, they will reduce Separate Account expenses to the extent the annualized expenses for either Replacement Portfolio for any fiscal quarter exceed the 2002 net expense level of its corresponding Substituted Portfolio.

7. Although not always identical, the investment risks of the Replacement Portfolios are comparable to those of their respective Substituted Portfolios.

8. The Section 17(b) Applicants also request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit MLLIC and MLNY to carry out the Substitutions by redeeming shares issued by AllianceBernstein Fund, Delaware Trust, and MFS Trust in-kind and using the distributed securities to purchase shares issued by MLIG Trust.

9. Section 17(a)(1) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. MLLIC and MLNY anticipate that the Substitutions will be done (in whole or in part) by redeeming shares of the Substituted Portfolios in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolios. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company by MLLIC, MLNY, and the MLIG Trust, each arguably an affiliated person of those investment companies.

10. Pursuant to Section 17(a)(1) of the 1940 Act, the Section 17(b) Applicants may be considered affiliates of one or more of the funds involved in the Substitutions, based upon the definition of ''affiliated person'' under Section 2(a)(3) of the 1940 Act. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares, and also by means of in-kind transactions, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

11. Any in-kind redemptions and purchases for purposes of the Substitutions will be effected in a manner consistent with the investment objectives and policies of the Substituted Portfolios and the Replacement Portfolios. Subject to the oversight of Roszel Advisors, DMC will review the securities holdings of the AllianceBernstein Quasar Portfolio and the Delaware VIP Trend Series, and PIMCO and Cadence will review the securities holdings of the MFS Research Series and the MFS Investors Trust Series, and determine which of these Substituted Portfolio holdings would be suitable investments for the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio, respectively, in the overall context of the Replacement Portfolios' investment objectives and policies and consistent with their management of the Replacement Portfolios. The Section 17(b) Applicants state that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolios to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming and purchasing portfolios. The redeeming and purchasing values will be the same. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees, or other remuneration will be paid in connection with the in-kind transactions. If Roszel Advisors declines to accept particular portfolio securities of any of the Substituted Portfolios for purchase in-kind of shares of any of the Replacement Portfolios, those positions will be liquidated by the applicable Substituted Portfolio and shares of the corresponding Replacement Portfolio will be purchased with cash.

12. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

13. The Section 17(b) Applicants submit that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17(b) Applicants also submit that the Substitutions are consistent with the policies of AllianceBernstein Fund, Delaware Trust, MFS Trust, and MLIG Trust, and their portfolios, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, the Section 17(b) Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in the Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitutions under Section 26(c) of the 1940 Act as necessary to carry out the transactions described in the Application; and (ii) exempting any in-kind redemptions and purchases from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in the Application.

2. Each Variable Contract owner will have been sent (i) prior to the Effective Date, a copy of the effective prospectus relating to the relevant Replacement Portfolio, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions and the rights of the Variable Contract owners in connection with the Substitutions, and (iii) a Post-Substitution Notice within five days after the Substitutions informing them that the Substitutions were carried out and restating the information set forth in the Pre-Substitution Notice.

3. MLLIC and MLNY shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitutions and related

transactions described herein, (ii) the transactions can be consummated as described in the Application under applicable insurance laws, and

(iii) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48668; File No. SR–BSE–2003–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Amend Its Listed Securities Requirements Relating to the Mandatory Establishment of Independent Audit Committees for All Listed Issuers

October 21, 2003.

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 July 16, 2003, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new requirements concerning audit committees to its Listed Securities Requirements in Chapter XXVII of the Rules of the Board of Governors of the BSE (''BSE Rules''). The Exchange states that the proposed rule change will address the requirements of Rule 10A–3 under the Act relating to the mandatory establishment of independent audit committees for all listed issuers.[3] The text of the proposed rule change is below. Text in italics indicates material to be added.

* * * * *

Chapter XXVII

Listed Securities—Requirements

Sec. 1–9. No change.

Sec. 10. Corporate Governance

A. *Audit Committees: All issuers with securities listed on the Boston Stock Exchange will be required to establish an independent audit committee that shall be defined as: ''An independent committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the Company and audits of the financial statements of the Company; and if no such body exists with respect to the Company, the entire board of directors.'' All issuers with securities listed on the Boston Stock Exchange shall comply with the following rules:*

1. Required Standards for Audit Committee Pursuant to SEC Rule 10A–3:

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j–1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):

(1) National securities exchanges. The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) National securities associations. The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) Opportunity to cure defects. The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) Notification of noncompliance. The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(5) Implementation.

(i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative, and listed issuers must be in compliance with those rules, by the following dates:

(A) July 31, 2005 for foreign private issuers and small business issuers (as defined in § 240.12b–2); and

(B) For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.

(ii) Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with this section.

(iii) Each national securities exchange and national securities association must have final rules or rule amendments that comply with this section approved by the Commission no later than December 1, 2003.

(b) Required standards.

(1) Independence.

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an ''interested person'' of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(iv) Exemptions from the independence requirements.

(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act (15 U.S.C. 78l), or for an issuer that has a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)):

(1) All but one of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for 90 days from the date of effectiveness of such registration statement; and

(2) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.

(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;

(2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.

(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(2) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, the Commission may exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(2) Responsibilities relating to registered public accounting firms. The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(3) Complaints. Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) Authority to engage advisers. Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) Funding. Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:

(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and

(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) General exemptions.

(1) At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of other classes of securities of the listed issuer on a national securities exchange or national securities association is not subject to the requirements of this section.

(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.

(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:

(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;

(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:

(A) Separate from the board of directors; or

(B) Composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a–14(g) and § 240.15d–14(g));

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii) Foreign governments (as defined in § 240.3b–4(a)).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) Disclosure. Any listed issuer availing itself of an exemption from the independence standards contained in paragraph (b)(1)(iv) of this section (except paragraph (b)(1)(iv)(B) of this section), the general exemption contained in paragraph (c)(3) of this section or the last sentence of paragraph (a)(3) of this section, must:

(1) Disclose its reliance on the exemption and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) Definitions. Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term affiliate of, or a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(2) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the

term board of directors means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term dual holding companies means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term executive officer has the meaning set forth in § 240.3b–7.

(7) The term foreign private issuer has the meaning set forth in § 240.3b–4(c).

(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities. Instructions to § 240.10A–3.

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d–3.

2. Compliance:

(a) *Certification: Initially, issuers listed on the Boston Stock Exchange or issuers applying for listing on the Exchange shall submit a statement indicating compliance with this Rule by the dates of effectiveness indicated below, and annually thereafter, in conjunction with the filing of the issuer's annual audited financial statement. Such issuers shall inform the Exchange promptly in the event of any of the following:*

(1) *A change in membership of any member of the audit committee, and a statement indicating compliance with this Rule as it pertains to any new member of such committee;*

(2) *Any event that would materially alter the independence of the audit committee or otherwise violate any of the Rules set forth herein or SEC Rule 10A–3;*

(3) *Any amendment to the corporate charter of the issuer having any effect on the issuer's audit committee;*

(4) *Upon the issuers executive officer becomes aware of noncompliance by the issuer with any part of this Rule; and*

(5) *Any reliance upon any exemption or exclusion from this Rule.*

(b) *Response to Exchange Inquiries: Listed companies shall promptly respond to any inquiry by the Exchange regarding the companies' audit committee, its independence, or the members thereof.*

(c) *Enforcement and Opportunity To Cure Defects: A listed issuer that has been deemed not in compliance with this Rule shall be given notice of such non-compliance and given thirty (30) days from the time of notice to either rectify the matter or submit a plan of resolution in writing to the Exchange. Upon submission of such, the Exchange shall determine whether the issuer into complied with this Rule or will comply within a reasonable time, not to exceed six months. If a member of a listed issuer's audit committee ceases to be independent as set-forth herein, such issuer may request, in writing, that such member remain on the audit committee until the earlier of the next annual shareholders meeting, or one year from the occurrence of the event that caused the member to be no longer independent, provided however, that the event that caused non-independence was outside such member's reasonable control. In the event that the issuer fails to so comply, the Exchange shall take the following measures:*

(1) *Thirty (30) days after notice of non-compliance: all securities of the issuer listed on the Exchange shall be suspended from trading pending resolution of the matter.*

(2) *Sixty (60) days after notice of suspension: all securities of the issuer listed on the Exchange, shall be involuntarily delisted from the Exchange.*

(d) *Effectiveness: Small business issuers and foreign private issuers must be in compliance with the provisions of this Section 10A by July 31, 2005. All other issuers listed on the Exchange must be in compliance with this Rule no later than the earlier of the issuer's first annual shareholders meeting after January 15, 2004, or in no case later than October 31, 2004.*

B. *(Reserved for Future Rules Relating to Corporate Governance Standards).*

* * * * *

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 BSE states that the purpose of the proposed rule change is to add a rule to its Listed Securities Requirements in Chapter XXVII of the BSE Rules to address the requirements of Rule 10A–3 under the Act [4] relating to the mandatory establishment of independent audit committees for all listed issuers. Specifically, under the Exchange's proposed rule, the Exchange will be prohibited from listing, or continuing to list, any issuer that is not in compliance with certain requirements by July 31, 2005 for foreign private issuers and small business issuers, and the earlier of the first annual shareholders meeting after January 15, 2004, but in no case later than October 31, 2004 for all other issuers.

First, listed issuers will be required to establish an audit committee that shall be defined as: ''An independent committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the Company and audits of the financial statements of the Company; and if no such body exists with respect to the Company, the entire board of directors.'' For the purposes of this rule, an audit committee member shall not be considered independent if: (1) such member accepts, either directly or indirectly, any consulting, advisory, or other compensatory fee from the issuer; or (2) is an affiliated person of the issuer or any subsidiary thereof.

Second, audit committees of listed issuers must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee. Further, each audit committee must establish procedures for the receipt, retention and treatment of the complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters. To such end, each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties, and each issuer must provide adequate funding for the audit committee.

The Exchange notes that this filing is restricted to the audit committee rules required by Rule 10A–3 under the Act.[5] The Exchange intends to file additional proposed rule changes relating to other corporate governance listing standards.[6] The Exchange is confident that the steps outlined above demonstrate a commitment to corporate governance and restoration of investor confidence to the U.S. securities markets. In particular, the Exchange believes that the rules outlined above will foster independent and vigilant audit committees with meaningful authority. In turn, these audit committees will ensure that investors receive accurate and reliable corporate financial information from BSE listed companies. The Exchange believes that such information is not only fundamental to the liquidity and vibrancy of the markets, but will also serve to restore confidence in the national market system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

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 comments on 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR–BSE–2003–07 and should be submitted by November 18, 2003.

[4] 17 CFR 240.10A–3.

[5] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

[6] Telephone conversation between Anthony Stankiewicz, Vice-President and Corporate Secretary, BSE, and Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, on October 21, 2003.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27097 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48672; File No. SR–CBOE–2003–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Relating to the Trading of Ratio Orders

October 21, 2003.

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 February 24, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 to the proposal on October 8, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 6.45, ''Priority of Bids and Offers,'' and 6.53, ''Certain Types of Orders Defined,'' to allow ratio orders to be executed through the CBOE. The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

Priority of Bids and Offers

Rule 6.45 Except as provided by Rules, including but not limited to Rule 6.2A, 6.8, 6.9, Rule 6.47, Rule 8.87, and CBOE Regulatory Circulars approved by the SEC concerning Participation Rights, the following rules of priority shall be observed with respect to bids and offers:

(a)–(d) No Change.

(e) Complex Order Priority Exception: A member holding a spread, straddle, [or] combination, *or ratio* order (or a stock option order as defined in Rule 1.1(ii)(b)) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders, as defined in Rule 1.1(ii)(a), have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

* * * Interpretation and Policies:

.01–.02 No change.

* * * * *

Certain Types of Orders Defined

* * * * *

Rule 6.53(a)–(m) No change.

(n) Ratio Order. A Ratio Order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 6.53 lists and defines the several types of orders that are executed through the CBOE.[4] Of the several types of orders defined in CBOE Rule 6.53, three are complex orders: spread orders, combination orders, and straddle orders.[5] The CBOE proposes to add another type of complex order, ratio orders, to the list of orders included in CBOE Rule 6.53. A ratio order is either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under the CBOE's proposal, a permissible ratio is any ratio that is equal to or greater than one to three (.333) or less than or equal to three to one (3.0). For example, a one to two (.5) ratio, a two to three (.667) ratio, or a two to one (2.0) ratio is permissible, whereas a one to four (.25) ratio or a four to one (4.0) ratio is not.

The CBOE believes that ratio orders are merely slight variations on the types of complex orders currently permitted on the CBOE. For this reason, the CBOE believes that it is appropriate to treat ratio orders in a manner similar to the existing complex orders that currently trade on the CBOE. Accordingly, the CBOE proposes to afford ratio orders within the permissible ratio the exception to the priority rules under CBOE Rule 6.45(e).

Specifically, CBOE Rule 6.45(e) provides for exceptions to the Exchange's priority rules when a member is holding a spread order, straddle order, or a combination order. Under CBOE Rule 6.45(e), a member holding a spread, straddle, or combination order and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book, provided that at least one leg of the order betters the corresponding bid (offer) in the book. Under the CBOE's proposal, ratio orders that are equal to or greater than one to three (.333) or less than or equal to three to one (3.0) will be given the same exception under CBOE Rule 6.45(e) as spread, straddle, and combination orders.

Because the proposal seeks consistent priority treatment for similar types of orders traded on the CBOE, the CBOE believes that the proposal furthers the objectives of section 6(b)(5) of the Act[6]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated October 6, 2003 (''Amendment No. 1''). Amendment No. 1 revises the proposal to provide that the permissible ratio for a ratio order is any ratio that is equal to or greater than one to three (.333) and less than or equal to three to one (3.0).

[4] These orders include, for example, market orders, contingency orders, and straddle orders.

[5] These types of orders are defined in paragraphs (d), (e), and (f), respectively, of CBOE Rule 6.53.

[6] 15 U.S.C. 78f(b)(5).

to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–07 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27092 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48669; File No. SR–CHX–2003–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Amend Certain Provisions of Its Rules Relating to the Governance of Issuers That List Securities on the Exchange

October 21, 2003.

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 July 23, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of its rules relating to the governance of issuers that list securities on the CHX. Specifically, the CHX seeks to amend its Tier I and Tier II listing standards to enhance its requirements relating to the roles and responsibilities of independent directors and independent board committees, including audit committees, nominating committees and compensation committees. The Exchange also seeks to amend its maintenance standards to set out a process that would allow an issuer an opportunity to cure a failure to meet the Exchange's maintenance listing standards, including its governance-related standards. The text of the proposed rule change is below.[3] Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

Chicago Stock Exchange Rules

ARTICLE XXVIII

Listed Securities

* * * * *

Maintenance Standards Applicable to All Tier I Issues

RULE 17A. The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading*, or failure to comply with required corporate governance standards.*

* * **Interpretations and Policies*

If the Exchange identifies a Tier I issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Kathleen M. Boege, Vice-President and Associate General Counsel, CHX, and Ira L. Brandriss, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 10, 2003.

Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but its not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

Tier I Corporate Governance and Disclosure Standards

Corporate Governance

RULE 19. The following Rule 19 applies [only] to Tier I issuers:

(a) Board of Directors.

(1) General Rule. Each issuer shall maintain a board of directors consisting of a majority of independent directors; however, each small business issuer shall be required only to maintain a board of directors consisting of at least 50% independent directors. Independent directors must have regularly scheduled meetings at which only independent directors are present.

(2) Exceptions. A controlled company is exempt from the requirements of this paragraph (a).

(b) Audit Committee. Each issuer shall establish and maintain an audit committee, of at least three persons, that meets the following standards.

(1) Audit Committee Composition

(A) Each member of the audit committee: (i) Must be an independent director as defined in subparagraph (o) below; (ii) must meet the criteria for independence set forth in SEC Rule 10A–3; and (iii) must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement.

(B) Exceptions.

(i) One director who is not independent, but who meets the criteria set forth in SEC Rule 10A–3 and who is not a current officer or employee (or an immediate family member of a current officer or employee) may be appointed to the audit committee, if the issuer's board under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve on the audit committee for more than two years under this exception (unless he or she ultimately satisfies the definition of an independent director) and may not chair the audit committee.

(ii) If a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A–3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs.

(iii) A small business issuer is only required to maintain an audit committee of at least two (not three) independent directors, but is otherwise required to comply with the provisions of this paragraph (b)(1).

(2) Audit Committee Responsibilities and Authority. The audit committee must have, at a minimum, (A) the responsibilities and authority set forth in SEC Rule 10A–3; and (B) the obligation to conduct an appropriate review of all related party transactions on an ongoing basis and to review potential conflict of interest situations where appropriate.

(3) Audit Committee Charter. Each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the committee's purpose—which, at a minimum, must be to:

(i) assist board oversight of (a) the integrity of the company's financial statements, (b) the company's compliance with legal and regulatory requirements, (c) the independent auditor's qualifications and independence, and (d) the performance of the company's internal auditors and independent auditors; and

(ii) prepare the required report to be included in the company's annual proxy statement or, if the company does not file a proxy statement, in the company's annual report; and

(B) the duties and responsibilities of the audit committee, which must, at a minimum, include (i) all duties and responsibilities that are set out in SEC Rule 10A–3 and section 303A(7)(c) and (d) of the Sarbanes-Oxley Act; and (ii) the obligation to conduct an appropriate review of all related party transactions on an ongoing basis and to review

potential conflict of interest situations where appropriate.

(c) Nominating Committee

(1) General Rule. The nomination of the issuer's directors shall be determined either by (A) a majority of the independent directors; or (B) a nominating committee comprised solely of independent directors.

(2) Exceptions.

(A) If the nominating committee is comprised of at least three persons, one director, who is not independent, but who is not a current officer or employee (or an immediate family member of a current officer or employee), may be appointed to the nominating committee if the issuer's board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years (unless he or she ultimately satisfies the definition of an independent director).

(B) Alternatively, if the nominating committee is comprised of at least three persons, and if the exception described in paragraph (c)(2) above is not relied upon, one director who owns 20% of more of the company's common stock or voting power outstanding, and is not independent because that director is also an officer, may be appointed to the nominating committee if the issuer's board determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship, and the reasons for the determination.

(C) A controlled company is exempt from the requirements of this paragraph (c).

(D) If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements and management agreements), the selection and nomination of those directors need not be subject to the nominating committee process.

(d) Compensation Committee.

(1) Compensation of the issuer's chief executive officer shall be determined either by (A) a majority of the independent directors meeting in executive session or (B) a compensation committee comprised solely of independent directors meeting in executive session.

(2) Compensation of all other officers, as that term is defined in section 16 of the Act, shall be determined either by (A) a majority of the issuer's independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote.

(3) Exceptions.

(A) If the compensation committee is comprised of at least three persons, one director who is not independent and is not a current officer or employee (or an immediate family member or a current officer or employee), may be appointed to the compensation committee if the issuer's board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years (unless he or she ultimately satisfies the definition of an independent director).

(B) A controlled company is exempt from the requirements of this paragraph (d).

(e) Code of Business Conduct and Ethics. Each issuer shall adopt a code of conduct and ethics applicable to all directors, officers and employees that complies with the requirements of section 406(c) of the Sarbanes-Oxley Act and the rules thereunder. Waivers of the code's provisions for directors and executive officers must be approved by the issuer's board of directors. The issuer must make this code publicly available and must disclose, in its public filings, waivers of the code for directors or executive officers.

(f) Governance-Related Certifications.

(1) Annual Certification. Each issuer's chief executive officer annually must certify to the Exchange that he or she is not aware of any violation by the issuer of the standards set out in paragraphs (a) through (e) of this rule.

(2) Interim Certifications. Each issuer's chief executive officer must promptly notify the Exchange after any executive officer of the issuer becomes aware of any material non-compliance by the issuer with the standards set out in paragraphs (a) through (e) of this rule.

[(a)] *(g) Annual Reports.* No change to text.

[(b)] *(h) Quarterly Reports.* No change to text.

[(c)] *(i) Other Reports.* No change to text.

[(d) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined below.]

[(e) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

[(f)] *(j) Annual Meeting.* No change to text.

[(g)] *(k) Proxy Solicitations.* No change to text.

[(h) Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.]

[(i)] *(l) Stock Certificates.* No change to text.

[(j)] *(m) Shareholder Approval of Employee Stock Option Plans.* No change to text.

[(k)] *(n) Stock Transfer Facilities.* No change to text.

(o) Definitions. For purposes of this Article XXVIII, unless the context requires otherwise:

(1) ''Controlled company'' means a company of which more than 50% of the voting power is held by an individual, a group or another company.

(2) ''Immediate family member'' includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any person who has the same residence.

(3) ''Independent director'' means a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship, which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) A director who is, or during the past three years was, employed by the

issuer or by any parent or subsidiary of the issuer;

(B) A director who accepts or who has an immediate family member who accepts any payments from the issuer or any parent or subsidiary of the issuer in excess of $60,000 during the current fiscal year or any of the past three fiscal years, other than compensation for board service, payments arising solely from investments in the issuer's securities, compensation paid to an immediate family member who is an employee of the issuer or a parent or subsidiary of the issuer (but not if such person is an executive officer of the company or any parent or subsidiary of the company), benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(C) A director who is an immediate family member of an individual who is, or during the past three years was employed by the issuer or by any parent or subsidiary of the issuer as an executive officer;

(D) A director who is a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments (other than those arising solely from investments in the company's securities) that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, in the current fiscal year or any of the past three fiscal years;

(E) A director of the issuer who is employed as an executive officer of another entity where any of the executive officers of the issuer serve on the compensation committee of such other entity, or if such relationship existed during the past three years; or

(F) A director who is or was a partner or employee of the issuer's outside auditor, and worked on the issuer's audit, during the past three years.

(4) ''Sarbanes-Oxley Act'' means the Sarbanes-Oxley Act of 2002.

(5) ''Small business issuer'' means any issuer that meets the definition of that term set out in SEC Rule 12b–2.

* * * Interpretations and Policies

.01 No change to text.

.02 Controlled Companies. If an issuer relies on a controlled company exemption from the requirements of paragraphs 19(a), 19(c) or 19(d), above, it must disclose in its annual meeting proxy statement that it is a controlled company and provide the basis for that determination.

.03 General Exemptions from Governance Rules. The requirements of this rule do not apply to the following entities, as described below:

(1) Limited partnerships and companies in bankruptcies are not required to comply with sections (a), (c) and (d) above.

(2) Closed-end management companies are not required to comply with any provision of this rule other than section (b) above and are only required to comply with that provision to the extent required by SEC Rule 10A–3.

(3) Passive business organizations (such as royalty trusts) or derivatives and special purpose entities that are exempt from the requirements of SEC Rule 10A–3 are not subject to any requirement under this rule.

(4) Foreign issuers will be permitted to comply with their home country practices with respect to corporate governance (and thus are exempt from the requirements of sections (a)–(f), above), except to the extent that SEC Rule 10A–3 requires compliance with specific audit committee requirements.

(5) Issuers listing only preferred or debt securities on the Exchange typically will not be required to adhere to the requirements set out in sections (a)–(f) because they will be subject to the multiple listing exception described in Interpretation .04, below. To the extent required by SEC Rule 10A–3, these issuers will only be required to comply with section (b) above.

.04 Dual and Multiple Listings. At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in sections (a)–(d) above, and that class of security has not been suspended from trading on that market, the issuer shall not be required to separately meet the requirements set forth in sections (a)–(d) above with respect to that class of securities or any other class of securities. Governance requirements of other markets will be considered to be substantially similar to the requirements of sections (a)–(d) above if they are adopted by the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market) or if they otherwise require, subject to exceptions approved by the Commission, that the issuer maintain (1) a board of directors, a majority of whom are independent directors (50% of whom are independent directors, for a small business issuer); (2) an audit committee, consisting of at least three persons (two persons, for a small business issuer), all of whom are independent directors who meet the requirements of SEC Rule 10A–3; (3) a written audit committee charter that provides information about the committee's duties and responsibilities; (4) a nominating committee or other body, a majority of whom are independent directors; and (5) a compensation committee or other body, a majority of whom are independent directors.

Similarly, when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in sections (a)–(d) above, and that class of security has not been suspended from trading on that market, a direct or indirect consolidated subsidiary of the issuer, or an at least 50% beneficially-owned subsidiary of the issuer, shall not be required to separately meet the requirements set forth in sections (a)–(d) above with respect to any class of securities it issues, except classes of equity securities (other than non-convertible, non-participating preferred securities) of such subsidiary.

.05 Transition Periods and Compliance Dates. Sections (a)–(f) will become effective pursuant to the following schedule:

(1) The audit committee requirements mandated by SEC Rule 10A–3 (and the exception set out in section (b)(1)(B)(ii) in this rule) will become effective as set out in Rule 10A–3.

(2) The other requirements of sections (a)–(f) will become effective two years after the date that they are approved by the Commission. If an issuer has a board with staggered terms, and a change is required with respect to a director whose term does not apply within this two-year period, the issuer will have an additional year to comply with the requirements of section (a).

(3) Except as otherwise required by SEC Rule 10A–3, an issuer listing securities on the Exchange in connection with an initial public offering or transferring from another marketplace that does not have governance standards substantially similar to the standards set out in sections (a)–(f), above, will be required to comply with sections (a)–(f) within two years after listing on the Exchange. An issuer transferring from a market that does have governance standards substantially similar to those set out in sections (a)–(f) above must comply with those provisions at the time that they list; provided, however, that an issuer that transfers during another market's transition period to new governance standards will be allowed to comply with the Exchange's requirements

within any transition period that had been provided by the other marketplace.

* * * * *

Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

(a) Each issuer shall comply with the governance requirements set out in Rule 19 (a)–(f) of this Article and is subject to Interpretations .02–.05 of that rule.

[(1) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

[(2) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

([3]*b*) *Stock Certificates.* No change to text.

([4]c) *Changes to Listing Standards.* No change to text.

* * * * *

Tier II Maintenance Standards

RULE 22. (a) The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading*, or failure to comply with required corporate governance standards.*

(b)–(d) No change to text.

** * * Interpretations and Policies*

If the Exchange identifies a Tier II issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but its not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

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 CHX states that the purpose of the proposed rule change is to amend certain provisions of its rules relating to the governance of issuers that list securities on the Exchange. Specifically, the CHX seeks to amend its listing standards to enhance its requirements relating to the roles and responsibilities of independent directors and independent board committees

(including audit committees, nominating committees and compensation committees), which are set forth in CHX Article XXVIII, Rules 19 and 21 (collectively, the ''CHX Governance Standards''). The proposed amendments to the CHX Governance Standards constitute a comprehensive group of significant changes to the Exchange's listing standards and are intended to enhance investor confidence by helping to ensure the independence of corporate directors and strengthening corporate governance practices. The Exchange believes that the additional proposed changes to the Exchange's maintenance listing standards, which are found in CHX Article XXVIII, Rules 17A and 22, will ensure continued compliance with the CHX Governance Standards, while also providing issuers an opportunity to cure failures to meet those (and other) on-going requirements.[4]

These changes to the CHX Governance Standards and to the CHX's maintenance listing standards are designed to comply with the provisions of Section 10A(m) under the Act[5] and SEC Rule 10A–3 thereunder;[6] they also include additional enhancements to the Exchange's governance requirements for listed companies.[7] In most respects, the Exchange believes that proposed changes are substantially similar to governance changes proposed by the National Association of Securities Dealers, Inc. and the American Stock Exchange LLC.[8] The Exchange also states that a few of the proposed changes—particularly those made to the CHX maintenance standards or incorporated within at least one new definition—mirror existing rules or proposals of the New York Stock Exchange, Inc. (''NYSE'').[9]

The CHX Governance Standards will apply to all companies listing common stock on the Exchange, with particular exemptions for controlled companies, limited partnerships, companies in bankruptcy, closed-end management companies and foreign issuers. Under proposed Article XXVIII, Rule 19, Interpretation and Policy .03, passive business organizations (such as royalty trusts) will not be subject to these standards, nor will the standards apply to derivatives or special purpose securities, if those entities and securities are exempt from the requirements of Rule 10A–3 under the Act.[10] Under proposed Article XXVIII, Rule 19, Interpretation and Policy .04, additional exemptions will exist for dual and multiple listings, where the same or another class of security of the company is already listed on another national securities exchange or national securities association that has similar governance-related requirements. The proposed CHX Governance Standards will apply to companies that list securities under Tier I or Tier II of the CHX's listing standards.

Summarized below are the principal categories of change to the CHX Governance Standards.

Definition of ''Independence''

The Exchange believes that it is critical for investors to have confidence that an individual serving as an independent director does not have any relationship with the issuer (or its officers) that would impair the director's independence. Accordingly, in addition to the existing CHX rule language, which generally precludes any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director, the proposed amendments specifically identify six categories of persons who shall not be considered independent under proposed CHX Article XXVIII, Rule 19(o)(3).

In general, persons who shall not be considered independent include: (i) A director employed by the issuer or its parent or subsidiary during the previous three years; (ii) a director who accepts (or who has immediate family members who accept) any payments from the issuer in excess of $60,000 during the current year or any of the past three fiscal years (other than compensation for board service, payments from investments in the issuer's securities, compensation to non-executive family members, tax-qualified retirement benefits or non-discretionary compensation); (iii) a director who is an immediate family member of an individual who is, or who served during the previous three years, as an executive officer of the issuer or its parent or subsidiary; (iv) a director who is a principal (*i.e.*, a partner, controlling shareholder or executive officer) in any organization that received payments from the issuer, or that made payments to the issuer, exceeding 5% of the recipient's consolidated gross revenues for the year or $200,000, whichever, is greater; (v) a director who is an executive officer of another entity, if there is compensation committee overlap between the issuer and such entity currently or during the past three years; and (vi) a director who was a partner or employee of the issuer's outside auditor, and worked on the issuer's audit, during any of the past three years.

Under proposed CHX Article XXVIII, Rule 19(o)(2), the proposed amendments define an immediate family member as a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any person who has the same residence as the director in question.

Independent Board and Board Committees

Through the exercise of independent judgment, independent directors act on behalf of investors to maximize shareholder value and guard against conflicts of interest. Accordingly, under proposed Article XXVIII, Rule 19(a), the proposed amendments require most issuers to maintain a majority of independent directors on their boards; small business issuers will be required to have boards consisting of at least 50% independent directors. The proposed rule also requires regularly convened executive sessions of the independent directors. The Exchange states that regularly scheduled executive sessions will encourage and enhance communication among independent directors. A controlled company would be exempt from this requirement.[11]

Under proposed CHX Article XXVIII, Rule 19(c), the nomination of the issuer's directors will be determined by independent directors. Independent director oversight of the director nomination process should enhance investor confidence in the selection of well-qualified director nominees. This

[4] A few additional clerical changes are also made; these changes re-number the paragraphs within affected rules and add new headings for certain paragraphs.

[5] 15 U.S.C. 78j–1(m).

[6] 17 CFR 10A–3. The Commission notes that the CHX intends to amend the proposed rule change to fully conform with SEC Rule 10A–3. Telephone conversation between Kathleen M. Boege, Vice-President and Associate General Counsel, CHX, and Ira L. Brandriss, Special Counsel, Division, Commission, on October 10, 2003.

[7] The Commission notes that the CHX will consider amendments to the proposed rule change once the Commission approves proposals on corporate governance matters filed by other exchanges. Telephone conversation between Kathleen M. Boege, Vice-President and Associate General Counsel, CHX, and Ira L. Brandriss, Special Counsel, Division, Commission, on October 10, 2003.

[8] *See* Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR–NASD–2002–141) and SR–Amex–2003–65.

[9] *See* Securities Exchange Act Release No. 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR–NYSE–2002–33) and NYSE Listed Company Manual Section 802.

[10] 17 CFR 240.10A–3.

[11] Under the definition in proposed in CHX Article XXVIII, Rule 19(o)(1), a ''controlled company'' would mean a company of which more than 50% of the voting power is held by an individual, group or other company.

rule would not apply in cases where the right to nominate a director legally belongs to a third party.[12]

The proposal under proposed CHX Article XXVIII, Rule 19(d) also contemplates independent director approval of the compensation of an issuer's officers.[13] The Exchange believes this oversight will help ensure that appropriate executive incentives are in place, consistent with the board's responsibility to maximize shareholder value.

Audit Committee Requirements

Under proposed CHX Article XXVIII, Rule 19(b), the proposed amendments would expand existing CHX requirements relating to audit committee composition and would include new requirements relating to that committee's role and authority. With very limited exceptions set forth in the proposed rule, each member of an issuer's audit committee: (i) Must be an independent director; (ii) must meet the criteria for independence set forth in SEC Rule 10A–3; and (iii) must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement.[14]

The proposed amendment would require each issuer's audit committee to have the responsibilities and authority set out in SEC Rule 10A–3 (and to act in accordance with those provisions) and to have a written charter to specify the audit committee's minimum purposes, duties and responsibilities, including those that are required by the SEC Rule and by the Sarbanes-Oxley Act.[15] The written charter must be reviewed, and its adequacy must be reassessed on an annual basis by the audit committee.

Code of Business Conduct and Ethics

Under the proposed rules, each issuer would be required to adopt a code of conduct and ethics that applies to its directors, officers and employees and that meets the requirements of section 406(c) of the Sarbanes-Oxley Act. Under proposed CHX Article XXVIII, Rule 19(e), waivers of the code for directors and officers would need to be approved by the issuer's board of directors and be made publicly available.

Governance-Related Certifications

Given the importance of the requirements set forth in the CHX Governance Standards, the proposed amendments contain a requirement that each issuer's chief executive officer certify, on an annual basis, that he or she is not aware of any violation by the issuer of any standard set forth in CHX Article XXVIII, Rules 19(a)–(e). Further, under proposed CHX Article XXVIII, Rule 19(f), such chief executive officer is required to promptly notify the Exchange if any executive officer of the issuer becomes aware of any material non-compliance by the issuer with those standards.

Changes to CHX Maintenance Standards

For both Tier I and Tier II issuers under proposed CHX Article XVIII, Rules 17A and 22, the proposed amendments contemplate a process whereby the Exchange would provide non-compliant issuers with notice and an opportunity to cure the stated deficiency. These provisions would apply to situations in which an issuer fails to meet governance-related standards, as well as those in which an issuer fails to meet other maintenance standards.

In general, the proposed rule amendments would require the Exchange to notify a non-compliant issuer in writing of the Exchange's determination and the reasons for such determination. The issuer would then be required to respond within 10 business days to confirm its receipt of the letter and to advise the Exchange whether or not the issuer intends to submit a plan for curing the deficiency. Any plan must describe definitive action that the issuer has taken or is taking that would bring it into conformity with the Exchange's standards within 18 months, or within any shorter period of time required by the Exchange.[16] The plan must be submitted within 45 days after receiving the Exchange's determination of deficiency. If the Exchange accepts the plan, the Exchange would assess the issuer's progress on a quarterly basis. If the Exchange does not accept the plan, the Exchange would initiate proceedings to suspend and/or delist the issue. While the plan is in effect, the Exchange could initiate proceedings to suspend and/or delist the issue if the issuer fails to meet a material provision of the plan or fails to meet quarterly milestones.

The foregoing procedures would not preclude the Exchange from taking immediate action to suspend trading in an issue, if such action is necessary for the protection of investors.

Application of Standards to Issuers With Dual or Multiple Listings

Because the majority of the Exchange's issuers have securities that are also listed on one or more other markets, the Exchange has included a provision in its proposed rule amendments under proposed CHX Article XVIII, Rule 19, Interpretation and Policy .04 that would exempt such issuers from the CHX Governance Standards if the issuer is listed on a national securities exchange or national securities association with listing standards substantially similar to the CHX Corporate Governance Standards. The proposed rule text contains specific criteria that must be considered when determining whether another market's governance standards are ''substantially similar.''

Schedule for Effectiveness of Proposed Rule Changes

The CHX anticipates that the proposed rule changes to CHX Governance Standards will become effective in accordance with the timetable set forth in proposed CHX Article XXVIII, Rule 19, Interpretation and Policy .05. In general, following Commission approval of the proposed rule changes: (i) The audit committee requirements mandated by Rule 10A–3 under the Act (and the exception set out in CHX Article XXVIII, Rule 19(b)(1)(B)(ii)) will become effective as set out in Rule 10A–3 for all issuers; (ii) the other CHX Governance Standards will become effective two years after they are approved by the Commission, with a one-year ''grace period'' for issuers with staggered term boards; and (iii) issuers listing on the Exchange in connection with an initial public offering or transferring from another marketplace with different governance standards will be required to comply with CHX Governance Standards within

[12] The rule incorporates other limited exceptions that would permit certain persons to serve on the nominating committee, if the issuer's board determines that a person's membership on the committee is required by the best interests of the company and its shareholders and the board discloses the nature of the relationship and the basis for its determination in the next annual meeting proxy statement following that determination. An issuer's chief executive officer would be permitted to participate in the deliberations relating to the compensation of other officers, but would not be allowed to vote.

[13] Controlled companies would be exempt from this requirement, and a specific exception would exist to allow certain persons to serve on the compensation committee in exceptional and limited circumstances.

[14] Nothing in the rule exempts an issuer from the requirements of section 10A(m) under the Act, 15 U.S.C. 78j–1(m), and Rule 10A–3 thereunder.

[15] Pub. L. 107–204, 116 Stat. 745 (2002).

[16] The proposed rule confirms that the Exchange would not accept a plan that is designed to cure a deficiency under SEC Rule 10A–3 if the plan extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances).

two years after listing on the CHX.[17] Changes to CHX Maintenance Standards will become effective upon Commission approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [18] in general, and furthers the objectives of section 6(b)(5) of the Act [19] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received. The Exchange, however, did notify its issuers of the types of proposed rule changes that it was contemplating and has not received any objections to those proposals. One issuer's verbal comments ''seeking flexibility in the effective dates of, or the scope of the exceptions from, the proposals for the new independence requirements ''have been incorporated into the Exchange's rule proposal.

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.

[17] An issuer transferring to the CHX from another market with substantially similar governance standards must comply with such governance standards at the time the issuer lists with the CHX, or within any transition period that was provided by the other marketplace.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–19 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48678; File No. SR–GSCC–2002–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change to Institute Informal Hearing Procedures for Fine Disputes

October 22, 2003.

I. Introduction

On June 28, 2002, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') and on August 19, 2003, amended proposed rule change SR–GSCC–2002–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 2, 2003.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

II. Description

Since 1998, GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines.[3] GSCC Rule 37 contains procedures whereby a member can dispute any fine assessment through a formal hearing process. Rule 37 also permits GSCC to establish procedures for a hearing not otherwise provided for in the rules.[4] GSCC seeks authority to specifically incorporate into its rules informal hearing procedures with respect to disputed fines.

Pursuant to GSCC's new procedures, if a member disputes a fine and asks for a formal hearing in the manner already specified in the rules, GSCC's management will automatically conduct a review of the disputed fine. Based on the documentation already required in the rules and/or a meeting arranged with the member, management may determine that the fine should be waived. If management determines that the fine should be waived, it must inform the Membership and Risk Management Committee of its determination and the reasons for that determination. The Committee has the ability to accept or reject management's determination. If the Committee accepts management's determination, the fine will be waived. However, if the Committee chooses not to accept management's determination or if management had not determined in its review that the fine should be waived, the member has the right to the formal hearing already provided for in Rule 37.

In addition, GSCC's rules are being amended to require that if a fine is assessed, the member must pay the fine within 30 calendar days (currently 90 days) after it receives the fine imposition letter. If the member requests a hearing in accordance with GSCC's rules to dispute the fine, the fine will not be owing while the hearing is pending.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the

[2] Securities Exchange Act Release No. 48411 (August 26, 2003), 68 FR 52256.

[3] Securities Exchange Act Release No. 39746 (March 12, 1998), 63 FR 13439 (March 19, 1998) [File No. SR–GSCC–97–04].

[4] Government Securities Clearing Corporation Rule 37, Section 7.

prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that GSCC's proposed rule change is consistent with this requirement because it clearly sets forth in GSCC's rules its procedures for management's review and possible waiver of fines and should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place. This added efficiency should contribute to the perfection of the national system for clearance and settlement.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48674; File No. SR–NASD–2003–149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SuperMontage and ITS Securities

October 21, 2003.

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 October 6, 2003 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to enhance the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq proposes to trade via SuperMontage all securities that are eligible for trading via the Intermarket Trading System (''ITS Securities''). Under the proposal, NASD members will trade ITS Securities using the SuperMontage functionality that the Commission has previously approved for the trading of Nasdaq-listed securities, with certain modifications needed to ensure that NASD members continue to comply with all pre-existing NASD and Commission rules governing the trading of ITS Securities. Nasdaq will publish a phase-in process for the trading of ITS Securities on the SuperMontage platform after approval by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

4700. Nasdaq National Market Execution System (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term *active NNMS securities* shall mean those NNMS eligible securities in which at least one NNMS Market Maker or *ITS/CAES Market Maker* is currently active in NNMS.

(b) Reserved

(c) The term *Attributable Quote/Order* shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's [MMID] *MPID* in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For ITS/CAES Market Makers, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MPID once such Quote/Order becomes the participant's best attributable bid or offer.

[(2)]*(3)* For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's [MMID] *MPID* in the Nasdaq Quotation Montage.

(d) The term *Automated Confirmation Transaction* service or *ACT* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc., which compares trade information entered by ACT Participants and submits ''locked-in'' trades to clearing.

(e) The term *automatic refresh size* shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.

(f) The term *Directed Order* shall mean an order *in a Nasdaq-listed security* that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the ''Preferenced Order'' described in subparagraph (aa) of this rule. *Directed Orders shall not be available for ITS Securities.*

(g) The term *Displayed Quote/Order* shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants or NNMS Order Entry Firms.

(h) The term *Firm Quote Rule* shall mean SEC Rule 11Ac1–1.

(i) The term *Immediate or Cancel* shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term *Liability Order* shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term *limit order* shall mean an order to buy or sell a stock at a specified price or better.

(l) The term *market order* shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term *marketable limit order* shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term *mixed lot* shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term *Non-Attributable Quote/Order* shall mean:

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

(1) for orders in Nasdaq-listed securities, a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).

(2) for orders in ITS Securities, a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis in the Nasdaq Order Display Facility. NNMS Order Entry Firms shall be eligible to enter Non-Attributable orders in ITS Securities only if they are designated as Immediate or Cancel.

(p) The term *Non-Directed Order* shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant *or ITS Exchange,* and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term *Non-Liability Order* shall mean *for Nasdaq listed securities* an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule. *For ITS Securities, only orders preferenced to an ITS exchange can be non-liability orders.*

(r) The term *Nasdaq National Market Execution System, NNMS,* or *system* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to ''lock in'' these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(s) The term *NNMS eligible securities* shall mean designated Nasdaq-listed equity securities *and ITS Securities as that term is defined in NASD Rule 5210(c).*

(t) The term *NNMS ECN* shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities.

(1) The term *NNMS Auto-Ex ECN* shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(2) The term *NNMS Order-Delivery ECN* shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(u) The term *NNMS Market Maker* shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities, and is currently active in NNMS and obligated to execute orders through the automatic-execution functionality of the NNMS system for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(v) The term *NNMS Participant* shall mean an NNMS Market Maker, NNMS ECN, UTP Exchange, [or] *ITS/CAES Market Maker,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

(w) The term *NNMS Order Entry Firm* shall mean a member of the Association who is registered as an Order Entry Firm for purposes of *entering orders in NNMS Securities into NNMS* [participation in NNMS]. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.

(x) The term *Nasdaq Quotation Montage* shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the [MMID] *MPIDs* for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related [MMID] *MPID.*

(y) The term *Nasdaq Quoting Market* Participant shall include only the following: (1) NNMS Market Makers; [or] (2) NNMS ECNs[.] and *(3) ITS/CAES Market Makers.*

(z) The term *odd-lot order* shall mean an order that is for less than a normal unit of trading.

(aa) The term *Preferenced Order* shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term *Quote/Order* shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's agency Quote/Order (as set out in Rule 4710([f]e)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term *Quoting Market Participant* shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; [and] (3) UTP Exchange Specialists, *and ITS/CAES Market Makers.*

(dd) The term *Reserve Size* shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant or NNMS Order Entry Firm to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is reduced by executions to less than a normal unit of trading.

(ee) The term *Nasdaq Order Display Facility* shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's [MMID] *MPID,* the five best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term *UTP Exchange* shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-

Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'').

(gg) The term *Legacy Quote* shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the NNMS.

(hh) The term *Day* shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4 p.m. Eastern Time), after which it shall be returned to the entering party.

(ii) The term *Good-till-Cancelled* shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(jj) The term *End-of-Day* shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until market close (4 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party. *End-of-Day orders shall not be available for ITS Securities.*

(kk) The term *Auto Ex* shall mean for orders in *Nasdaq listed securities* so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(ll) The term Fill or Return *shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by NNMS Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges.*

[(ll)] (*mm*) The term *Pegged* shall mean, for orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. The price of a Pegged Order may be equal to the inside quote on the same side of the market (a Regular Pegged Order) or may be equal to a specified amount better than the inside quote on the contra side of the market (a Reverse Pegged Order). The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be converted into an un-pegged limit order. *Pegged Orders shall not be available for ITS Securities.*

(nn) The term *Discretionary* shall men:

(1) for orders *in Nasdaq listed securities* so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price may be fixed, or pegged to the inside quote on the same side of the market (or a specified amount better than the inside quote on the contra side of the market if designated as a short sale order), and the pegging of the discretionary order may be capped in the same manner as a pegged order.

(2) for orders in ITS Securities so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an ITS Security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.

(oo) The term *Summary* shall mean, for orders so designated, an order that if marketable upon entry and receipt by NNMS, shall be rejected and returned to the entering party.

(pp) The term ITS/CAES Market Maker *shall mean a member of the Association that is registered as an ITS/CAES Market Maker as defined in NASD Rule 5210(e) and as a Market Maker for purposes of participation in NNMS with respect to one or more ITS Securities, and is currently active in NNMS. ITS/CAES Market Makers shall be permitted to execute orders in ITS Securities through the automatic execution or order delivery functionality of the NNMS system for the purchase or sale of active ITS Securities.*

(qq) The term ITS Exchange *shall mean a national securities exchange that participates in the ITS system as defined in Rule 5210(a). ITS Exchanges shall not be eligible to participate in the NNMS. ITS Commitments sent by ITS Exchanges shall be processed by the system in accordance with the ITS Plan and all applicable NASD rules governing the participation in ITS. Quotes/Orders that are eligible for ITS will be processed by the system and delivered to the appropriate ITS Exchange as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable NASD rules.*

(rr) The term Sweep Order *shall mean, for orders in ITS Securities so designated, an order that may be delivered to or executed by NNMS Participants at multiple price levels.*

(ss) The term Total Day *shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open. and 6:30 p.m., after which it shall be returned to the entering party.*

(tt) The term Total Good-till-Cancelled *shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.*

(uu) The term Total Immediate or Cancel *shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders are available for potential execution between 9:30 a.m. and 6:30 p.m.*

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) Execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) Registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker or to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) Acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) Execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) Acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) The execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) Membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(e) *Participation in NNMS as an ITS/CAES Market Maker shall be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.*

([e]*f*) The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

([f]*g*) Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

([g]*h*) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as ''Immediate or Cancel'', [or as a] ''Day''*,* [or a] ''Good-till-Cancelled''*, ''Auto-Ex'', ''Fill or Return'', ''Pegged'', ''Discretionary'', ''Summary'', ''Sweep'', ''Total Day'', ''Total Good till Cancelled'', or ''Total Immediate or Cancel''* [order].

(1) If a priced order designated as ''Immediate or Cancel'' (''IOC'') is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(2) If a priced order designated as a ''Day'' order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(3) If the order is designated as ''Good-till-Cancelled'' (''GTC''), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(4) Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: *For Nasdaq listed securities only,* Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

(5) for *Nasdaq listed securities,* [A]*a*n order may be designated as ''Auto-Ex,'' in which case the order will also automatically be designated as IOC. An Auto-Ex Order will execute solely against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(6) for ITS Securities, an order may be designated as ''Fill or Return,'' in which case it shall be executed solely against the Quotes/Orders of NNMS

Participants at the best bid/best offer within NNMS. A Fill or Return order entered by an ITS/CAES Market Maker may trade through the quotation of an ITS Exchange if it is also designated as a Sweep Order.

(7) [In addition, an order may be assigned the designations described below.] If the order is designated as ''Pegged'', the order (or unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market as directed by the entering party. Pegged orders may only be entered as ''Day'' orders. A Pegged Order will be cancelled if there is no displayable Quote/Order to which its price can be pegged. To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders for all securities or for any security. Pegged orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution. *Pegged Orders shall not be available for ITS Securities.*

(8) If the order is designated as ''Discretionary'', the order (or unexecuted portion thereof) shall be displayed in system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. A Discretionary Order may only be entered as a ''Day'' order. *A Discretionary Order in an ITS Security may not be preferenced to an ITS/CAES Market Maker or ITS Exchange, shall not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is also designated as a Sweep Order.*

(9) If the order is designated as ''Summary'', the order, if marketable at the time of entry and receipt by NNMS, shall be rejected and returned to the entering party.

(10) An order in an ITS Security may be designated as a ''Sweep Order.'' A Sweep Order may be delivered to or executed by NNMS Participants at multiple price levels.

(i) A Sweep Order entered by an NNMS Order Entry Firm shall not trade through the quotation of an ITS Exchange. The system shall execute all shares available within the NNMS without trading through the quotation of an ITS Exchange, and shall reject the unexecuted portion of the Sweep Order back to the entering party.

(ii) A Sweep Order entered by an NNMS Quoting Market Participant may trade through the quotation of an ITS Exchange. The system shall execute only against NNMS Participants.

(11) An order in an ITS Security may be designated as ''Total Day'' (''X'') and may be entered between the hours 7:30 a.m. to 6:30 p.m. Eastern Time. If a priced X order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 6:30 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(12) An order in an ITS Security may be designated as ''Total Good-till-Cancelled'' (''GTX''). If a GTX order (or unexecuted portion thereof) shall be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time.

(13) An order in an ITS Security may be designated as ''Total Immediate or Cancel'' (''IOX''). If a priced order designated as IOX is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. IOX orders may be entered beginning at 7:30 a.m. Eastern Time and are available for potential execution throughout any trading day (9:30 a.m. through 6:30 p.m. Eastern Time).

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350 *or, in the case of ITS Securities, SEC Rule 10a–1.*

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel *and limit orders designated as Total Immediate or Cancel* orders shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A)*(i)* All Non-Directed orders *in Nasdaq listed securities* shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may also assign the order designations described in subparagraph (a)(1)(B). For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(ii) In ITS Securities, all Non-Directed orders shall be designated as Immediate or Cancel, GTC, Day, Total Immediate or Cancel, Total Day, or Total GTC but shall be required to be entered as Non-attributable if not entered as IOC or IOX. NNMS Order Entry Firms may also assign the order designations described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. Such limit and market orders will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC *or, in the case of ITS Securities, IOX* and is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b) Directed Orders *in Nasdaq-listed Securities.* A participant may enter a Directed Order i*n a Nasdaq-listed security* into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) An ''All-or-None'' order (''AON'') that is at least one normal unit of

trading (*e.g.* 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) A ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(C) A Directed Order that is entered at a price that is inferior to the Attributable Quote/Order of the Quoting Market Participant to which the order is directed.

Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 3 to 99 minutes, or may be designated as ''Day'' order, or an ''End of Day'' order.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(4) A Directed Order entered into the system may not be cancelled until a minimum of five seconds has elapsed after the time of entry. This five-second time period shall be measured by NNMS.

(5) Directed Orders shall not be entered in ITS Securities.

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—

(1) In Nasdaq-listed securities, [A]any order in whole shares up to 999,999 shares may be entered into the NNMS for normal execution processing.

(2) Orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. Orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, and NNMS Order Entry Firms may enter Non-Attributable *Orders* into the NNMS, subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an ''Attributable Quote/Order'' or ''Non-Attributable Quote/Order,'' and the amount of Reserve Size (if applicable). NNMS Order Entry Firms shall be permitted to transmit to NNMS multiple Non-Attributable Quotes/Orders at a single as well as multiple price levels and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display Quotes/Orders submitted to the system as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID,* and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's and NNMS Order Entry Firm's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. A Non-Attributable Quote/Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID.* Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous [MMID] *MPID,* which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding—The]Nasdaq system] *NNMS* (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, [Nasdaq] *NNMS* will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant and NNMS Order Entry Firm at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quote/Order that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get

displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(B) Aggregation and Display of Odd-lots Bettering the Inside Price—*Except as provided in Subsection (C) below,* odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE [MMID] *MPID,* with the odd-lot share amounts of other NNMS Quoting Market Participants and NNMS Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.

(C) In the case of ITS Securities, odd lot share amounts of each individual ITS/CAES Market Maker shall be aggregated separately and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. Odd lot share amounts will be cancelled at the end of the day.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The ''Summary Scan'' functionality, [which] is a query-only non-dynamic functionality *for Nasdaq listed securities only.* It [that] displays without attribution to Quoting Market Participants' [MMIDs] *MPIDs* the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the number of price levels authorized for aggregation and display pursuant to Rule 4701 (ee).

(e) NQDS Prime—''NQDS Prime'' is a separate data feed *for Nasdaq-listed securities* that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' [MMIDs] *MPIDs* all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

(f) IM Prime—''IM Prime'' is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility for ITS Securities

4708. ITS Commitments

(a) Compliance with Rule 5200 Series.

(1) Pre Opening Application. ITS/CAES Market Makers may use NNMS to participate in the Pre Opening Application accordance with Rules 5240 and 5250. NNMS Order Entry Firms may not participate in the Pre Opening Application.

(2) Trade throughs. ITS/CAES Market Makers must use NNMS to comply with the trade through obligations set forth in Rules 5262 and 5264. The NNMS will reject any order of an NNMS Order Entry Firm that, if executed, would trade through an ITS Exchange

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use NNMS to comply with the locked and crossed markets obligations set forth in Rules 5263. Any order or portion thereof entered by an NNMS Order Entry Firm that would create a locked/crossed market with an ITS Exchange will be rejected.

(b) Inbound ITS Commitments

(1) If the ITS Commitment contains an obvious error as described in Rule 5265(b), the NNMS will decline it.

(2) If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a–1, the NNMS will decline it.

(3) If the conditions described in subparagraphs (1) and (2) above do not apply, the NNMS will execute or deliver an inbound ITS Commitment in accordance with applicable provisions of the Rule 5200 Series and the ITS Plan.

4710. Participant Obligations in NNMS

(a) Registration Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, *ITS/CAES Market Maker* or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the NNMS. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size. ITS/CAES Market Makers that elect order delivery shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's Displayed Quote/Order and Reserve Size. ITS/CAES Market Maker that elect order delivery shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ITS/CAES Market Maker's system, in which case

the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

[(ii)] *(iii)* NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

[(iii)] *(iv)* UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) Execution Algorithm—Price/Time—The system will access interest in the system in the following priority and order:

a. Displayed Quotes/Orders of NNMS Market Makers, *ITS/CAES Market Makers,* and NNMS ECNs, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, and displayed non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders;

b. Reserve Size of Nasdaq Quoting Market Participants and NNMS Order Entry Firms, in time priority between such participants' Quotes/Orders; and

c. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or NNMS Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and NNMS Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Nasdaq Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, in price/time priority.

b. If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

c. If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: (1) delivering an execution to a Quoting Market Participant(s) or an NNMS Order Entry Firm that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or (2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 *e.g.* $1) − $.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 *e.g.* $1) + $.01 = $11.01. *This subsection shall not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.*

(d) An Auto-Ex order *in a Nasdaq listed security* will execute solely

against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.

(e) A Fill or Return order in an ITS Security will be executed solely by the NNMS at the best bid/best offer, without delivering the order to an ITS Exchange. A Fill or Return order entered by an ITS/CAES Market Maker may trade through the quotation of an ITS Exchange if it is also designated as a Sweep Order.

([e]*f*) If an NNMS Market Participant enters a Discretionary Order, the order shall be first executed against (or delivered in an amount equal to) the Displayed Quote/Order and Reserve Size of available market participants in conformity with this rule based on the algorithm selected and the displayed price of the Discretionary Order, subject to the foregoing exceptions. In the event that the full size of the incoming order cannot be executed at the displayed price, the order may also be executed against (or delivered in an amount equal to) the Displayed Quote/Order and Reserve Size of market participants with Quotes/Orders within the discretionary price range (including discretionary orders on the contra side), in conformity with this Rule based on the algorithm selected (subject to any applicable exception). The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b). When a Discretionary Order is displayed as a Quote/Order, it will be available for execution against (or delivery to) market participants entering orders or Quotes/Orders at the display price (including market orders, when the display price is at the inside, and other discretionary orders), and will then be available for execution against (but not delivery to) market participants entering orders or Quotes/Orders at prices within the discretionary price range (including other discretionary orders), at the price of the incoming order.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(v) ITS/CAES Market Makers

a. If an ITS/CAES Market Maker declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond in any manner within 5 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

b. If the bid side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish a bid of $0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish an offer of two times the system best bid plus $0.01 and offer for 100 shares.

c. If an ITS/CAES Market Maker regularly fails to meet a 5-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market

(D) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality.

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant or NNMS Order Entry Firm, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and

4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh (''AQR'')—Once an NNMS Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to an amount less than a normal unit of trading, by a price interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size.

(iii) This functionality shall produce an Attributable Quote/Order.

(iv) The AQR functionality described in this subparagraph shall only be available for use in connection with a NNMS Market Maker's ''Legacy Quote.'' This functionality shall be available only to NNMS Market Makers.

(v) The AQR functionality shall not be available to any participant for any ITS Security.

(3) Entry of Locking/Crossing Quotes/Orders The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e) *or in NASD Rule 5263(a) or (b)),* the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant or NNMS Order Entry Firm next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants or NNMS Order Entry Firms in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed. Once the lock/cross is cleared, if the participant's order is not completely filled, the system *may* [will]*, if consistent with the parameters of the Quote/Order,* reformat the order and display it in Nasdaq [(consistent with the parameters of the Quote/Order)] as a Quote/Order on behalf of the entering Quoting Market Participant or Order Entry Firm. *If an order is not eligible to be reformatted, the NNMS will reject the remainder of the order back to the entering participant.*

(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market *in a Nasdaq-listed security* is locked or crossed at 9:29:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once NNMS has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters: If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)([iv]*ii*)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710 (b)(1)(B)([iv]*ii*)(a).

(C) Locked/Crossed Quotes/Orders in ITS Securities Immediately Before the Open—If the market in an ITS Security is locked or crossed at 9:29:55 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:55 a.m. and 9:29:59 Eastern Time, once the NNMS has cleared a locked or crossed market, or if a newly submitted Quote/Order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by holding such Quotes/Orders in queue.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters: If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other ITS/CAES Market Maker or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)(ii)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).

(4) An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

(5) If an NNMS Market Maker's Attributable Quote/Order is reduced to less than a round-lot amount on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS on that side of the market, and the NNMS Market Maker will be permitted a grace

period of 30 seconds within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the AQR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have the exhausted side of its quotation restored by the system at a price $0.01 inferior to the lowest displayed bid price or the highest displayed offer price in that security as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: (a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, NNMS will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days.

(6) Notwithstanding the provisions of subparagraph (5) above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 *or an ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 6350* prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) an NNMS Market Maker *or ITS/CAES Market Maker* that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(7) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph (b)(5) of this rule.

(8) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with NNMS inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS and a closed-quote status, and if the Quoting Market Participants is an NNMS Market Maker an excused withdrawal from Nasdaq pursuant to Rule 4619 *or an ITS/CAES Market Maker an excused withdrawal pursuant to Rule 6350.* If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

(c) Directed Order Processing—A participant may enter a Directed Order in *Nasdaq-listed securities* into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

(d) NNMS Order Entry Firms. All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide and these rules. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

(e) UTP Exchanges. Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes A UTP Exchange may voluntarily participate in the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (f) of this rule. The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS.

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq.

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP

Exchange's best bid/best offer Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee).

(B) UTP Exchange Agency Quotes/Orders.

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders (''UTP Agency Order/Quote'').

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing—UTP Exchanges that elect to participate in the system shall be required to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711. Clearance and Settlement

All transactions executed in NNMS shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

4712. Obligation To Honor System Trades

(a) If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing, or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

(b) Nasdaq shall have no liability if an NNMS Participant, or a clearing member acting on his behalf, fails to satisfy the obligations in paragraph (a).

4713. Compliance With Rules and Registration Requirements

(a) Failure by an NNMS Participant to comply with any of the rules or registration requirements applicable to NNMS identified herein shall subject such NNMS Participant to censure, fine, suspension or revocation of its registration as an NNMS Market Maker, *ITS/CAES Market Maker,* Order Entry Firm, and/or NNMS ECN or any other fitting penalty under the Rules of the Association.

(b)(1) If an NNMS Participant fails to maintain a clearing relationship as required under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705, it shall be removed from NNMS until such time as a clearing arrangement is reestablished.

(2) An NNMS Participant that is not in compliance with its obligations under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705 shall be notified when Nasdaq exercises it authority under paragraph (b)(1) of Rule 4713.

(3) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Associations rules, to enforce its rules or impose any fitting sanction.

4715. Adjustment of Open Quotes and/or Orders

NNMS will automatically adjust the price and/or size of open quotes and/or orders in all *NNMS securities (unless otherwise noted)* resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent ($0.01), as follows:

(a) Quotes—All bid and offer side quotes shall be purged from the system.

(b) Sell Orders—Sell side orders *in Nasdaq-listed and NYSE-listed securities* shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system. *Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.*

(c) Buy Orders—Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (*i.e.* cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) *Odd lot orders in ITS Securities that result from partial execution rather than order entry shall be canceled rather than adjusted.*

[(1)] *(2)* Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked ''Do Not Reduce''.

[(2)] *(3)* Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked ''Do Not Increase'', the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.

[(3)] *(4)* Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

[(4)] *(5)* Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.

[(5)] *(6)* Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) Open buy and sell orders that are adjusted by the system pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

4719. Anonymity

(a) Transactions in executed in NNMS in which at least one member submits a Non-Attributable Quote/Order will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.

(b)(1) The processing described in paragraph (a) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.

(2) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs ECN shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.

(c) The Association will reveal a member's identity in the following circumstances:

(1) When the National Securities Clearing Corporation (''NSCC'') ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades;

(2) For regulatory purposes or to comply with an order of an arbitrator or court; or

(3) On risk management reports provided to the member's contra parties each day after 4 p.m., which disclose trading activity on an aggregate dollar value basis.

(d) The Association will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote/Order has been decremented by another Quote/Order submitted by that same member.

* * * * *

5200. Intermarket Trading System/Computer Assisted Execution System

5210. Definitions

(a)–(h) No Change.

(i) ''CAES'' means the ''Computer Assisted Execution System'', the computerized order routing and execution facility for ITS Securities, as from time to time modified or supplemented, that is operated by The Nasdaq Stock Market, Inc. and made available to NASD members. CAES functionality is offered through the ''Nasdaq National Market Execution System'' or ''NNMS'' which operates pursuant to the Rule 4700 Series.

5220. ITS/CAES Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/CAES Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) participation in NNMS in accordance with the Rule 4700 and 5200 Series;

([c]*d*) compliance with SEC Rule 15c3–1;

([d]*e*) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

([e]*f*) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association;

([f]*g*) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and

([g]*h*) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

5221. Suspension or Revocation of ITS/CAES Registration

No Change.

5230. ITS Operations

No Change.

5240. Pre-Opening Application—Opening by ITS/CAES Market Maker

No Change.

5250. Pre-Opening Application—Openings on Other Participant Markets

No Change.

5260. System Trade and Quotations

5261. Obligation to Honor System Trades

No Change.

5262. Trade-Throughs

No Change.

5263. Locked or Crossed Markets

No Change.

5264. Block Transactions

No Change.

5265. Authority To Cancel or Adjust Transactions

No Change.

6300. Consolidated Quotations Service (CQS)

No Change.

6400. Reporting Transactions in Listed Securities

No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD members currently use CAES to trade ITS Securities with other NASD members and also with the securities exchanges that participate in ITS. Nasdaq has decided to enhance the trading of ITS Securities by offering the superior functionality of SuperMontage, Nasdaq's fully integrated order display and execution system currently used for trading Nasdaq securities. SuperMontage allows market participants to enter unlimited quotes and orders at multiple price levels. The system displays aggregate interest five price levels deep on each side of the market and permits users to access that aggregated trading interest via a variety of order types. In addition, SuperMontage offers pre- and post-trade anonymity.

Trading of ITS Securities is affected by three national market system plans that are established jointly by the markets and approved by the Commission. Nasdaq collects quotations and trade reports from NASD members and provides such quotations to the Consolidated Quotation System (''CQ Plan'') and the Consolidated Tape Association (''CT Plan'') for dissemination to the public. The ITS Plan governs the manner in which

NASD members participate in the ITS, an electronic linkage between markets that trade exchange listed securities. In addition, the NASD adopted the NASD Rule 5200 and 6300 Series to ensure that NASD members comply with the obligations imposed by the CT, CQ, and ITS Plans.

Nasdaq proposes no changes to the obligations imposed by the Plans or by the NASD Rule 5200 and 6300 Series. Thus, for example, members must continue to comply with the trade through restrictions in NASD Rule 5262, the locked and crossed markets restrictions in NASD Rule 5263, the block trade requirements in NASD Rule 5264, and the Pre-Opening Application procedures set forth in NASD Rules 5240 and 5250. Members that wish to make markets in ITS Securities must continue to register as ITS/CAES and CQS Market Makers pursuant to NASD Rules 5220 and NASD Rule 6320 and comply with the obligations imposed under NASD Rule 6330.[3] They must also continue to clear and settle trades under NASD Rule 5261 and properly report transactions pursuant to the NASD Rule 6400 Series.

To ensure that SuperMontage will enable NASD members trading ITS Securities to continue to comply with applicable NASD and Commission rules, Nasdaq is proposing certain modifications to the existing SuperMontage functionality. These modifications apply to ITS Securities only; they do not affect the trading of Nasdaq-listed securities:

1. Define two participant types: ITS/CAES market makers and order entry firms.

2. Enable ITS/CAES market makers to participate in the Pre-Opening Application in accordance with NASD Rules 5240 and 5250.

3. Enable ITS/CAES market makers to comply with the locked/crossed obligations imposed by NASD Rule 5263.

4. Enable ITS/CAES market makers to comply with the trade through and block trade obligations imposed by NASD Rules 5262 and 5264.

5. Disable Directed, Pegged and End of Day Orders, modify the Discretionary Order, and add four order types to facilitate ITS trading.

6. Remove the Auto-Quote Refresh functionality, modify the decrementation process, and apply the excused withdrawal provisions of NASD Rule 6350, rather than NASD Rule 4619.

7. Prohibit SuperMontage from executing trades in violation of Rule 10a–1 of the Act[4] or of the obvious error provisions of the ITS Plan.

8. Modify the system to comply with the round lot requirements of the ITS Plan.

9. Modify the adjustment of open buy and sell orders in ITS Securities to conform closely to the practice of the listing exchange.

Set forth below is a description of the proposed modifications.

1. Define Participant Types

NASD members will trade ITS Securities in two ways: as ITS/CAES Market Makers or as NNMS Order Entry Firms.[5] Proposed NASD Rule 4701(pp) defines ITS/CAES Market Makers by incorporating the definition already contained in NASD Rule 5210(e), which includes both market makers and electronic communications networks (''ECNs''). The definition distinguishes ITS/CAES Market Makers, which make markets in ITS Securities from NNMS Market Makers, which make markets in Nasdaq securities.[6] ITS/CAES Market Makers will be permitted to choose between the automatic execution and the order delivery functionality of the NNMS system, unlike NNMS Market Makers, which are required to accept automatic executions. Nasdaq believes that this will permit ITS/CAES Market Makers to better manage their interaction with ITS Exchanges either through the NNMS or through their direct connections to those exchanges' systems.

NASD members may also trade ITS Securities through the NNMS as Order Entry Firms, using the same registration process as NNMS Order Entry Firms in Nasdaq securities. Nasdaq is proposing simply to modify the existing definition of NNMS Order Entry Firm, contained in NASD Rule 4710(w), to include both Nasdaq and ITS Securities. Therefore, references to NNMS Order Entry Firms throughout the 4700 Series should be understood to include Order Entry Firms participating in either Nasdaq or ITS Securities unless otherwise indicated.[7]

Nasdaq's proposal is dominated by one simple difference between NASD members that trade ITS Securities as ITS/CAES Market Makers and those that trade as NNMS Order Entry Firms: ITS/CAES Market Makers can participate in ITS and NNMS Order Entry Firms cannot. Nasdaq has systematically eliminated any possibility that order entry firms would interact with ITS, by eliminating order entry firms' ability to place liquidity on the SuperMontage book,[8] to precluding their participation in the Pre-Opening Application, to preventing order entry firms from trading through or locking/crossing the quotations of ITS Exchanges. As a result of Nasdaq's tailoring, Nasdaq is proposing no changes to the NASD rules that implement the ITS Plan, and ITS Exchanges will experience no impact from Nasdaq's decision to replace CAES with SuperMontage.

2. Pre-Opening Application

The NNMS would be modified to permit ITS/CAES Market Makers to participate in the Pre-Opening Application for ITS Securities that is established in the ITS Plan and incorporated in NASD Rules 5240 and 5250. The NNMS system will receive all Pre-Opening Administrative (''POA'') Messages, Second Look Messages (''SLM''), and One-Sided Responses (''OSRs'') that the ITS Exchanges issue. The NNMS will also disseminate those messages to ITS/CAES Market Makers. Market makers that opt to participate in the Pre-Opening Application may do so by entering Pre-Opening Responses

[3] The NASD Rules will continue to refer to CAES and to ITS/CAES Market Makers in order to maintain consistency with the language of the ITS Plan. To accomplish the name change from CAES to NNMS, Proposed NASD Rule 5210(i) incorporates the ITS Plan definition of CAES and then provides that CAES functionality will now be provided by SuperMontage. In addition, Proposed NASD Rule 5220(c) requires ITS/CAES Market Makers to participate in the NNMS.

[4] 17 CFR 240.10a–1.

[5] NASD Rule 4710(qq) defines ITS Exchanges as national securities exchanges that participates in the ITS system as defined in NASD Rule 5210(a). ITS Exchanges are not eligible to participate in the NNMS but are defined because the system will send ITS Commitments to and receive them from ITS Exchanges.

[6] Nasdaq reinforces this distinction by modifying the definition of NNMS Market Maker. *See* Proposed NASD Rule 4710(u).

[7] The definitions of ITS/CAES Market Makers and NNMS Order Entry Firms are carried forward into other definitions that establish system entitlements. For example, ITS/CAES Market Makers are included in the definitions of NNMS Participants (NASD Rule 4710(v)), Nasdaq Quoting Market Participants (NASD Rule 4710(y)), and Quoting Market Participant (NASD Rule 4710(cc)). Since ECNs may trade ITS Securities only as ITS/CAES Market Makers or as NNMS Order Entry Firms, they are excluded from the definition of NNMS ECNs (NASD Rule 4710(t)).

[8] *See* Proposed NASD Rule 4701(*o*) (''NNMS Order Entry Firms shall be eligible to enter Non-Attributable orders in ITS Securities only if they are designated as Immediate or Cancel''). The ability to enter Non-Attributable Orders in Nasdaq listed securities for display would enable order entry firms to place liquidity in the Nasdaq book under the anonymous acronym ''SIZE'' and to gain standing in the execution algorithm. Nasdaq is eliminating this feature in order to fully comply with the ITS Plan, although Nasdaq believes that this functionality is consistent with the Exchange Act and is beneficial to investors and market participants alike. As a further result, NNMS Order Entry Firms will not have quotations disseminated via the proposed IM Prime Data Feed. *See* Proposed NASD Rule 4707(f).

(''PORs'') in response to a POA or SLM. In addition, NNMS will receive and process OSRs from the opening ITS Exchange in accordance with NASD Rules 5240 and 5250. NNMS Order Entry Firms are not eligible to participate in the Pre-Opening Application, and the system will not accept PORs that are entered by an Order Entry Firm.

3. Locked and Crossed Markets Processing

The NNMS would process locked or crossed markets between and among ITS/CAES Market Makers largely as it does for Nasdaq securities. A quote/order that would create a locked or crossed market, if entered into the NNMS during normal market hours, will be processed exactly as locks and crosses in Nasdaq securities are processed under existing NASD Rule 4710(b)(3)(A). Rather than display the quote/order at the locking/crossing price, the system will treat the quote/order as a marketable limit order and enter it into the system as a Non-Directed Order. A locking quote/order will be executed at the locking price against the order next in line for execution, and a crossing quote/order will be executed at the displayed price of the order next in line for execution. Once the lock or cross is cleared, any remaining shares will be displayed in the NNMS, if eligible for display.

A quote/order that would create a locked or crossed market between and among ITS/CAES Market Makers prior to normal market hours will be processed exactly as are Nasdaq securities today, except that the NNMS automated unlocking/uncrossing spin will occur at 9:29:55 a.m. for ITS Securities rather than at 9:29:30 a.m. as it does for Nasdaq listed securities.[9] Quotes/Orders that would create a locked/crossed market after the unlocking/uncrossing spin occurs will be held in queue until 9:30 a.m. Due to the cumbersome structure of the Pre-Opening Application of the ITS Plan, fewer NASD members participate in the pre-market for ITS Securities than for Nasdaq securities. Therefore, a shorter processing window is appropriate.

Nasdaq would program the NNMS to accommodate different processing for locked or crossed markets involving ITS Exchanges. First, if an Order Entry Firm enters an order that would lock or cross an ITS Exchange, the NNMS will execute the order against all Quotes/Orders currently in the system and reject any remaining portion of the order that would create a locked/crossed market with an ITS Exchange. If an ITS/CAES Market Maker enters a quote/order that would lock or cross an ITS Exchange, the system will process the quote/order in accordance with its designation and automatically generate and send an ITS Commitment to any ITS Exchange that is locked or crossed.[10]

If an ITS Exchange has created a locked/crossed market with Nasdaq, the NNMS will notify any ITS/CAES Market Maker whose market was locked/crossed. If Nasdaq receives an ITS Commitment when a locked/crossed condition is pending, Nasdaq will send the ITS Commitment to the ITS/CAES Market Maker(s) at the pending inside price.

4. ITS Trade Through Rule

Nasdaq would modify the NNMS processing to enable ITS/CAES Market Makers to comply with their trade through obligations under NASD Rules 5262 and 5264. The NNMS would reject any order of an NNMS Order Entry Firm that, if executed, would trade through an ITS Exchange. If Nasdaq receives an administrative complaint from an ITS Exchange in response to a potential trade through, Nasdaq will send that complaint to the ITS/CAES Market Maker responsible for the potential trade through, as it does today.[11] ITS/CAES Market Makers will respond to administrative complaints by entering into the NNMS a preferenced order to the complaining ITS Participant. The NNMS will then generate and send a properly formatted ITS Commitment to the appropriate ITS Exchange.

The NNMS would also monitor for trade-throughs by ITS Exchanges as called for by the ITS Plan and NASD Rules 5262 and 5264. If the system detects a trade through by an ITS Exchange, it will notify the ITS/CAES Market Makers that was traded through.[12] ITS/CAES Market Makers may elect to send administrative complaints on their own behalf. If an inbound ITS Commitment is received, the NNMS will automatically send a preferenced Order at the price of the ITS Commitment to the Nasdaq Quoting Market Participant(s) at that price level, as Nasdaq does today.[13]

5. Modify Available Order Types

Nasdaq is proposing to disable Directed, Pegged and End of Day Orders, modify Discretionary Orders, and add new order types to accommodate the characteristics unique to ITS Securities. Nasdaq, in consultation with current ITS participants, has determined not to offer Directed, Pegged and End of Day Orders for ITS Securities.[14] The processing of orders in ITS Securities is more complex than for Nasdaq securities due to both the presence of ITS and the ability for ITS/CAES Market Makers to accept order delivery rather than automatic executions. The possibility of receiving Directed Orders, in addition to Non-Directed and Preferenced Orders and ITS Commitments, seems needlessly complicated. Nasdaq decided not to offer Pegged Orders at this time to hasten its development efforts, and it may file a separate proposal to add that functionality at a later date.

Nasdaq is proposing to modify the characteristics of a Discretionary Order for ITS Securities.[15] Like the current Discretionary Order for Nasdaq Securities, it will have both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. Rather than being fixed or pegged to the Nasdaq best bid and offer, the modified order type must be fixed. Nasdaq will systematically prohibit Discretionary Orders in ITS Securities from creating a quote that locks or crosses the national best bid and offer and from executing at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.

Nasdaq is also proposing to create a Fill or Return Order for ITS Securities.[16] Fill or Return Orders will be delivered to or executed by NNMS Participants in ITS Securities through multiple price levels without delivering the order to an ITS Exchange. Unlike the Auto-Ex Order for Nasdaq securities, the Fill or Return Order will execute against ECNs that are

[9] *See* Proposed NASD Rule 4710(b)(3)(c).

[10] *See* Proposed NASD Rule 4708(a)(3).

[11] *See* Proposed NASD Rule 4708(a)(2).

[12] Due to technology latencies, rapid quote updates, and a variety of other factors, not all apparent trade throughs violate the ITS Plan. To avoid needless false positives, Nasdaq will program the system, as CAES is programmed today, to provide a trade through ''grace period'' before issuing an administrative complaint. The system will not detect a trade through unless a particular Nasdaq quote has been in place for the duration of the grace period. The current grace period ranges between five and 17 seconds, depending upon, among others, the level of automation at a particular exchange.

[13] The ITS Operating Committee has discussed a proposal to add a resolution indicator to ITS Commitments that are intended to respond to an administrative complaint. Nasdaq strongly favors that proposal because it will decrease the difficulty and expense of determining the proper recipient of an inbound ITS Commitment. Nasdaq urges the ITS Operating Committee and the Commission to move quickly to implement that proposal.

[14] *See* Proposed NASD Rule 4710(f), (jj), and (mm).

[15] *See* Proposed NASD Rule 4710(nn)(2).

[16] *See* Proposed NASD Rule 4710(ll).

registered as ITS/CAES Market Makers, but it will not generate an ITS Commitment to an ITS Exchange. In addition, ITS/CAES Market Makers will use this order without trading through the quotations of ITS Exchanges.

An ITS/CAES Market Maker that wishes to trade through multiple price levels and to avoid generating an ITS Commitment, but is willing to trade through those ITS Exchanges, can use the newly proposed ''Sweep Order.'' [17] Nasdaq believes it is consistent with the ITS Plan to offer ITS/CAES Market Makers this functionality because there are many circumstances where an ITS/CAES Market Maker is permitted to trade through an ITS Exchange quotation without violating the ITS Plan. ITS/CAES Market Makers must decide for themselves when the use of such functionality is permitted by the rules, and they will be subject to continuous, rigorous surveillance to ensure proper compliance. On the other hand, Nasdaq will systematically prevent an Order Entry Firm from using the system to trade through the quotations of ITS Exchanges. If an Order Entry Firm enters a Sweep Order, the system will execute all shares available within the NNMS without trading through the quotation of an ITS Exchange, and will reject the unexecuted portion of the Sweep Order to be sent back to the entering party.

Finally, Nasdaq proposes to create three new order types that will participate in after hours trading of ITS Securities between 4:00 and 6:30 p.m. These orders—the ''Total Day'', Total Good-till-Canceled'', and ''Total Immediate or Cancel''—differ from the existing Day, Good till Canceled, and Immediate or Cancel orders only in their ability to participate in the pre-opening spin and after-hours sessions.[18] A Total Day Order, if not fully executed at entry, remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., after which it is returned to the entering party. A Total Good-till-Cancelled Order, if not fully executed at entry remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first. A Total Immediate or Cancel Order is a limit order that, upon becoming non-marketable, is canceled and returned to the entering participant. Such orders are available for potential execution between 9:29:55 a.m. and 6:30 p.m.

6. Quotation Updates

The manner in which ITS/CAES Market Makers update their quotations would differ in certain respects from NNMS Market Makers. First, if the bid side of an ITS/CAES Market Maker's quote/order is exhausted, the system then will automatically establish a bid of $0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's quote/order is exhausted, the system will then automatically establish an offer of two times the system best bid plus $0.01 and offer for 100 shares.[19] This modification will ensure that ITS/CAES Market Makers maintain continuous two-sided quotations whenever they are active in the NNMS.

To preserve a fair and orderly market, Nasdaq would close the quotation of any ITS/CAES Market Maker that regularly exceeds the standard five-second response time. Specifically, if an ITS/CAES Market Maker regularly fails to meet a five-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the five-second response time requirement with regularity sufficient to maintain a fair and orderly market.[20]

The Auto-Quote Refresh (''AQR'') functionality described in NASD Rule 4710(b)(2)(B) is designed to assist market participants in maintaining a continuous two-sided quotation. Because the system will automatically enter a quotation for an ITS/CAES Market Maker whose quotation has been decremented to zero, Nasdaq does not believe it is necessary to provide ITS/CAES Market Makers with that AQR functionality.[21] Likewise, an ITS/CAES Market Maker that experience difficulty maintaining proper quotations may request an excused withdrawal pursuant to NASD Rule 6350, rather than utilizing the procedures set forth in NASD Rule 4619 for Nasdaq securities.[22]

7. System Validations

Nasdaq would program SuperMontage to validate ITS Commitments to ensure that they comply with the formatting requirements set forth in NASD Rule 5230. In addition, the system will screen ITS Commitments and reject any ITS Commitment that, if executed, would violate Rule 10a–1 of the Act [23] governing the execution of short sale orders or that would constitute an obvious error as set forth in NASD Rule 5265.[24]

8. Odd-Lot Processing

Nasdaq is proposing to modify two aspects of the odd-lot processing of ITS Securities. This is necessary to accommodate the ITS Plan requirement that ITS Commitments be for a minimum of one round lot or for round lot multiples. This requirement is incorporated in Proposed NASD Rule 4706(d)(2), which requires that orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. This proposed rule also establishes that orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

In addition, Nasdaq proposes to modify the aggregation of odd lots set forth in NASD Rule 4707. Specifically, in the case of ITS Securities, odd lot share amounts of each individual NNMS Participant will be aggregated separately and shall be displayed next to that NNMS Participant's MPID for a minimum of one round lot or for round lot multiples. Odd lot share amounts will be cancelled at the end of the day.[25] Nasdaq is modifying the processing of Nasdaq securities, which permits the aggregation of all market participants' orders together, to ensure that all ITS Commitments are for a minimum of one round lot.

9. Adjustment of Open Orders

Nasdaq is proposing to modify the adjustment of open buy and sell orders to more closely conform that process to the practice of the listing exchange. Sell orders in Nasdaq-listed and NYSE-listed securities will not be adjusted by the system, except for reverse splits where sell orders will be purged from the system. In the event of a Stock Dividend or Stock Split, sell orders in Amex-listed securities will be adjusted differently, in accordance with the procedures set forth for buy orders. In such cases, sell orders, like buy orders in all securities, prices will be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount will then be subtracted from the

[17] *See* Proposed NASD Rule 4710(pp).

[18] *See* Proposed NASD Rule 4710(ss ''uu).

[19] *See* Proposed NASD Rule 4710(b)(1)(C)(v)(b).

[20] *See* Proposed NASD Rule 4710(b)(i)(c)(v)(c).

[21] *See* Proposed NASD Rule 4710(b)(3)(B)(v).

[22] *See* Proposed NASD Rule 4710(b)(6).

[23] 17 CFR 240.10a–1.

[24] *See* Proposed NASD Rule 4708(b)(1–2).

[25] *See* Proposed NASD Rule 4708(b)(3)(C).

price of the buy order. Unless marked ''Do Not Increase'', the size of the order will be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.[26] Finally, odd lot orders in ITS Securities that result from partial execution rather than order entry will be canceled rather than adjusted.

Implementation

When the proposed enhancements to SuperMontage are approved, Nasdaq proposes to set and publish a phase-in schedule for transitioning from CAES to SuperMontage. When an ITS Security begins trading through SuperMontage, it will simultaneously cease trading through CAES. When all ITS Securities are trading through SuperMontage, no stocks will be trading through CAES and CAES will be retired.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the rules cannot be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes that improvements to SuperMontage are designed to increase the liquidity and opportunities for price improvement in SuperMontage by facilitating greater participation and trading interest interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–149 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[26] *See* Proposed NASD Rule 4715(b and c).

[27] 15 U.S.C. 70o–3(b)(6).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48677; File No. SR–NASD–2003–155]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Accelerated Return Notes Linked to the S&P 500® Index

October 21, 2003.

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 October 9, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Accelerated Return Notes Linked to the S&P 500® Index (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade notes, the return on which is based upon the S&P 500® Index (''Index'').[3]

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list for trading the, as described below, under NASD Rule 4420(f).

Description of the Notes

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will have a term of not less than one and not more than four years. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity in 2005.[5]

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on triple the amount of that percentage increase, not to exceed a maximum payment per Unit (the ''Capped Value'') that is expected to be between $11.60 and $12.00.[6] Thus, the Notes provide investors the opportunity to obtain leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 16% to 20% over the original public offering price of the Notes. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity, a beneficial owner will receive less, and possibly significantly less, than the original public offering price of $10 per Unit.[7]

The payment that a beneficial owner will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes (the ''Ending Value'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 + \left(\$30 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right)$$

provided, however, the Redemption Amount cannot exceed the Capped Value.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the Index.[8]

Criteria for Initial and Continued Listing

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[9] In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

[3] The Index is published by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (''Standard & Poor's'' or S&P'') and is intended to provide an indication of the pattern of common stock price movement. The Index is a capitalization-weighted index, with each stock's weight in the Index proportionate to its market value. The value of the Index is based on the relative value of the aggregate market value of the common stocks of 500 companies as of a particular time compared to the aggregate average market value of the common stocks of 500 similar companies during the base period of the years 1941 through 1943. The market value for the common stock of a company is the product of the market price per share of the common stock and the number of outstanding shares of common stock. As of August 29, 2003, 424 companies, or 83.6% of the market capitalization of the Index, traded on the New York Stock Exchange (''NYSE''); 74 companies, or 16.2% of the market capitalization of the Index, traded on Nasdaq; and 2 companies, or 0.2% of the market capitalization of the Index, traded on the American Stock Exchange (''AMEX''). As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database, which Standard & Poor's uses as an assumed model for the composition of the total market. Relevant criteria employed by Standard & Poor's include the viability of the particular company, the extent to which that company represents the industry group to which it is assigned, the extent to which the market price of that company's common stock is generally responsive to changes in the affairs of the respective industry and the market value and trading activity of the common stock of that company. Ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%). Standard & Poor's may from time to time, in its sole discretion, add companies to, or delete companies from, the Index to achieve the objectives stated above.

[4] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993), (''1993 Order'').

[5] The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

[6] The actual Capped Value will be determined at the time of issuance of the Notes.

[7] Any amount the beneficial owner would receive at maturity (which is less than the original offering price) would correspond to any decline in value of the Index. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Hong-Anh Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 15, 2003.

[8] *See* Securities Exchange Act Release No. 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500® Index); Securities Exchange Act Release No. 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500® Index); Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500® Index); Securities Exchange Act Release No. 31591 (December 11, 1992), 57 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depository Receipts based on the S&P 500® Index); and Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500® Index).

[9] Merrill Lynch satisfies this listing criterion.

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[10] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to NASD Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

[10] NASD Rule 4420(f)(2) generally requires that issuers of securities designated pursuant to this paragraph [sic] to be listed on The Nasdaq National Market or the NYSE or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis. The Commission notes that there is a typographical error in NASD Rule 4420(f)(2), which the NASD, through its subsidiary, Nasdaq, will have to submit a filing, pursuant to the provisions of Section 19(b) under the Act, to delete any reference to paragraph (e) under this Rule.

Rules Applicable to the Trading of the Notes

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310, ''Recommendations to Customers (Suitability),'' and NASD IM–2310–2, ''Fair Dealing with Customers,'' NASD members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[11] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

Disclosure and Dissemination of Information

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] in general, and with Section 15A(b)(6) of the Act,[13] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

[11] Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–155 and should be submitted by November 18, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal, on an accelerated basis to accommodate the timetable for listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked

to or based on, the Index.[14] The Commission has also previously approved the listing of securities with a structure identical to that of the Notes.[15]

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 association, and, in particular, with the requirements of Section 15A(b)(6) of the Act [16] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[17] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exist at the maturity of the Notes, subject to the Capped Value. Specifically, as described more fully above, if the value of the Index has increased, a beneficial owner will be entitled to receive at maturity a payment of the Notes based on triple the amount of any percentage increase in the Index, not to exceed the Capped Value.

The Notes are leveraged debts instruments whose price will be derived from and based upon the value of the Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Index has declined at maturity, a beneficial owner may receive significantly less than the original public offering price of the Notes.[18] Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return on the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Value, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[19] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[20] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee any return of principal at maturity, that the maximum return on the Notes is limited to $11.60 and $12 per unit,[21] that the Notes will not pay interest, and that the Notes will provide exposure in the Index. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.[22]

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4:00 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates. Nasdaq represents that its surveillance procedures are adequate to monitor properly the grading of the Notes.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,[23] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE and the AMEX. The Commission notes that the Index is determined, composed, and calculated by Standard & Poor's. As of October 7, 2003, the market capitalization of the securities included in the Index ranged from a high of $313.8 billion to a low of $568.4

[14] *See* note 8, *supra*.

[15] *See* Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of Market Recovery Notes linked to the S&P 500® Index); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500® Index); 47009 (December 16, 2002), 67 FR 78540 (December 24, 2002) (approving the listing and trading of Market Recovery Notes linked to the Nasdaq-100 Index); and 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes linked to the Dow Jones Industrial Average).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] Any amount the beneficial owner would receive at maturity (which is less than the original offering price) would correspond to any decline in value of the Index. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Hong-Anh Tran, Special Counsel, Division, Commission, on October 15, 2003.

[19] *See* 1993 Order, *supra* note 4.

[20] As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

[21] The actual Capped Value will be determined at the time of issuance of the Notes.

[22] The companies comprising the Index are reporting companies under the Act.

[23] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

million. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 60.0 million shares to a low of 138.7 thousand shares. As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database. Furthermore, as of August 29, 2003, ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%).

Given the large diversification, capitalization, and relative percentage weightings of the companies included in each group of companies comprising the Index, the Commission continues to believe, as it has concluded previously, that the listing and trading of securities that are linked to the Index, should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the Commission also believes that the relative percentage weightings of the ten groups of companies comprising the Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are with listed on Nasdaq, the NYSE, or the AMEX. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.[24] Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[25] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASD–2003–155) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27091 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48675; File No. SR–NASD–2003–143]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Establish a New ''Auto-Ex'' Order in Nasdaq's SuperMontage System

October 21, 2003.

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 September 24, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on October 3, 2003.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on October 21, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a new ''Auto-Ex'' order in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq intends to implement the proposed rule change as soon as possible following Commission approval and will inform market participants of the exact implementation date via a Head Trader alert on *http://www.nasdaqtrader.com.* The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)–(jj) No change.

(kk) The term ''Auto-Ex'' shall mean, for orders so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

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[24] *See* note 15, *supra.*

[25] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[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, Division of Market Regulation (''Division''), Commission, dated October 2, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq amended the proposal to designate the proposed rule change as filed under section 19(b)(2) rather than section 19(b)(3)(A) of the Act and replaced the original filing in its entirety.

[4] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 21, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq amended the proposed rule text and clarified certain aspects of the proposed rule change which included, in part, stating that all Nasdaq market participants would be permitted to enter Auto-Ex orders and that Auto-Ex orders would access liquidity available at multiple price levels, but under no circumstances would the order ''trade through'' the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee).

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as ''Immediate or Cancel'', or as a ''Day'' or a ''Good-till-Cancelled'' order. If a priced order designated as ''Immediate or Cancel'' (''IOC'') is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a ''Day'' order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as ''Good-till-Cancelled'' (''GTC''), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

An order may be designated as ''Auto-Ex,'' in which case the order will also automatically be designated as IOC.

(C)–(F) No change.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms ''In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order[-]Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. *NNMS Order Entry Firms may also designate orders as ''Auto-Ex,'' in which case the order will also automatically be designated as IOC.* For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) No change.

(b)–(e) No change.

* * * * *

4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i)–(iii) No change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

a.–c. No change.

d. *An Auto-Ex order will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS (''Auto-Ex Eligible Participants''). When processing an Auto-Ex order, however, the NNMS will not deliver an execution to an Auto-Ex Eligible Participant if the Quote/Order of an NNMS Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to introduce a new SuperMontage order type, to be designated as the Auto-Ex order. The purpose of the order is to allow market participants to manage more precisely the timing of executing orders through SuperMontage. Accordingly, the order will execute solely against the Quotes/Orders of SuperMontage participants that participate in the system's automatic execution functionality. According to Nasdaq, many market participants and their customers place a high value on the speed of order execution, especially in circumstances where the price of a security may be moving rapidly. SuperMontage's automatic execution functionality was designed to offer market participants a speed of execution that is as fast as technically feasible ''on average, less than a second between order entry and order execution. However, in circumstances where a market participant values speed, it may be unable to receive the benefits of the system's efficiency if all or a portion of its order is delivered to an NNMS Order-Delivery ECN, which has up to 30 seconds to respond to the order (and which may respond by declining to fill the order).[5] By contrast, many ECNs offer extremely rapid execution speeds to orders submitted to them directly. As a result, firms seeking rapid execution may avoid using SuperMontage and submit order directly to ECNs. The new order type will also allow an ECN subscriber that has submitted an order directly to an ECN to simultaneously access liquidity available from SuperMontage auto-ex participants without running the risk that its SuperMontage order will be delivered to the ECN to which it has already submitted an order.[6]

Nasdaq believes that its market participants should have the option of seeking rapid, automatic executions through SuperMontage, as well as through direct connections with ECNs. Accordingly, the proposed Auto-Ex order would be eligible for execution solely against the Quotes/Orders of automatic execution participants.[7]

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[5] In a prior filing, Nasdaq noted that the average response time of order-delivery ECNs is less than one second. *See* Securities Exchange Act Release No. 48078 (June 24, 2003), 68 FR 39171 (July 1, 2003) (SR–NASD–2003–72). *See also* Securities Exchange Act Release No. 48196 (July 17, 2003), 68 FR 43777 (July 21, 2003) (SR-NASD–2003–108). Nasdaq notes that the response time to particular orders may be far longer, however. In addition, in many instances an ECN responds by declining to execute an order delivered to it. In that case, a rapid response by the ECN does not translate into a rapid execution of the order delivered to it.

[6] *See* Amendment No. 2, *supra* note 4.

[7] To help market participants control the costs of automatic order execution, an automatic execution participant that charged a separate quote-access fee to participants accessing its Quotes/Orders through SuperMontage would also be ineligible to receive an execution of an Auto-Ex order. However, it should be noted that none of Nasdaq's current automatic execution participants charges a separate quote access fee. Thus, the order would execute

Continued

Auto-Ex orders will access liquidity available at multiple price levels, but under no circumstances would the order ''trade through'' the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee). Thus, an Auto-Ex order would automatically be designated ''Immediate or Cancel,'' and the order (or any unexecuted portion thereof) would be cancelled whenever the best price available through SuperMontage solely reflects the Quote/Order of a market participant that is not eligible to receive the Auto-Ex order. Nasdaq believes that this feature of the order will assist market participants using the order in fulfilling their obligations to obtain best execution for their customers, and will also encourage ECNs to continue to offer liquidity through SuperMontage. As is currently the case, NNMS order-delivery participants will be accessible through all other types of non-directed orders, as well as Preferenced and Directed Orders. Auto-Ex orders may be either priced limit orders or market orders, and all market participants will be permitted to enter Auto-Ex orders.[8]

Nasdaq believes that the processing of the Auto-Ex order type will be similar to the processing of orders in Nasdaq's SuperSOES system, which was operational in 2001 and 2002.[9] SuperSOES orders executed automatically against the quotes of market participants at the inside market that had agreed to accept automatic executions. The quotes of non-auto-ex market participants, however, were accessible only through Nasdaq's SelectNet system, which operated in a manner similar to the Directed Order functionality of SuperMontage. Nasdaq believes that the proposed Auto-Ex order is also closely aligned in function and purpose to the ''fill-or-return'' order offered by at least one of the national securities exchanges that trade Nasdaq stocks.[10]

At present, moreover, market participants can attempt to replicate the functionality of an Auto-Ex order by using a Preferenced Order, which executes solely against the Quote/Order of a recipient identified by the participant entering the order, and only if the recipient is at the best bid/best offer. Thus, a market participant seeking to access liquidity offered by an auto-ex participant at the inside market could preference an order to that market participant. However, in circumstances where a market participant seeks to work a large order by accessing the Quotes/Orders of several auto-ex participants at the best bid/best offer, use of this option would require the use of several orders, and therefore a higher cost. The Auto-Ex order, by contrast, will allow SuperMontage participants to access liquidity at the inside market as quickly and economically as possible.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with section 15A(b)(6) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change would provide market participants with a voluntary tool to use on behalf of their customers when seeking to execute transactions as quickly as possible and at the lowest cost possible.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The new order type established by this proposed rule change will allow market participants that opt to use it to access available liquidity almost instantaneously, thereby achieving efficient executions at best available prices for their customers. However, the order will not trade through the Quote/Order of an NNMS order delivery participant (or an auto-ex ECN that charged an access fee), and order-delivery participants will continue to be accessible through all other types of non-directed orders, as well as Preferenced and Directed Orders.[13] As the Commission found when it determined that SuperSOES's comparable order processing functionality was consistent with the Act, ''it is not likely that ECNs that choose order entry participation will be marginalized because ECNs are frequently at the best quote in the market.''[14] Nasdaq believes that the processing functionality of the Auto-Ex order is no more likely to result in an inappropriate burden on competition than the processing functionality approved by the Commission in 2000.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association.

against the quotes of all of Nasdaq's current automatic execution participants, including the Chicago Stock Exchange.

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR–NASD–99–11); Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999) (SR–NASD–99–11).

[10] *See* Pacific Exchange Rule 7.31(p) (describing ''fill-or-return order'' of the Archipelago Exchange facility of the Pacific Exchange, Inc.).

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] *See* Amendment No. 2, *supra* note 4.

[14] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987, 3998 (January 25, 2000) (SR–NASD–99–11).

All submissions should refer to File No. SR–NASD–2003–143 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27093 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48671; File No. SR–NASD–2003–135]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Aggregate Odd-Lot Amounts in for Display in SuperMontage Under Certain Circumstances

October 21, 2003.

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 August 28, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 20, 2003, the Commission received Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to aggregate odd-lot share amounts inside the inside spread for display purposes via the SIZE MMID. Nasdaq will implement the proposed rule change effective December 8, 2003 with the exact start date to be provided to market participants via a Nasdaq Head Trader Alert. The text of the proposed rule change is below. Proposed new language is in *italics.*

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4707. Entry and Display of Quotes/Orders

(a) No Change.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quotes/Orders submitted to the system as follows:

(1) Through (2) No Change.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) No Change.

(B) *Aggregation and Display of Odd-lots Bettering the Inside Price—odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE MMID, with the odd-lot share amounts of other NNMS Quoting Market Participants and NNMS Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.*

(c) Through (e) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the rules of the SuperMontage system provide that odd-lot share amounts of individual market participants are not displayed but otherwise generally remain in the system at their original price level and with the time-priority of their original entry. In some cases this may result in individual odd-lots being available at prices better than the displayed Nasdaq inside, but that are hidden from public view. In an attempt to increase transparency in the system in this situation, Nasdaq proposes in this filing to aggregate and display through SIZE the single best price level of any buy or sell odd-lots that are priced better than the Nasdaq inside market and that combined equal or are larger to or larger than one round-lot.[4] This aggregation will be for display purposes only, each individual odd-lot that is added together and displayed will retain their individual execution priority in the system and will continue to be processed individually.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general and with Section 15A(b)(6) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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[15] 17 CFR 200.30–3(a)(12).

[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, Division of Market Regulation, Commission (dated October 17, 2003) (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety.

[4] Since the aggregation of odd-lots proposed here may involve the odd-lot quote/orders of more than one market participant, Nasdaq has determined to use the SIZE MMID to represent this combined trading interest. Though aggregated under SIZE, the firm identity of odd-lot attributed quote/orders that are thereafter executed will be provided to counter-parties.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–135 should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27098 Filed 10–27–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48627A; File No. SR–NASD–2003–130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Amendments to Its Recently Adopted Rules Regarding Shareholder Approval for Stock Option or Purchase Plans or Other Equity Compensation Arrangements

October 22, 2003.

Correction

In FR Document No. 03–26588, beginning on page 60426 in the issue for Wednesday, October 22, 2003, the proposed rule text for proposed NASD Rule 4350(i)(1)(A)(iv) did not accurately reflect the current rule text of the rule being amended. Proposed NASD Rule 4350(i)(1)(A)(iv) should read as follows:

(iv) issuances to a person not previously an employee or director of the company, or following a bonafide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's *independent* compensation committee [comprised of a majority of independent directors] or a majority of the issuer's independent directors. *Promptly following an issuance of any 2 employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. C3–27137 Filed 10–27–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48659; File No. SR–NYSE–2002–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the New York Stock Exchange, Inc. To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

October 20, 2003.

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 August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange (the ''Exchange'') proposes to introduce into its rules ''Crossing Session III,'' for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. In Amendment No. 1, the Exchange proposes to adopt a new Rule 907 to also add a ''Crossing Session IV,'' whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security. Proposed Crossing Session III and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure (''Amendment No. 1''). Amendment No. 1 proposes to add ''Crossing Session IV.''

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure (''Amendment No. 2''). Amendment No. 2 deletes the reference to a volume-weighted average price (''VWAP'') order from paragraph (c) of proposed Rule 907.

Crossing Session IV would operate as a one-year pilot.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rule 900

(a) Through (d)—No Change.

(e) As used in this 900 series of Rules and other Rules in their application to Off-Hours Trading, the following terms shall have the meanings specified below:

(i) The term ''aggregate-price order'' means an order to buy or sell a group of securities, which group includes no fewer than 15 Exchange-listed securities having a total market value of $1 million or more.

(ii) The term ''closing price'' means the price established by the last ''regular way'' sale in a security prior to the official closing of the 9:30 a.m. to 4 p.m. trading session, as determined by the Exchange.

(iii) The term ''closing-price order'' means an order to buy or sell a security at its closing price.

(iv) The term ''guaranteed price coupled order'' means an order to buy for a minimum of 10,000 shares coupled with an order to sell the same quantity of the same security. One side of the guaranteed price coupled order must be for the account of a member organization and the other side must be for the account of one of its customers. Such orders must be entered and priced in accordance with Rule 907.

(v) [(iv)] The term ''Off-Hours Trading Facility'' means the Exchange facility that permits members and member organizations to effect securities transactions on the Exchange pursuant to this 900 series of Rules. The term ''Off-Hours Trading'' refers to trading through that facility.

Rule 907

Guaranteed Price Coupled Orders

(a) A member organization may enter into the Off-Hours Trading Facility a guaranteed price coupled order or an order to be executed at the volume weighted average price (''VWAP''), subject to the following:

(i) The member organization has accepted from its customer prior to the close of trading of the Exchange's 9:30 a.m. to 4 p.m. trading session an order for at least 10,000 shares, and has guaranteed its customer a specific price with respect to the entire order or the VWAP;

(ii) The member organization has recorded, along with all required details of the order, the guaranteed price or that the customer has elected the order be executed at the VWAP and has documented the basis upon which the VWAP is to be calculated;

(iii) The guaranteed price coupled order or an order to be executed at the VWAP is for that portion of the customer's order that could not be executed prior to 4 p.m., but in any event must be at least 10,000 shares;

(iv) The guaranteed price coupled order or VWAP order is priced at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or VWAP;

(v) The member organization designates the guaranteed price coupled order as Crossing Session III and the VWAP order as Crossing Session IV.

(b) A guaranteed price coupled order or VWAP order may be entered at any time following the close of the 9:30 a.m. to 4 p.m. trading session on the Exchange until the close of the Consolidated Tape.

(c) A guaranteed price coupled order may be priced at a price that is outside the range of prices for the subject security during the 9:30 a.m. to 4 p.m. trading session.

(d) A guaranteed price coupled order or VWAP order shall be immediately executed upon entry into the Off-Hours Trading Facility.

(e) Upon the close of the Consolidated Tape, the Exchange shall print each trade reported through the Off-Hours Trading Facility as guaranteed price coupled orders or VWAP orders. Guaranteed price coupled orders shall be designated as Crossing Session III. VWAP orders shall be designated as Crossing Session IV.

(f) Member organizations shall not enter a guaranteed price coupled order or VWAP order pursuant to paragraph (a) of this Rule if the order is for a security that was subject to a trading halt at the time the Exchange's 9:30 a.m. to 4 p.m. trading session ended.

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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, as amended, is to add two additional ''Crossing Sessions'' to the Exchange's Off-Hours Trading Facility (''OHTF''). Currently, the OHTF consists of ''Crossing Session I,'' which permits the execution, at the Exchange's closing price, of single stock, single sided closing price orders and crosses of single-stock, closing price buy and sell orders. The OHTF also consists of ''Crossing Session II,'' which permits the execution of crosses of multiple-stock (''basket'') aggregate price buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

As described below, the Exchange is proposing to add a new ''Crossing Session III,'' which would allow for the execution on the NYSE of ''guaranteed price coupled orders'' whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. Crossing Session III would be implemented initially as a one-year pilot program.

The Granting of ''Upstairs Stops''. In serving their institutional customers, member firms may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an ''upstairs stop'' meaning that the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the ''stop'' price (in the case of a buy order) or at or above the ''stop'' price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the ''stop'' price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where

trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the upstairs stop.

The Exchange is proposing to adopt a new post 4 p.m. ''Crossing Session'' to accommodate member firms that are trading to complete an ''upstairs stop'' and thereby obviate any perceived need to execute these transactions in London or elsewhere.

In Amendment No. 1, the Exchange is proposing to adopt a new Rule 907 to add, as ''Crossing Session IV,'' a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the volume weighted average price (''VWAP'') for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined. Crossing Session IV would be implemented initially as a one-year pilot program.

The Operation of Crossing Session III and Crossing Session IV. Proposed Crossing Session III and Crossing Session IV would operate as follows:

(i) The original order as to which an ''upstairs stop'' or ''VWAP'' has been granted must be for at least 10,000 shares;

(ii) The customer must have received a ''stop'' (guaranteed price) or VWAP for the entire order;

(iii) The member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;

(iv) The unfilled balance of the order that would be executed in Crossing Session III or Crossing Session IV must be at least 10,000 shares;

(v) The customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

(vi) Orders may be entered in Crossing Session III or Crossing Session IV between 4 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;

(vii) Member firms will receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV;

(viii) Orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4 p.m. trading session;

(ix) Orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4 p.m. trading session; and

(x) At 6:30 p.m., the Exchange will print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

A proposed amendment to Rule 900 provides a definition of ''guaranteed price coupled orders.'' Proposed new Rule 907 prescribes the operation of Crossing Session III and Crossing Session IV as described above.

Relief from Commission Rules. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from its Rule 10a–1[5] under the Securities Exchange Act of 1934 (the ''Act'') (short sale rule) for transactions effected therein, finding that such transactions did not raise all of the same regulatory concerns that are raised by similar transactions during the 9:30 a.m. to 4:00 p.m. trading session. In its filing, the Exchange requests that the Commission extend the exemptive relief from Rule 10a–1 currently available for transactions effected in Crossing Sessions I and II to transactions effected in Crossing Session III as well. However, the NYSE has withdrawn its request for exemptive relief with respect to Crossing Session III.[6] In Amendment No. 1, the Exchange did not request short sale relief with respect to Crossing Session IV.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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 written comments on 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–40 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority[8].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27095 Filed 10–27–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 240.10a–1.

[6] Telephone conversation between Robert J. McSweeney, Senior Vice President, Competitive Position, NYSE, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on August 19, 2003.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48662; File No. SR–PCX–2003–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Trade, Either by Listing or Pursuant to Unlisted Trading Privileges, Fixed Income Exchange Traded Funds

October 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2003, the Pacific Exchange, Inc. (''PCX'' 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. On October 14, 2003, PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, PCX proposes to amend PCXE Rule 5.2(j)(3) to permit trading, either by listing or pursuant to unlisted trading privileges (''UTPs''), certain fixed income Exchange Traded Funds (''ETFs''). The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

* * * * *

Rule 5.2(j)(3)—No change.

(A) Original Unit Listing Standards.

(i) The Investment Company must:

(a)[(I)] hold securities (*including fixed income securities*) comprising, or otherwise based on or representing an interest in, an index or portfolio or securities; or

(b)[(II)] hold securities in another registered investment company that holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

(ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the ''Deposit'') consisting of either:

(a)[(I)] a specified number of shares of securities (*or, if applicable, a specified portfolio of fixed income securities*) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b)[(II)] shares of a registered investment company, as described in subsection (A)(i)*(a)*[(I)] above, and/or a cash amount.

(iii) Units must be redeemable, directly or indirectly, from the Investment Company for securities (*including fixed income securities*) and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.

(iv)—No change.

(B)–(D)—No change.

Commentary

.01—No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. PCX 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

Purpose

The Exchange proposes to amend PCXE Rule 5.2(j)(3) to permit the listing and trading of fixed income ETFs. Additionally, PCXE seeks approval to trade, on a UTP basis, the following series of the iShares Trust: iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, and iShares GS $ InvesTop™ Corporate Bond Fund.

1. Listing and Trading ETFs

PCXE Rule 5.2(j)(3) provides standards for listing an Investment Company Unit (''ICU''), which is defined as ''a security that represents an interest in a registered investment company (''Investment Company'') that could be organized as a unit investment trust, open-end management investment company or similar entity.'' In addition to being registered under the Investment Company Act of 1940 (''1940 Act''), these securities are also registered under the Exchange Act. The Exchange proposes to amend this definition to permit the listing and trading of index-based fixed income investment products (*e.g.*, ETFs) that are based on an index of fixed income securities. Examples of such products include U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, PCXE Rule 5.2(j)(3) would accommodate the listing and trading of units of trading (''Units'')[4] based on an index of U.S. government debt securities (*e.g.*, securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other products that could be listed or traded under this rule, as amended, could include Units based on an index of corporate and/or non-corporate debt securities.[5] The Commission has approved the requests of the American Stock Exchange LLC (''Amex''), the New York Stock Exchange (''NYSE'') and the Chicago Stock Exchange (''CHX'') to list and trade fixed income ETFs.[6] The Exchange believes that its proposed rule change is substantially similar to those filed and approved for the Amex, NYSE and CHX.

Accordingly, the Exchange proposes to amend PCXE Rule 5.2(j)(3) to specify

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 13, 2003 (''Amendment No. 1'').

[4] *See* PCXE Rule 5.1(b)(15) for the definition of ''Unit'.

[5] ICUs based on a fixed income securities index are not currently eligible for listing or trading under the Exchange's generic listing criteria (*See* PCXE Rule 5.2) pursuant to Rule 19b–4(e) of the Exchange Act. The Exchange understands that it must make separate rule filings for any additional series of such ICUs based on fixed income indices prior to listing or trading those products, even if the Exchange is only trading the product on a UTP basis.

[6] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35) (''Amex Approval Order''); Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR–NYSE–2002–26); and Securities Exchange Act Release No. 46834 (November 14, 2002), 67 FR 70276 (November 21, 2002) (SR–CHX–2002–27).

that ETFs may be: (1) Based on a portfolio of fixed income securities; (2) issued in return for a deposit of a specified portfolio of fixed income securities and/or cash; and (3) redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash.[7]

Upon approval of the proposed amendments to PCXE Rule 5.2(j)(3), the Exchange also proposes to trade, on a UTP basis, the following four series of the iShares Trust, a registered open-end management investment company (the ''Trust''): iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, and iShares GS $ InvesTop™ Corporate Bond Fund (each, a ''Fund,'' and jointly, the ''Funds'').

Each Fund will hold certain fixed income securities selected to correspond generally to the price and yield performance of a specified U.S. Treasury, Government/Credit, or Corporate Bond Index (each, an ''Underlying Index'') maintained either by Lehman Brothers, or, for the Goldman Sachs Corporate Bond Fund, by Goldman Sachs & Co. Barclays Global Fund Advisors (''Advisor'') is the investment advisor to each Fund. The Advisor is registered under the 1940 Act. The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A., which, is in turn, a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. (''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

A. Operation of the Funds

Each Fund is designed to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each Fund will utilize ''passive'' indexing investment strategies. Each Fund may fully replicate its Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities (''Component Securities'') of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index).[8]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogenous pieces. These subdivisions are sometimes referred to as ''cells.'' A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: duration, sector, credit rating, coupon and the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed closely to correlate to the duration, sector, credit rating, coupon and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.[9]

According to the Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information (*e.g.*, coupon rates instead of dividend payments).

According to the Application, the Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are ''expensive names'' (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities. From time to time, adjustments may be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a regulated investment company (''RIC'') under the Internal Revenue Code. For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange notes, however, that Applicants do not anticipate that the Funds would need to make such adjustments, particularly since these Funds (other than the iShares Lehman Corporate Bond Fund and the iShares GS $ InvesTop™ Corporate Bond Fund) invest a very large percentage of their assets in U.S. Treasury securities.

The Exchange represents that the Advisor expects that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each Fund's investment objectives, policies and investment strategies will be fully disclosed in its prospectus (''Prospectus'') and statement of additional information (''SAI''). At least 90% of each of the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, and iShares 20+ Year Treasury Index Fund's assets will be invested in Component Securities of its respective Underlying Index. Each of these Funds

[7] *See supra,* note 4.

[8] The Commission approved an ''Application'' by the Trust, the Advisor and the Distributor (''Applicants'') for an Order under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the Funds from various provisions of the 1940 Act. *See* Investment Company Act Release No. 25622 (June 24, 2002) (approving File No. 812–12390). *See also supra* note 6.

[9] As stated in the Application, the Goldman Sachs Index excludes bonds with embedded options. Although the Lehman Indices may include bonds with embedded options, the bonds in each Lehman Index (and the respective Deposit Securities and Fund Securities, as defined herein) should be liquid and easily tradable because each Lehman Index consists of U.S. Treasury and agency securities and/or liquid corporate and non-corporate bonds. To the extent a particular bond is less liquid than another bond with similar characteristics, the Advisor's representative sampling techniques should permit the Advisor to replace the less liquid bond with a more liquid one. For these reasons, the Applicants do not believe the presence of bonds with embedded options in an Underlying Index, the Deposit Securities or Fund Securities would have any material impact on the creation/redemption process and the efficiency of the arbitrage mechanism for each Fund.

may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions). The iShares GS $ InvesTop™ Corporate Bond Fund generally will invest at least 90% of its assets in Component Securities of its respective Underlying Index. However, the iShares GS $ InvesTop™ Corporate Bond Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents as well as in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index and which are either (i) included in the broader index upon which such Underlying Index is based (*i.e.*, the Lehman Credit Index for the Lehman Credit VLI Index or the Goldman Sachs Investment Grade Index for the Goldman Sachs InvesTop Index); or (ii) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

B. Issuance of Creation Unit Aggregations

1. In General

Shares of each Fund (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The Funds will issue and redeem iShares only in Creation Unit Aggregations.[10] As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received.

The NAV per share of each Fund is determined at the close of the regular trading session based upon the methodology employed by the specific Fund. The Trust sells Creation Unit Aggregations of each Fund only on business days at the next determined NAV of each Fund. Each Fund will issue Creation Unit Aggregations in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (the ''Deposit Securities''). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each fund in exchange for portfolio securities of the Fund (''Fund Securities'') and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant (''Authorized Participant''). Authorized Participants, which are required to be Depository Trust Company (''DTC'') participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. In-Kind Deposit of Portfolio Securities

Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash (the ''Balancing Amount'') specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the differences between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Portfolio Deposit.''

The Advisor will make available to the market through the National Securities Clearing Corporation (the ''NSCC'') on each Business Day, prior to the Core Trading Session[11] trading on ArcaEx (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on the information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to a Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting of composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each Fund to permit or require the substitution of an amount of cash (*i.e.*, a ''cash in lieu'' amount) to be added to the Balancing Amount to replace any Deposit Security: (1) That may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

C. Availability of Information Regarding iShares and Underlying Indices

1. In General

On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current

[10] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

[11] The Exchange operates three trading sessions each day it is open. The three trading sessions are (1) the Opening Session; (2) the Core Trading Session; and (3) the Late Trading Session. *See* PCXE Rule 7.34(a).

Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the ''Intra-day Optimized Portfolio Value'' or ''IOPV'') will be calculated by Bloomberg L.P. (''Bloomberg'') every 15 seconds during the Exchange's core trading hours and disseminated every 15 seconds on the Consolidated Tape. Bloomberg will use Bloomberg Generic Prices (''BGN Prices'') to reflect changing bond prices and update the IOPV throughout the day. BGN Prices are current prices on individual bonds as determined by Bloomberg using an automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers). BGN Prices are updated throughout the day based on an ongoing analysis of the bid/ask prices submitted by the third-party price contributors. When Bloomberg receives bid/ask prices from a price contributor, the prices are filtered and screened according to pre-determined criteria and set parameters in order to maximize the accuracy of the pricing data. The net result of this process is an individual bond ''price'' based on an analysis of multiple pricing sources. BGN Prices are available on Bloomberg systems and Applicants expect that the pricing of the Deposit Securities will be transparent to anyone with access to Bloomberg systems.

The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. Goldman Sachs updates the value and return of the Goldman Sachs Index on a daily basis.

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. The closing prices of the Funds' Deposit Securities are available from published or other public sources, or on-line information services provided by Merrill Lynch, IDC, Bridge, Bloomberg, Lehman Brothers and other pricing services commonly used by bond mutual funds. In addition, the Web site for the Trust, which will be publicly accessible at no charge,[12] will contain the following information, on a per iShare basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask price [13] at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

2. Information Regarding the Underlying Debt Securities

The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems.[14]

The primary dealers are among the most active participants in the secondary market for Treasury securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker.[15] The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX,[16] for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[17]

Real-time price quotes for corporate [18] and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes.[19] The Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

D. Redemption of iShares

Creation Unit Aggregations of each Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each Fund will be redeemed principally in-kind, together with a balancing cash payment

[12] *See http://www.ishares.com.*

[13] The Bid-Ask Price of a Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each Fund's NAV.

[14] *See* ''eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems,'' December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site: *http://www.bondmarkets.com.*

[15] *See e.g.,* BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage.

[16] *See http://www.govpx.com.*

[17] *See http://www.tradeweb.com.*

[18] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (SR–NASD–65) for a discussion of the Trade Reporting and Compliance Engine (''TRACE'') which requires mandatory reporting relating to price transparency and oversight for the corporate debt market.

[19] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.*

(although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities that a creator of Creation Unit Aggregations must deliver to the Fund (the ''Creation List'') and which a redeemer will receive from the Fund (the ''Redemption List''). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.

In addition, just as the purchaser of Creation Unit Aggregations delivers the Balancing Amount to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the ''Cash Redemption Payment.'' The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ in the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

E. Clearance and Settlement

The Deposit Securities and Fund Securities of each Fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the ''CNS System''), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3), an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an ''in-kind'' creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not now effect the Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. government securities, corporate bonds, non-corporate bonds (other than U.S. government securities) and iShares on the same T + 3 settlement cycle. The issuer does not believe that the clearing and settlement process will affect the arbitrage of iShares of the Funds.

F. Dividends and Distributions

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities

gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amount received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

G. Other Issues

1. Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of ICUs in PCXE Rule 5.2(j)(3) and PCXE Rule 5.5(g)(2), respectively. It is anticipated that a minimum of one Creation Unit (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. Original and Annual Listing Fees

Because the ETFs will be traded on a UTP basis, the Exchange does not presently assess original or annual listing fees that are applicable to the fixed income ETF rule filing. However, once the fixed income ETFs are listed, the Exchange will submit a rule filing to reflect the original and annual listing fees.

3. Stop and Stop Limit Orders

Notwithstanding that the value of the ETF is derivatively priced based upon another security or index of securities, a Stop Order or Limit Order to buy or sale an ETF will be handled as provided in PCXE Rule 7.31(l)[20] and PCXE Rule 7.31(n).[21]

4. Specialist Trading of ETFs

ArcaEx does not currently offer trading by specialists. However, ArcaEx does allow trading by Market Makers (''MMs'') or Market Maker Authorized Traders (''MMATs'').[22] Nothing in the PCXE Rules should be construed to restrict a MM or MMAT in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

5. Prospectus Delivery/Disclosures

The Exchange represents that in an Information Circular to ETP Holders,[23] it will inform ETP Holders, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to iShares. The Commission granted the Applicants' request for an exemptive order granting relief from a certain prospectus delivery requirement under Section 24(d) of the 1940 Act.[24] Any product description used in reliance of a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Information Circular will also remind ETP Holders of their obligations to provide all purchasers of a series of Units a written description of the term and characteristics of those securities at the time of the confirmation of the first transaction in such a series. Additionally, ETP Holders will include such written description with any sales material relating to a series of Units that is provided to the customers or public.

6. Trading Halts

Any decision to halt trading of fixed income ETFs will be conducted in accordance with PCXE Rule 7.12, if circuit breaker parameters have been reached.

7. Suitability

Prior to the commencement of trading, the Exchange will issue an Information Circular informing ETP Holders of the characteristics of the fixed income ETFs and of the applicable PCXE rules, as well as the requirement of PCXE Rule 9.2(a) (''Diligence as to Accounts.''). Rule 9.2(a) generally requires members to use due diligence to learn the essential facts relative to every customer.

8. Purchases and Redemptions in Creation Unit Size

The Exchange represents that in the Information Circular referenced above, ETP Holders will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and SAI, and that iShares are not individually redeemable, but may redeemed only in Creation Unit Size aggregations or multiples thereof.

9. Surveillance

The Exchange will implement written surveillance procedures for the ETFs that it trades. The Exchange intends to use its existing surveillance technology and procedures applicable to other ICUs currently trading on the Exchange.[25] The Exchange believes that these surveillance efforts will effectively monitor the trading of the Funds so as to ensure full compliance with Exchange rules and the federal securities laws.

The Exchange also recognizes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock or bond index upon which an ETF

[20] On the ArcaEx, a stop order to buy (sell) becomes a market order when a transaction in the security occurs on the Exchange or on another national securities exchange or association at or above (below) the stop price. Stop Order shall not have standing in any Order Process in the Arca Book and shall not be displayed.

[21] On the ArcaEx, a stop limit order to buy (sell) becomes a limit order when a transaction in the security occurs on the Exchange or on another national securities exchange or association at or above (below) the stop price.

[22] *See* PCXE Rule 1.1(u) and PCXE Rule 7.31(v) for the definition of ''Market Maker'' and ''Market Maker Authorized Trader,'' respectively.

[23] An ETP Holder is a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP for effecting approved securities transactions on the ArcaEx. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Exchange Act. *See* PCXE Rule 1.1(n) and PCXE Rule 1.1(m).

[24] *See* Investment Company Act Release No. 25623 (June 25, 2002).

[25] PCXE currently trades a variety of ETFs.

is based.[26] The Exchange notes that the Commission previously made a finding that Lehman and Goldman each have sufficient policies and procedures in place to prevent the misuse of material non-public information.[27] The Exchange believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

10. Hours of Trading/Minimum Price Variation

The Funds will be eligible to trade on the Exchange during each of the three trading sessions available each day the Exchange is open for business.[28] The minimum price variation for quoting will be $.01.[29]

Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[30] in general, and furthers the objectives of Section 6(b)(5),[31] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–41 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Exchange Act,[32] and the rules and regulations thereunder applicable to a national securities exchange.[33] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[34] The Commission believes that the Exchange's proposal to list and trade fixed income ETFs (including the trading thereof on a UTP basis)[35] will provide investors with a convenient way of participating in the U.S. government, corporate and non-corporate (other than U.S. government) fixed income markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks. The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[36]

iShares Trust and iShares, Inc. are each registered in the 1940 Act as an open-ended management investment company with multiple series. iShares Trust has created (or identified for creation) over 50 separate series, while iShares, Inc. has created (or identified for creation) over 20 separate series. All of these series operate (or will operate) as ETFs pursuant to six prior exemptive orders from the 1940 Act, and each of the ETFs seeks to match the return of an equity securities index. Additionally, the Commission has granted the Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[37]

Barclays is registered as an investment adviser under the 1940 Act and serves as the investment adviser to the series of iShares Trust and iShares, Inc. The Distributor acts as the principal underwriter and distributor for iShares Trust and iShares, Inc.

iShares Trust created seven new series each of which operates as an ETF seeking to match the performance of a fixed income securities index. Four of the seven indices are the following:

[26] PCX changed this sentence from the original filing to refer to a stock or bond index. Telephone call between Tania J. Cho, Staff Attorney, PCX, and Jennifer Lewis, Special Counsel, Division of Market Regulation, Commission, on October 16, 2003.

[27] *See* Amex Approval Order, *supra* note 6.

[28] *See supra,* note 8.

[29] *See* Commentary .03 to PCXE Rule 7.6(a).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78f.

[33] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] The Commission notes that, pursuant to Rule 12f–5 under the Exchange Act, prior to trading a particular class or type of security pursuant to UTP, PCX must have listing standards comparable to those of the primary market on which the security is listed. 17 CFR 240.12f–5. The Commission finds that adequate rules and procedures exist to govern the trading of the Funds on PCX, pursuant to UTP.

[36] Pursuant to Section 6(b)(5) of the Exchange Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[37] Investment Company Act Release No. 25622 (June 25, 2002).

• Lehman Brothers 1–3 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 1 and 3 years);
• Lehman Brothers 7–10 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 7 and 10 years);
• Lehman 20+ Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 20 years); and
• Goldman Sachs InvesTop Index (containing the 100 most liquid and representative bonds in the U.S. investment grade corporate market with remaining maturities of at least 3 years).

The Commission noted in the Amex Approval Order that this was the first ETF based on an underlying index of fixed income securities (''Fixed Income ETFs''). The Funds will operate in substantially the same manner as Equity ETFs. Like many other ETFs, each Fund will use a representative sampling strategy to track its index. With a sampling strategy, a Fund will seek to match the return of its index by holding some, but not all, of the fixed income securities contained in its underlying index. In constructing the portfolio for a Fund, Barclays will select a sample of bonds that will correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the underlying index as a whole. Barclays may also exclude less liquid bonds in order to create a more tradable portfolio to enhance arbitrage efficiency. As with its Equity ETFs, Barclays represents that the Funds will have a tracking error relative to the performance of their respective underlying indices of no more than 5%.

Shares of the Funds will be issued and redeemed in Creation Units priced at NAV in exchange for Portfolio Deposits and Redemption Baskets consisting of Bonds selected and announced by Barclays at the beginning of each business day.

The Commission finds that the Funds will provide benefits to investors in allowing investors to trade baskets of bonds in a single transaction at a cost comparable to that of trading existing equity securities and will allow investors to trade baskets of bonds throughout the day and thereby permit them to take advantage of (or protect themselves against) intra-day market movements. The Funds may make it easier for individual investors to diversify their portfolios across a broader range of assets and will provide institutional and other large investors with an alternative to futures for various hedging and other investment strategies that involve fixed income securities. Finally, the Funds will provide investors with a fund product that discloses its portfolio on a daily basis rather than semi-annually.

While the Funds will be operated in a manner that closely parallels the manner in which Equity ETFs are operated, one key potential difference may be the efficiency of the arbitrage process. The arbitrage mechanism for Equity ETFs generally has caused the market price of ETF shares to track closely the NAV of the ETF shares. With respect to liquidity of the debt securities likely to be in the ETF portfolios, to the extent these debt securities could not be readily purchased and sold, the arbitrage process would be less efficient. However, the Commission notes that the Funds will invest in some of the most liquid debt securities, including U.S. Government securities and investment grade corporate and non-corporate bonds.[38] In addition, Barclays will employ a sampling method of portfolio management that would allow the Funds to exclude any bonds contained in an underlying index that may not have sufficient liquidity for easy trading. As a result, the Commission believes that the Funds have addressed the liquidity issues that might hamper arbitrage.

In addition, differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs. Specifically, because the pricing of debt securities can be less transparent than the pricing of equity securities, arbitrageurs might account for pricing uncertainty by waiting for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the Funds (*i.e.*, U.S. Government securities and investment grade corporate and non-corporate bonds), the pricing information should be available. The Exchange has indicated that real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Exchange has also represented that retail investors would have access to free intra-day bellwether quotes.[39] For instance, the Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs & Co.

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG.

PCX represents that every 15 seconds a price calculated by Bloomberg reflecting the current value of the Portfolio Deposit on a per ETF share basis for the Funds will be disseminated. To calculate this intra-day value, Bloomberg intends to use Bloomberg Generic Prices, which are current prices for individual bonds as determined by Bloomberg using an automated pricing program that analyzed multiple bond prices contributed by third-part price contributors such as broker-dealers.[40]

[38] The Goldman Sachs InvesTop Index may include investment grade corporate and non-corporate bonds issued by non-U.S. issuers (sovereign, supra-national, foreign agency, and foreign local government). In Barclays' 1940 Act Application, it stated that these bonds will be dollar denominated, registered for sale in the U.S., and traded on U.S. markets at negotiated and readily available prices. Barclays does not believe that these bonds present any unique pricing or liquidity issues and does not expect the bonds to negatively affect arbitrage efficiency. The Commission notes that if any of these major characteristics of these fixed income indices (*e.g.,* investment grade, face amount issued, maturity classification) were to materially change, the Commission would expect PCX to amend these listing standards accordingly.

[39] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.* TRACE also disseminates last sale information on certain investment grade bonds. See *http://www.nasdbondinfo.com.*

[40] The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers.

Accordingly, PCX believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption Basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under PCX's listing standards, sales in the secondary market must be accompanied by a ''product description,'' describing the ETF and its shares.[41] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under PCXE Rule 5.2(j) the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under PCXE Rule 9.2(a) which generally requires that members use due diligence to learn the essential facts relative to every customer. The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with Section 6(b)(5) of the Exchange Act.[42]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Investment Company Unit listing standards in PCXE Rules 5.2(j) and 5.5(g)(2), and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Investment Company Units, including Funds. Funds will be deemed equity securities subject to PCX rules governing the trading of equity securities. These rules include: Business Conduct and Equity Trading Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to PCXE Rule 7.12, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, handling of orders and reports, duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans;[43] and Conducting Business with the Public Rules, such as conduct of accounts, margin rules, and advertising.[44] PCX also will consider halting trading in any series of Investment Company Units under certain other circumstances regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock index upon which an ETF is based. Previously, the Commission noted the importance of an exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a fixed income securities index.[45] In the Amex Approval Order, the Commission noted that Goldman and Lehman each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks to the Funds.[46] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

The Commission also believes that PCX has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

PCX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. PCX has requested accelerated approval because the 1940 Act Application relating to the Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[47] The Application disclosed the characteristics and risks associated with the Funds. No comments were submitted and the Commission granted the relief requested in the Application.[48] The Funds will trade on the Exchange in the same

The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

[41] When the Commission approved Nasdaq listing standards for ETFs, it clarified that NASD members trading equity ETFs through electronic communication networks (''ECNs'') would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

[42] 15 U.S.C. 78f(b)(f).

[43] PCXE Rules 6.1–7.64.

[44] PCXE Rules 9.1–9.28.

[45] *See* Amex Approval Order, *supra* note 6.

[46] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[47] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[48] Investment Company Act Release No. 25622 (June 25, 2002).

manner as Investment Company Units previously approved by the Commission. Furthermore, the Commission notes that it granted accelerated approval to the request of the Amex, NYSE, and CHX to list and trade fixed income ETFs.[49] Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It Is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[50] that the proposed rule change, as amended, (File No. SR–PCX 2003–41) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48664; File No. SR–PCX–2003–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 To Exempt ETP Holders and Sponsoring ETP Holders From the Administrative Late Charges Related to Transaction Fees by the Archipelago Exchange

October 20, 2003.

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 September 24, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its 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. On October 10, 2003, the Exchange filed an amendment that entirely replaced the original rule filing.[3] The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend the Schedule of Fees and Charges (''Schedule'') for the Archipelago Exchange (''ArcaEx'') to establish an exception to an administrative late charge applicable to ETP Holders and Sponsoring ETP Holders for failure to pay applicable dues, fees, or charges that are past due. The text of the proposed rule change is available at the PCX 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 PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX 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 is proposing to amend ArcaEx's Schedule to establish an exception to an administrative late charge applicable to ETP Holders and Sponsoring ETP Holders who trade on ArcaEx for failure to pay dues, fees, or charges that are past due.

Currently, ArcaEx[5] assesses an administrative late charge to ETP Holders and Sponsoring ETP Holders that are substantially late in making payments to ArcaEx of dues, fees, fines or other charges.[6] The purpose of this charge is to recover ArcaEx's costs in seeking to collect such payments when they are past due and to encourage ETP Holders and Sponsoring ETP Holders to make such payments in a timely manner. ArcaEx provides invoices and related notices to ETP Holders and Sponsoring ETP Holders as follows: An initial invoice is sent approximately five days after a given month in which dues, fees or other charges are accrued. If no payment is made on the invoice within one month, ArcaEx sends the ETP Holder or Sponsoring ETP Holder a ''late'' notice on the tenth day of the month following the month in which the invoice was issued. Thereafter, if no payment is made by the twentieth of the month following issuance, ArcaEx sends a second ''late'' notice with an administrative late charge. The amount of the late charge is $250.00 or 1.0 percent of the invoice amount (whichever is greater) if the ETP Holder or Sponsoring ETP Holder is late once within the previous twelve months; and $500.00 or 1.5 percent of the invoice amount (whichever is greater) if the ETP Holder or Sponsoring ETP Holder is late more than once within the previous twelve months.

ArcaEx is proposing to establish an exception that would eliminate the requirement to pay the administrative late charges related to transaction fees. The purpose of such an exception is for business reasons in that ArcaEx is seeking to promote a more competitive level to its ETP Holders and Sponsoring ETP Holders for conducting business on ArcaEx. The administrative late charge will continue to be applied to all other dues, fees or charges that are past due.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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[49] *See supra,* note 5.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.3–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 9, 2003 letter from Tania J. Cho, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachment (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 10, 2003, the date the PCX filed Amendment No. 1. *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] With the exception of regulatory related fees and charges, for which the PCX administer, ArcaEx administers the billing and collection of all other fees and charges.

[6] *See* Securities Exchange Act Release No. 35757 (May 24, 1995), 60 FR 28433 (May 31, 1995), (SR-PSE–95–15) (Notice of Filing and Immediate Effectiveness of the Administrative ''Late'' Charges). While this rule change in the Schedule has been operative since May 13, 1995, due to a clerical error the Schedule was not updated internally at that time. Hence, the Schedule, to date, has not reflected the late charge. This administrative error has been corrected internally by the PCX's Finance Department.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–53 and should be submitted by November 18, 2003.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27096 Filed 10–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48673; File No. SR–Phlx–2003–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Temporarily Waive Membership Transfer Fees

October 21, 2003.

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 October 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. 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 Phlx proposes to amend its schedule of dues, fees and charges to adopt the following temporary actions respecting fees that would ordinarily be imposed on transfers of memberships: [3] (1) Waive the transfer fee of $500 [4] in connection with memberships that are transferred from a member who holds legal title to more than one regular membership [5] to an existing member or new member; (2) waive the application fee of $350 [6] in connection with the transfer of a membership from a member who holds legal title to more than one regular membership to a new member; [7] (3) refund the initiation fee of $1,500 [8] incurred in connection with the transfer of a membership from a member who holds legal title to more than one regular membership to a new member, when such transfer occurred during the time period from October 1, 2003 until the record date for the Special Member Meeting;[9] and (4) waive the transfer fee of $500 in connection with transfers of memberships back to the prior legal title holder (who held legal title to more than one regular membership and transferred it to an existing member or new member from October 1, 2003 to the record date for the Special Member Meeting) within 60 days after the record date. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal does not apply to memberships in non-participating status (''NPS''). Any transfer of memberships in NPS must abide by the requirements set forth in Phlx Article XII, Section 12–1. The Phlx notes, however, that members who change the status of their membership from NPS to participating status before the record date for the special meeting concerning demutualization (''Special Member Meeting'') can take full advantage of the waivers described herein. Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Ian K. Patel, Attorney, Division of Market Regulation, Commission on October 20, 2003.

[4] The transfer fee is imposed on the transferee at the time of the transfer of legal or equitable title to any Phlx regular membership. *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR–Phlx–97–09).

[5] *See* Phlx Certificate of Incorporation, Article Fifth.

[6] In general, the application fee is charged in connection with applications handled by the Exchange's Membership Services Department, including applications for Exchange membership. *See* Securities Exchange Act Release No. 47383 (February 20, 2003), 68 FR 8956 (February 26, 2003) (SR–Phlx–2002–79).

[7] The waivers for the application fee and transfer fee as described in items one and two would be in effect from October 1, 2003 until the record date for the Special Member Meeting. The record date has currently been set for October 21, 2003.

[8] The initiation fee is imposed upon members upon election. See Securities Exchange Act Release No. 26468 (January 18, 1989), 54 FR 3713 (January 23, 1989) (SR–Phlx–88–45). *See also* Phlx Article XII, Section 12–8.

[9] The Exchange intends to refund these initiation fees in the billing cycle following the date of the transfer of the membership.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with an upcoming Special Member Meeting concerning demutualization,[10] members holding legal title to a regular membership will be allowed to vote respecting a proposed demutualization plan. Currently, in accordance with the Exchange's by-laws and Delaware General Corporation Law, a member holding a regular Phlx membership is permitted to cast only one vote, regardless of the number of memberships to which he or she holds legal title.[11] For instance, a member organization may hold title to multiple memberships in the name of a single employee of that member organization, thereby only allowing one vote for the memberships held in the name of that single employee; simply transferring those memberships to different employees would permit those memberships to be voted. However, there are fees—specifically the application, initiation and transfer fees—that may be associated with the transfer of memberships.

The purpose of the proposed rule change is to allow members who own multiple memberships to transfer some of their memberships to others during the time periods specified above, in order to maximize voting rights, without imposing a significant cost to those members. As a result, members who hold legal title to more than one regular membership during the applicable period will be able to transfer memberships without incurring significant costs. The Exchange believes that this will enable more memberships to be voted with respect to the demutualization if the legal titleholders of the memberships choose to do so.

2. Statutory Basis

The Exchange believes that the proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. This proposal applies to all members who hold legal title to more than one regular membership. The Exchange believes that this temporary fee waiver and refund should maximize member voting rights in connection with the Exchange's proposed plan to demutualize.

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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(2) of Rule 19b–4 thereunder,[15] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–69 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27090 Filed 10–27–03; 8:45 am]

BILLING CODE 8010–01–P

[10] In the proposed Demutualization, the Phlx is seeking approval to convert from a non-stock mutual corporation that is precluded from paying dividends, into a for-profit stock corporation that may pay dividends. The transaction, if approved, would take place in two stages: (1) an amendment to the Phlx's Certificate of Incorporation; and (2) a merger by the Phlx with and into a subsidiary created for this purpose.

[11] *See* Phlx By-Law Article XII, Section 12–1(b), except as provided by Article Thirteenth of the Phlx's Certificate of Incorporation.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 20–27F, Certification and Operation of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of AC 20–27F, Certification and Operation of Amateur-Built Aircraft. AC 20–27F provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Title 14 Code of Federal Regulations, part 21, Certification Procedures for Products and Parts, regarding Certification and Operation of Amateur-Built Aircraft.

ADDRESSES: Copies of AC 20–27F can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave, Landover, MD 20785. This AC can also be obtained at no charge from the Internet at *www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgWebcomponents.nsf/HomeFrame?OpenFrameSet.*

Issued in Washington, DC, on September 26, 2003.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 03–27176 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare a Tiered Environmental Impact Statement and Conduct Environmental Scoping for the Construction and Operation of Inaugural Airport Facilities by the State of Illinois for the South Suburban Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare a Tiered Environmental Impact Statement and to hold one (1) public scoping meeting and one (1) governmental and agency scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a tiered Environmental Impact Statement (EIS) will be prepared to consider the construction and operation of Inaugural Airport Facilities for the south Suburban Airport (SSA). To ensure that all significant issues related to the proposed project are identified, one (1) public scoping meeting and one (1) governmental and public agency scoping meeting will be held. The scope of the proposed action is significantly different from earlier scoping completed in August 2000 that considered the location and acquisition of land by the state of Illinois for a potential future supplemental air carrier airport to serve the northeast Illinois and northwest Indiana metropolitan area. New public scoping will be held in order that all significant issues related to the proposed actions are identified.

FOR FURTHER INFORMATION CONTACT: Denis R. Rewerts, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Rewerts can be contacted at (847) 294–7195 (voice), (847) 294–7046 (facsimile) or by e-mail at *7-agl-ssa-eis-project@faa.gov*. Comments on the scope of the EIS should be submitted to the address above and must be received no later than Friday, December 19, 2003.

SUPPLEMENTARY INFORMATION: The FAA will prepare a Tier 2 EIS for development of inaugural airport facilities at the SSA site located in Will County, IL. An earlier Tier 1 EIS approved in the FAA Record of Decision on July 12, 2002, addressed FAA site approval for a potential future supplemental air carrier airport to serve the greater Chicago region. This second tier (Tier 2 EIS) will address the construction and operation of inaugural airport facilities for the SSA. All reasonable alternatives to the proposed action will be considered including the No-Action Alternative.

Copies of a scoping document with additional detail can be obtained by contacting the FAA informational contact person identified above. The scoping documents can also be accessed on the Internet at *http://www.southsuburbanairport.com*. Federal, state and local agencies and other interested parties are invited to make comments and suggestions to ensure that the full range of issues related to the proposed project are addressed and all significant issues identified. The FAA informational contact person identified above must receive these comments and suggestions no later than Friday, December 19, 2003.

Public Scoping Meetings

The FAA will hold one (1) public and one (1) governmental agency scoping meeting to solicit input from the public and various Federal, state, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed project. The agency and public scoping meetings will be held on December 3, 2003, in Engbretson Hall at Governors State University, University Park, Illinois. The first meeting will be held between 10 a.m. and 12 p.m. for Federal, State, and local agencies. The second meeting will be held from 4 p.m. to 8 p.m. for the public and other interested parties. An informational workshop on the SSA Tier 2 EIS will run concurrent with the public scoping meeting. The workshop will be held at the hall of governors, Governors State University, University parkway, University Park, Illinois.

Dated: Issued in Des Plaines, Illinois on October 22, 2003.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–27178 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held December 8–12, 2003 starting at 9:30 am.

ADDRESSES: The meeting will be held at EUROCAE, 17 rue Hamelin, 75116, Paris, France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) EUROCAE contact, Christian Lefebvre; telephone 33/ 1 45 05 72 27; e-mail *christian.lefebvre@eurocae.com*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting. The agenda will include:

- December 8:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- December 9–11:
  - Sub-group Meetings
- December 12:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 15, 2003

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–27179 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135/ EUROCAE Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135/EUROCAE Working Group 14 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135/Eurocae Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held November 12–14, 2003 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org,* (2) Jim Lyle at Embry Riddle; telephone (520) 708–3833; e-mail *lyallj@erau.edu.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- November 12–14:
  - Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting)
  - Review Table of Changes
  - Review Change Proposals and Drafts for Section 16.
  - Review Change Proposals and Drafts for Sections 20 and 21.
  - Review Change Proposals and Drafts for all other sections.
  - Review Schedule for DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment.
  - Closing Plenary Session (Debrief of Subgroup Meetings, New/ Unfinished Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 15, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–27180 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2002–007]

Proposed Policy for Pitot Heat Indication Systems for 14 CFR, Part 23, 23.1326(b)(1)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy for Pitot Heat Indication Systems for 14 CFR, Part 23, § 23.1326(b)(1) in Small Airplanes. This notice is necessary to advise the public of this proposed FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Send your comments by November 28, 2003.

ADDRESSES: Copies of the proposed policy statement, PS–ACE100–2002–007, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed policy statement is also available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/aceProposed.htm.* Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Federal Aviation Administration, Small Airplane Directorate, Standards Office, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4134; fax: 816–329–4090; e-mail: *leslie.b.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed policy statement. Identify the proposed Policy Statement Number PS–ACE100–2002–007 on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed policy statement PS–ACE100–2002–007'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text.

State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on October 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–27177 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: New York County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a Final Environmental Impact Statement/Section 4(f) Evaluation will be prepared for a proposed highway project in New York County, New York.

FOR FURTHER INFORMATION CONTACT:

Richard Schmalz, Route 9A Project Director, New York State Department of Transportation, 21 South End Avenue, New York, NY 10280–1044, Telephone: (212) 201–0917.

or

Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act (NEPA) of 1969 and 23 U.S.C. 315 and 23 CFR

777.123, the FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare a supplement to a Final Environmental Impact Statement/Section 4(f) Evaluation (EIS) on a proposal to restore U.S. Route 9A (West Street) in New York County (Manhattan). The original EIS for the improvements on Route 9A from Battery Park to 59th Street was published in May 1994, for which the Record of Decision was issued in July 1994. The Supplemental EIS (SEIS) will be a comprehensive summary of the results of the analyses performed for the proposed action in the section of Route 9A from Albany Street to Chambers Street for a distance of about one-half mile, where conditions have changed as a result of the attacks of September 11, 2001. The scope of issues to be addressed in the SEIS is consistent with those issues previously addressed in the original EIS.

As part of the Lower Manhattan redevelopment efforts, the NYSDOT and the FHWA, in cooperation with Lower Manhattan Development Corporation (LMDC), Port Authority of New York & New Jersey (PANY&NJ), New York City Department of Transportation (NYCDOT) and the Metropolitan Transportation Authority (MTA), are studying alternatives to rebuild the section of Route 9A/West Street between Albany Street and Chambers Street. The section of highway in these limits was destroyed by the September 11, 2001 terrorist attacks on the World Trade Center (WTC) or subsequently damaged by cleanup and/or recovery activities. The study to reconstruct Route 9A/West Street is being undertaken in order to integrate the reconstruction of Route 9A into the overall redevelopment planning initiative for Lower Manhattan to better serve the existing and planned adjacent uses. The section of West Street from Battery Place to Chambers Street was under construction and almost complete just prior to the 9–11 attack. The plan being constructed at the time was the preferred plan from the 1994 Route 9A FEIS.

The alternatives currently under consideration for Route 9A/West Street are: (1) The No Action Alternative, which is included as a baseline alternative against which all other alternatives are measured. This alternative would make permanent the six-lane roadway that was opened March 29, 2002. (2) An At-Grade Alternative, which restores eight lanes, four northbound and four southbound, in front of the WTC site as originally approved in the 1994 Route 9A FEIS with a slight alignment shift to the west to avoid the now exposed WTC slurry wall. This alternative would also provide pedestrian overpasses to facilitate movement of pedestrians across West Street. (3) A Short Bypass Alternative, which restores eight lanes in front of the WTC site by depressing four through traffic lanes and providing four lanes at grade for local traffic circulation. The bypass would drop below street grade in an 1100-foot-long covered underpass north of Albany Street and rise to street level just south of Murray Street to provide an enhanced setting, green space and public space at the proposed WTC memorial site and World Financial Center (WFC). A wide sidewalk would also be provided adjacent to the WTC site for north-south pedestrian traffic and memorial visitors.

The build alternatives are consistent with the original goals and objectives of the Route 9A Reconstruction Project, near completion just prior to the 9/11 attacks, and also address those of the LMDC. The LMDC planning initiative as outlined in the ''Principles and Preliminary Blue Print for the Future of Lower Manhattan'' report and the needs resulting from the terrorist attack are important in the evaluation of this project. Additional influences on the project include the ''New York City's Vision for Lower Manhattan'' developed by New York City and presented by Mayor Michael Bloomberg in December 2002 and the selected WTC site development plan by Studio Daniel Libeskind Architects. The build alternatives being considered for Route 9A / West Street address and are compatible with the principles and plans outlined in these documents.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, Sate, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A Public Meeting will be held on November 19, 2003, at the U.S. Customs House, from 12 p.m. to 8 p.m., at which comments from the public will be taken, and a transcript of the entire proceedings will be produced. Public notice will be given for the time and place of future meetings and the public hearing on the Draft SEIS. The Draft SEIS will be available for public and agency review and comment. Coordination with the public, stakeholders and agencies involved will continue to be provided throughout preparation of the SEIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123

Issued on: October 29, 2003.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 03–27103 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16356]

Notice of Receipt of Petition for Decision That Nonconforming 2002 and 2003 Ferrari 575 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 and 2003 Ferrari 575 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 and 2003 Ferrari 575 passenger cars 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 importation into and 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 November 28, 2003.

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 am to 5 pm]. 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**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 2002 and 2003 Ferrari 575 passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 2002 and 2003 Ferrari 575 passenger cars that were manufactured for importation into, and 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 2002 and 2003 Ferrari 575 passenger cars 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.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2002 and 2003 Ferrari 575 passenger cars, 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 2002 and 2003 Ferrari 575 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word ''Brake'' for the ECE warning symbol as the marking for the brake failure indicator lamp; (b) modification of the speedometer to read in miles per hour. The petitioner states that the instrument cluster will be modified by installing U.S.-version software information which will result in the seat belt warning symbol and other warning emblems reading appropriately in English.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model front and rear sidemarker assemblies; (b) modification of the tail lamp assembly wiring (by welding the circuit in the tail lamp assembly) so that the tail lamps will operate in the same manner as those on the vehicle's U.S.-certified counterpart.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* downloading of U.S.-version software information so that the vehicle complies with the standard.

Standard No. 208 *Occupant Crash Protection:* inspection of all vehicles and replacement of any passive restraint system components that are not identical to the U.S.-model components with U.S.-model components. The petitioner states that the non-U.S. certified comparison vehicle is equipped with seatbelts that are not identical to the U.S.-model vehicle.

Standard No. 209 *Seat Belt Assemblies:* inspection of all vehicles and replacement of any seat belts, air bags, knee bolsters, crash sensors, and air bag control units with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles should be equipped with automatic restraint system components that are identical to those found on the vehicles' U.S. certified counterparts, and with combination lap and shoulder belts that are self-tensioning and are released by means of a single red push button.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of U.S.-model tether anchorages.

Standard No. 301 *Fuel System Integrity:* replacement of the complete vent pipe, disareator, fuel tank connecting pipe, and pipe for vapor recycling with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* installation of compliant interior trunk release components, including an inner hood unlocking device, a safety handle for use by persons trapped within the trunk compartment, a cable for the handle, as well as connection hardware, a dowel and a clip.

Petitioner states that front and rear bumper bracket components will have to be replaced with U.S. model components for the vehicles to comply with the Bumper Standard found in 49 CFR part 581. Petitioner identified the components requiring replacement as including left- and right-hand brackets and supports, as well as a pad and plate for the front bumper, and left- and right-hand brackets, as well as a plate, pad, bumper fixing plate, and rivet for the rear bumper.

The petitioner states that all vehicles will be inspected prior to importation to ensure that all required anti-theft devices identical to those found on the vehicles' U.S. certified counterparts are installed. Any modifications necessary to achieve compliance with the Theft Prevention Standard found at 49 CFR part 541 will be made at that time.

In addition, the petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicles so

that it is readable from outside the driver's windshield pillar and a VIN reference label must be affixed to the edge of the driver's door or to the latch post nearest the driver in order to meet the VIN requirements of 49 CFR part 565.

Lastly, the petitioner states that a certification label will be affixed to the driver's side doorjamb to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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.

Issued on: October 23, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–27129 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the 24th session of the United Nation's Subcommittee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 3–10, 2003 in Geneva, Switzerland.

DATES: November 19, 2003, 9:30 a.m.–12:30 p.m., Room 6200; December 17, 2003, 9:30 a.m.–12:30 p.m., Room 6200.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Richard, International Standards Coordinator, or Mr. Duane Pfund, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the 24th session of the UNSCOE and to discuss draft U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the 25th session of the UNSCOE. Topics to be covered during the public meetings include: (1) Harmonization of the Recommendations on the Transport of Dangerous Goods with the Globally Harmonized System of Classification and Labeling of Chemicals, (2) Hazards to the aquatic environment, (3) Procedures for incident reporting, (4) Evaluation of the United Nations packaging requirements, (5) Transport of Dangerous Goods in limited quantities and consumer commodities, (6) Miscellaneous proposals related to listing and classification and the use of packagings and tanks. The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32003.html.* This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/intstandards.htm.* RSPA's site provides additional information regarding the UNSCOE and related matters such as a summary of decisions taken at the 23rd session of the UNSCOE.

Issued in Washington, DC, on October 22, 2003.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–27130 Filed 10–27–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2004. The basic fee for the transfer of a Treasury book-entry security will be $.21, unchanged from fees in effect since July 1, 2003. The Federal Reserve funds movement fee will be decreasing from $.05 to $.04, resulting in a combined fee of $.25 for each Treasury securities transfer.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer in CY 2004 will be increasing from $25.00 to $28.00.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, c/o Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045–0001, telephone (212) 720–2883.

John M. Lilly, Financial Systems Analyst, Bureau of the Public Debt, Room 510, 999 E Street, NW., Washington, DC 20239–0001, telephone (202) 691–3550.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Effective January 2, 2004, the basic fee will be $.21 for each Treasury securities transfer and reversal sent and received, unchanged from fees in effect since July 1, 2003. The surcharge for an off-line Treasury book-entry transfer will increase from $25.00 to $28.00.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping or reconstitution of Treasury securities, wires associated with original issues, or

interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published elsewhere in this issue by the Board of Governors of the Federal Reserve System [Docket OP–1165].

The following is the Treasury fee schedule that will take effect on January 2, 2004, for the book-entry transfers on NBES:

TREASURY—NBES FEE SCHEDULE [1]

[Effective January 2, 2004, (in dollars)]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.21	.00	.04	.25
On-line transfer received	.21	.00	.04	.25
On-line reversal transfer originated	.21	.00	.04	.25
On-line reversal transfer received	.21	.00	.04	.25
Off-line transfer originated	.21	28.00	.04	28.25
Off-line transfer received	.21	28.00	.04	28.25
Off-line account switch received	.21	.00	.04	.25
Off-line reversal transfer originated	.21	28.00	.04	28.25
Off-line reversal transfer received	.21	28.00	.04	28.25

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: October 17, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–27125 Filed 10–27–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–252936–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a final regulation, REG–252936–96 (TD 8780), Rewards for Information Relating to Violations of Internal Revenue Laws (section 301.7623–1).

DATES: Written comments should be received on or before December 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Rewards for Information Relating to Violations of Internal Revenue Laws.

OMB Number: 1545–1534.

Regulation Project Number: REG–252936–96.

Abstract: The regulations explain the procedure for submitting information that relates to violations of the internal revenue laws. The regulations also require a person claiming a reward for information to provide, in certain circumstances, identification of evidence that the person is the proper claimant.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: October 20, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–27171 Filed 10–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for e-Services Registration Tin Matching—Application and Screens for TIN Matching Interactive

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning e-Services Registration Tin Matching—Application and Screens for TIN Matching Interactive.

DATES: Written comments should be received on or before December 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: e-Services Registration Tin Matching—Application and Screens for TIN Matching Interactive.

OMB Number: 1545–1823.

Abstract: E-services is a system which will permit the Internal Revenue Services to electronically communicate with third party users to support electronic filing and resolve tax administration issues for practitioners, payers, states and Department of Education Contractors. Registration is required to authenticate users that plan to access e-services products. This system is a necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the internet and accessible through the irs.gov Website. TIN Matching allows a payer, or their authorized agent, who is required to file information returns for income subject to backup withholding to match TIN/Name combinations through interactive and bulk sessions. It is necessary for payers to apply online to use TIN Matching, and the information requested in the application process is used to validate them systemically as payers of the correct types of income.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Registration

Estimated Number of Responses: 1,320,000.

Estimated Average Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 440,000.

TIN Matching Application

Estimated Number of Responses: 18,825,000.

Estimated Average Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 3,150,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–27172 Filed 10–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Survey for the Practitioner Attitudinal Survey

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Survey for the Practitioner Attitudinal Survey.

DATES: Written comments should be received on or before December 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Practitioner Attitudinal Survey.

OMB Number: 1545–1587.

Abstract: This is a survey for quantitative research to establish changes to baseline measures of public

knowledge and acceptance of Electronic Tax Administration (ETA) programs. The results of the survey will provide the level of detail needed to guide decisions related to development and quality improvements of future e-submissions products and services and effective marketing techniques.

Current Actions: There are no changes being made to the survey at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 1 hour, 17 minutes.

Estimated Total Annual Burden Hours: 1,797.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–27173 Filed 10–27–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 208

Tuesday, October 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[ATF Notice No. 3; Docket No. ATF2003R–28T]

The Gang Resistance Education and Training Program: Availability of Financial Assistance, Criteria and Application Procedures

Correction

In notice document 03–26774 beginning on page 60709 in the issue of Thursday, October 23, 2003, make the following correction:

On page 60710, in the first column, under the heading **Criteria and Points,** in the fifth line, ''and'' shoud read ''or''

[FR Doc. C3–26774 Filed 10–27–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2176; File No. S7–28–02]

RIN 3235–AH 26

Custody of Funds or Securities of Clients by Investment Advisers

Correction

In rule document 03–24813 beginning on page 56692 in the issue of Wednesday, October 1, 2003, make the following correction:

§275.206(4)–2 [Corrected]

On page 56701 in §275.206(4)–2, in the first column, in the fourth line, ''(a)'' is corrected to read ''(b)''.

[FR Doc. C3–24813 Filed 10–27–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 28, 2003

Part II

Environmental Protection Agency

40 CFR Parts 260 and 261
Revisions to the Definition of Solid Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[RCRA–2002–0031; FRL–7577–7]

RIN 2050–AE98

Revisions to the Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing revisions to the definition of solid waste that identify certain recyclable hazardous secondary materials as not discarded, and thus not subject to regulation as wastes under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed rule would also establish specific regulatory criteria for determining whether or not hazardous secondary materials are recycled legitimately.

DATES: To make sure we consider your comments on this proposed rule, they must be postmarked by January 26, 2004.

ADDRESSES: Comments may be submitted by mail to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0031. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in Section C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Dave Fagan at (703) 308–0603 (*fagan.david@epa.gov*), or Ingrid Rosencrantz at (703) 605–0709 (*rosencrantz.ingrid@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially affected by this action are expected to include more than 1700 facilities that generate and/or recycle hazardous secondary materials. Most of these facilities are in manufacturing industries, and the most common types of recyclable materials that would be affected by the rule are metal-bearing secondary materials and solvents. The rule is expected to result in a net savings to industry of approximately $178 million per year. More detailed information on the entities, industries and materials potentially affected by this rule is presented in section VII.A. of this preamble.

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

Docket. EPA has established an official docket for this action under Docket ID No. RCRA–2002–0031. The official 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 public docket is the collection of materials that is available for public viewing at the OSWER Docket at the EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA/DC Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the OSWER Docket telephone number is (202) 566–0270. Copies are $0.15 per page. 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.* Comments on the proposed rule can be submitted through the federal e-rulemaking portal, *http://www.regulations.gov.*

An electronic version of the public docket is also 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 public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket. 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work toward 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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

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 identification 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.

Electronically. If you submit an electronic comment as prescribed below, 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.

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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2002–0031. 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.

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epamail.epa.gov,* Attention Docket ID No. RCRA–2002–0031. 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.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the following paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0031.

By Hand Delivery or Courier. Deliver your comments to: OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. RCRA–2002–0031. Such deliveries are only accepted during the Docket's normal hours of operation as identified in the ''How Can I Get Copies of This Document and Other Related Information?'' section.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0031. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. 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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Preamble Outline

I. Statutory Authority
II. Background
  A. What Is the Intent of Today's Proposed Rule?
  B. Who Would be Affected by Today's Rule?
  C. How Is Hazardous Waste Recycling Currently Regulated?
  D. What Are the Legal Issues Surrounding the Definition of Solid Waste?
  1. Background
  2. A series of D.C. Circuit Court decisions
  3. Today's action
  E. What Suggestions Have Stakeholders Offered for Future Efforts to Revise the Current Recycling Regulations?
  F. What Is the Scope of Today's Proposed Rule?
III. Detailed Description of the Proposed Rule
  A. Exclusion for Hazardous Secondary Materials Generated and Reclaimed in a Continuous Process Within the Same Industry
  1. What is the intent of the proposed exclusion?
  2. What is reclamation?
  3. What types of materials would be eligible for the proposed exclusion?
  4. What is meant by a ''continuous process within the same industry?''
  5. What other options were considered for defining ''continuous process within the same industry?''
  6. How is EPA proposing to define ''industry?''
  7. How is EPA proposing to define ''continuous process?''
  8. What type of notification will be required?
  9. What conforming changes to existing regulations are proposed?
  10. How would the proposal be implemented and enforced?
  B. Legitimate Recycling
  1. What is legitimate recycling?
  2. What is the current guidance for legitimate recycling?
  3. Today's proposed criteria for legitimate recycling
IV. Request for Comment on a Broader Exclusion for Legitimate Recycling
V. Effect of Today's Proposal on Other Programs
  A. Exports and Imports
  B. Superfund
VI. State Authority

A. Applicability of rules in authorized states
B. Effect on state authorization
C. Interstate transport
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act of 1995

I. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

II. Background

A. What Is the Intent of Today's Proposed Rule?

Today's proposed rule is intended to revise and clarify the RCRA definition of solid waste as it pertains to certain types of hazardous secondary materials that are not considered to be discarded, and thus are not considered wastes subject to regulation under RCRA Subtitle C. This regulatory action was initiated primarily in response to decisions by the United States Court of Appeals for the D.C. Circuit, which, taken together, have provided the Agency with additional direction in this area. Specifically, this proposal would define those circumstances under which materials would be excluded from RCRA's hazardous waste regulations because they are generated and reclaimed in a continuous process within the same industry.

This proposal represents an important restructuring of the RCRA regulations that distinguish wastes from non-waste materials for Subtitle C purposes, and that ensure environmental protections over hazardous waste recycling practices. As such, it is also an opportunity for the Agency to clarify in a regulatory context the concept of ''legitimate recycling,'' which has been and is a key component of RCRA's regulatory program for hazardous material recycling, but which to date has been implemented without specific regulatory criteria. Today's proposal thus includes specific regulatory provisions for determining when hazardous wastes and other hazardous secondary materials are recycled legitimately.

Today's proposal is de-regulatory in nature, in that certain recyclable materials that have heretofore been subject to hazardous waste regulations would no longer be regulated under the hazardous waste regulatory system. The proposed criteria for legitimate recycling codify existing principles, without increasing regulation. This proposal is not intended to bring new wastes into the RCRA Subtitle C regulatory system.

By removing hazardous waste regulatory controls over certain recycling practices, and by providing more explicit criteria for determining the legitimacy of recycling practices in general, EPA expects that this proposed rule will encourage safe, beneficial recycling of hazardous secondary materials by industry. This regulatory initiative is thus consistent with the Agency's longstanding policy of encouraging the recovery and reuse of valuable resources as an alternative to land disposal. It is also consistent with one of the primary goals of the Congress in enacting the RCRA statute (as evidenced by its name), and with the Agency's vision of how the RCRA program could evolve over the longer term to promote sustainability and more efficient use of resources.[1] Finally, this regulatory proposal is an important component of EPA's recently announced ''Resource Conservation Challenge,'' which is designed to encourage and provide new incentives for increased reuse and recycling of materials, including hazardous wastes and hazardous secondary materials (for further information on this initiative *see http://www.epa.gov/epaoswer/osw/conserve/index.htm*).

It should be understood that today's proposal does not attempt to resolve all issues surrounding the current RCRA Subtitle C recycling regulations. Since the current regulations were put in place in 1985 (*see* 50 FR 614–668, January 4, 1985), many of the program's stakeholders have expressed the view that the current system is unnecessarily restrictive, and imposes regulatory controls that often discourage legitimate recycling opportunities by industry. These stakeholders have often argued that the Agency should commit itself to fundamentally restructuring the current rules, to ease controls over a wide range of recycling practices. On the other hand, other stakeholders have argued that the current regulations are in some ways too lenient, and that greater accountability and tighter controls should be built into the system.

EPA has participated with a variety of stakeholder groups in several initiatives aimed at exploring and developing comprehensive new approaches to regulating hazardous material recycling. Unfortunately, these initiatives have been largely unsuccessful. In EPA's view, these unsuccessful efforts to comprehensively revise the RCRA recycling system are in large part attributable to the fundamental difficulty of trying to distinguish wastes from non-waste materials in a national regulatory framework that applies to an exceptionally broad array of industries, materials and recycling practices.

Today's proposal, which addresses a particular set of recycling activities, is prompted by concerns articulated in the D.C. Circuit Court's opinions. Together with the legitimacy criteria also discussed today, the proposed exclusion is crafted to cover those cases where discard most likely does not occur because materials are being truly reused or recycled in a continuous process within the generating industry. EPA intends to continue exploring whether further initiatives aimed at encouraging legitimate recycling of hazardous secondary materials are warranted. We invite comment on this issue. Specifically, we are interested in stakeholder views as to whether EPA should undertake additional actions to encourage recycling of materials that would remain regulated as wastes under today's proposal. In this regard, most helpful would be comments describing what specific actions might be appropriate for this purpose, and the potential environmental and economic impacts that might be associated with such actions.

B. Who Would Be Affected by Today's Proposed Rule?

Today's proposal would most directly affect those who generate, reclaim and reuse hazardous secondary materials in a continuous process within the generating industry, in accordance with the provisions of today's proposal. These materials would not be considered to be discarded under the proposal (and thus would not be wastes), so those who manage them would no longer be subject to hazardous waste regulatory requirements. EPA estimates that approximately 70% of the

[1] The Agency's long-term ''vision'' of the future of the RCRA program is discussed in the document ''Beyond RCRA: Prospects for Waste and Materials Management in the Year 2020,'' which is available on the Agency's Web site at *http://www.epa.gov/epaoswer/osw/vision.htm.*

materials potentially affected by today's proposed regulatory exclusion are generated in the following industries:

- Inorganic chemicals
- Plastic Materials and Resins
- Pharmaceutical Preparations
- Cyclic Crudes and Intermediates
- Industrial Organic Chemicals
- Secondary Smelting of Nonferrous Metals
- Plating and Polishing
- Printed Circuit Boards

More detailed discussion of the potential impacts of this rule on the regulated community is presented in section VII.A. of this preamble.

In addition to the industries that may potentially benefit from the regulatory exclusion in today's proposal, the proposed provisions relating to legitimacy of recycling activities should provide a more general benefit to those who are engaged in hazardous material recycling, by providing clearer, more explicit rules for distinguishing between recycling practices that are legitimate, and those that EPA considers to be ''sham'' recycling.

C. How Is Hazardous Waste Recycling Currently Regulated?

The basic regulatory provisions for defining ''solid wastes'' and ''hazardous wastes'' under RCRA are found in part 261 of title 40 of the Code of Federal Regulations (CFR). To be subject to RCRA's hazardous waste regulatory program, a material must be a solid waste that is also a hazardous waste. A solid waste is a hazardous waste if it is explicitly listed as such (in subpart D of part 261), or if it exhibits a hazardous characteristic (as specified in subpart C of part 261).

In general, hazardous wastes are subject to RCRA's full ''cradle to grave'' regulatory system, from the time they are generated to when they ultimately are disposed of. However, hazardous secondary materials can often be recycled instead of being disposed, which can change how those wastes are regulated. The ''definition of solid waste'' regulations in part 261 in effect separate recyclable hazardous secondary materials into two broad categories—those that are classified as solid wastes when recycled, and are therefore subject to regulation under RCRA, and those that are not considered solid wastes when they are recycled, and thus are not regulated. It should be understood that the term ''hazardous secondary material'' as it is used in today's proposed rule and preamble therefore refers to both categories of recyclable materials; that is, materials that are regulated as hazardous wastes when recycled, and materials that are not considered wastes when recycled.

Hazardous secondary materials that are not regulated as wastes when they are recycled include, for example, those which are used or reused directly as effective substitutes for commercial products, and those which can be used as ingredients in an industrial process, provided the materials are not being reclaimed. *See* 40 CFR 261.2(e). In essence, EPA considers these types of recycling practices to be more akin to normal industrial production than waste management. EPA does not consider them to involve management of discarded materials for purposes of RCRA Subtitle C.

In contrast, some recycling practices bear more resemblance to waste management, and the hazardous secondary materials therefore remain regulated as wastes. One type of recycling that falls within this category and that is especially relevant to this proposed rule is reclamation of certain types of hazardous secondary materials. Reclamation involves processing of secondary materials in some way so that the materials can be used or reused. *See* 40 CFR 261.1(c)(4) and 40 CFR 261.2(c)(3). An example of reclamation is processing of a spent solvent to restore its solvent properties before it is suitable for reuse as a solvent. As explained elsewhere in this preamble, today's proposal would de-regulate a specific subset of these materials that are recycled by being reclaimed.

The existing part 261 regulations identify other types of recycling practices that are fully regulated because they generally are more likely to involve discard of materials (*see* 40 CFR 261.2(c)). These practices include recycling of ''inherently waste-like'' materials, recycling of materials that are ''used in a manner constituting disposal,'' and ''burning of materials for energy recovery.'' Today's proposal is not intended to affect how these recycling practices are regulated.

The current regulations also provide certain specific exemptions and exclusions from the definition of solid waste for particular recycling practices. For example, pulping liquors from paper manufacturing that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process are excluded from regulation under 40 CFR 261.4(a)(6). In some cases, these exclusions specify certain conditions that must be met in order to qualify for and maintain the excluded status of the recycled material. An example of such a ''conditional exclusion'' is the one provided in 40 CFR 261.4(a)(9) for spent wood preserving solutions that are reclaimed and reused. Today's proposal would impact some of these existing exclusions, as discussed in Section III.A. below.

D. What Are the Legal Issues Surrounding the Definition of Solid Waste?

1. Background

RCRA gives EPA authority to regulate the management of ''solid wastes'' under its non-hazardous waste program. *See, e.g,* RCRA sections 1008(a), 4001 and 4004(a). RCRA also gives EPA authority to regulate hazardous wastes. *See, e.g.*, RCRA sections 3001–3004. ''Hazardous wastes'' are the subset of solid wastes that present threats to human health and the environment. *See* section 1004(5). EPA may also address solid and hazardous wastes under its endangerment authorities in section 7003. (Similar authorities are available for citizen suits under section 7002.) Materials that are not wastes are generally not subject to regulation under RCRA Subtitle C. Thus, the definition of ''solid waste'' plays a key role in defining the scope of EPA's RCRA's authorities.

The statute defines ''solid waste'' as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* * * * resulting from industrial, commercial, mining, and agricultural operations, and from community activities.* * *'' RCRA Section 1004 (27) (emphasis added). In its RCRA regulations, EPA has historically defined some materials destined for recycling as ''waste,'' while excluding others.

Since 1980, EPA has interpreted ''solid waste'' under its Subtitle C regulations to encompass both materials that are destined for final, permanent placement in disposal units, as well as *some* materials that are destined for recycling. 45 FR 33090–95 (May 19, 1980); 50 FR 604–656 (Jan. 4, 1985) (*see* especially pages 616–618). EPA has offered three arguments in support of this approach:

- The statute and the legislative history suggest that Congress expected EPA to regulate as wastes some materials that are destined for recycling (*see* 45 FR 33091, citing numerous sections of the statute and *U.S. Brewers' Association* v. *EPA,* 600 F. 2d 974 (D.C. Cir. 1979); 48 FR 14502–04 (April 3, 1983); and 50 FR 616–618).
- Many materials stored or transported prior to recycling present the same types of threats to human health and the environment as materials

stored or transported prior to disposal. In fact, EPA found that recycling operations have accounted for a number of notorious damage incidents. For example, materials destined for recycling were involved in one-third of the first 60 filings under RCRA's imminent and substantial endangerment authority, and 20 of the first sites listed under CERCLA. (48 FR 14474, April 4, 1983) (The Agency has not, however, compiled definitive data on more recent damage cases associated with recycling operations.) Congress also cited some damage cases which can be interpreted to involve recycling. H.R. Rep. 94–1491, 94th Cong., 2d Sess., at 17, 18, 22.

• Excluding all materials destined for recycling would allow materials to move in and out of the hazardous waste management system depending on what any person handling the material intended to do with it. This seems inconsistent with the mandate to track hazardous wastes and control them from ''cradle to grave.''

Interpreting the statute to confer jurisdiction over at least some materials destined for recycling, EPA has developed in part 261 of 40 CFR a definition of ''solid waste'' for Subtitle C regulatory purposes. (Note that this definition is narrower than the definition of ''solid waste'' for RCRA endangerment and information gathering authorities. *See* 40 CFR 261.1(b) and *Connecticut Coastal Fishermen's Association* v. *Remington Arms Co.,* 989 F.2d 1305, 1315 (2d Cir. 1993), holding that EPA's use of a broader and more specific definition of solid waste for Subtitle C purposes is a reasonable interpretation of the statute.)

Under its Subtitle C regulations, EPA classifies as solid wastes some—but not all—secondary materials that are recycled by ''reclamation.'' The regulations define ''spent materials'' as being ''discarded'' if they are destined for reclamation. However, ''commercial chemical products'' are not defined as ''discarded'' when reclaimed. Byproducts and sludges are defined as ''discarded'' on a case-by-case basis. EPA regulates these materials when they are reclaimed, when it has listed them in the context of a hazardous waste listing determination. However, EPA does not regulate by-products and sludges being reclaimed that are not listed hazardous wastes. *See* Table 1 to 40 CFR 261.2. Finally, EPA has promulgated three exceptions from the Subtitle C definition for materials destined for reclamation. *See* 260.31(b) and (c); 40 CFR 261.4(a)(8).

In a reclamation operation, some components of a material are recovered and reused, while others are separated and in some cases are discarded. The variety of regulatory approaches to reclamation reflects the fact that EPA has found that some reclamation processes involve discard (because they more closely resemble waste management), while other such processes do not (because they more closely resemble normal manufacturing).

Finally, EPA has always asserted that materials are not excluded from its jurisdiction simply because someone claims that they will be recycled. EPA has consistently considered materials destined for ''sham recycling'' to be discarded and, hence, to be solid wastes for Subtitle C purposes. *See* 45 FR 33093 (May 19, 1980), 50 FR 638–39 (Jan. 4, 1985). The U.S. Court of Appeals for the D.C. Circuit has agreed that materials undergoing sham recycling are discarded and, consequently, are solid wastes under RCRA. *See American Petroleum Institute* v. *EPA,* 216 F.3d 50, 58–59 (D.C. Cir. 2000);

2. A Series of D.C. Circuit Court Decisions

Trade associations representing mining and oil refining interests challenged EPA's 1985 regulatory definition of solid waste. In 1987, the D.C. Circuit held that EPA exceeded its authority ''in seeking to bring materials that are not discarded or otherwise disposed of within the compass of ''waste.'' '' *American Mining Congress* v. *EPA* (''*AMC I*''), 824 F.2d 1177, 1178 (D.C. Cir. 1987). Although the Court clearly articulated this concept, it did not specify which portions of the rules exceeded EPA's authority. It more generally ''granted the petition for review.''

The Court held that some of the materials EPA was seeking to regulate were not ''discarded materials'' under section 1004(27). After reviewing numerous statutory provisions and portions of the legislative history, the Court held that Congress used the term ''discarded'' in its ordinary sense, to mean ''disposed of'' or ''abandoned.'' 824 F.2d at 1188–89. The Court further held that the term ''discarded materials'' could not include materials * * * *destined for beneficial reuse or recycling in a continuous process by the generating industry itself* (because they) are not yet part of the waste disposal problem.'' 824 F.2d at 1190 (italics in original). The Court held that Congress had directly spoken to this issue, so that EPA's use of a conflicting definition was not entitled to deference under *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837 (1984). 824 F.2d at 1183, 1189–90, 1193.

At the same time, the Court did *not* hold that no recycled materials could be discarded. The Court mentioned at least two examples of recycled materials that EPA properly considered within its statutory jurisdiction, noting that used oil to be reused as fuel and metal-bearing secondary materials stored in open piles which leached into the environment while stored for reuse in metals recovery can be considered to be solid wastes. 824 F.3d at 1187 (fn 14) and 1191 (fn 20). Also, the Court suggested that materials disposed of and recycled as part of a waste management program are within EPA's jurisdiction. 824 F. 2d at 1179. Subsequent decisions by the D.C. Circuit also indicate that some materials destined for recycling are ''discarded'' and therefore within EPA's jurisdiction. The Court held that emission control dust from steelmaking operations listed as hazardous waste ''K061'' is a solid waste, even where sent to a metals reclamation facility, at least where that is the treatment method required under EPA's land disposal restrictions program. *American Petroleum Institute* v. *EPA (''API I''),* 906 F.2d 729 (D.C. Cir. 1990). The Court held that listed wastes managed in units that are part of wastewater treatment units are discarded materials (and solid wastes), especially where it is not clear that the industry actually reuses the materials. (''*AMC II*''), 907 F. 2d 1179 (D.C. Cir. 1990). Also, the Court found that EPA potentially had jurisdiction over oil-bearing wastewaters recycled at petroleum refineries, although in the rule under review EPA failed to provide a rational basis for asserting jurisdiction. *American Petroleum Institute* v. *EPA* (''*API II*''), 216 F.3d 50, 57–58 (D.C. Cir. 2000).

It is also worth noting that two other Circuits also have held that EPA has authority over at least some materials destined for reuse rather than final discard. The U.S. Court of Appeals for the 11th Circuit found that ''[i]t is unnecessary to read into the term 'discarded' a congressional intent that the waste in question must finally and forever be discarded.'' *U.S.* v. *ILCO,* 996 F.2d 1126, 1132 (11th Cir. 1993) (finding that used lead batteries sent to a reclaimer have been ''discarded once'' by the entity that sent the battery to the reclaimer). The Fourth Circuit found that slag held on the ground untouched for six months before sale for use as road bed could be a solid waste. *Owen Electric Steel Co.* v. *EPA,* 37 F.3d 146, 150 (4th Cir. 1994).

Considering all of these decisions (except the *API* case decided in 2000), in 1998 EPA promulgated a rule adjusting its Subtitle C jurisdiction over

materials recycled by reclamation within the mineral processing industry (the ''LDR Phase IV rule''). 63 FR 28556 (May 26, 1998). In that rule, EPA promulgated a conditional exclusion for all types of mineral processing materials destined for reclamation. EPA imposed a condition prohibiting land-based storage prior to reclamation because it considered secondary materials from the mineral processing industry that were stored on the land to be part of the waste disposal problem. 63 FR at 28581. The conditional exclusion decreased regulation over spent materials stored prior to reclamation, but increased regulation over by-products and sludges that exhibit a hazardous characteristic, and that are stored prior to reclamation. EPA noted that the statute does not authorize it to regulate ''materials that are destined for immediate reuse in another phase of the industry's ongoing production process.'' EPA, however, took the position that materials that are removed from a production process for storage are not ''immediately reused,'' and therefore, are ''discarded.'' 63 FR at 28580.

The mining industry challenged the rule, and the D.C. Circuit vacated the provisions that expanded jurisdiction over characteristic by-products and sludges destined for reclamation. *Association of Battery Recyclers* v. *EPA* (''*ABR*''), 208 F.3d 1047 (D.C. Cir. 2000). The Court held that it had already resolved the issue presented here in its opinion in *AMC I,* where it found that ''* * * Congress unambiguously expressed its intent that 'solid waste' (and therefore EPA's regulatory authority) be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away.'' 208 F.2d at 1051. It repeated that materials reused within an ongoing industrial process are neither disposed of or abandoned. 208 F.3d at 1051–52. It explained that the intervening API I and AMC II decisions had not narrowed the holding in AMC I. 208 F.3d at 1054–1056.

At the same time, the Court did not hold that storage before reclamation automatically makes materials ''discarded.'' Rather, it held that ''* * * at least some of the secondary material EPA seeks to regulate as solid waste (in the mineral processing rule) is destined for reuse as part of a continuous industrial process and thus is not abandoned or thrown away.'' 208 F.3d at 1056.

3. Today's Action

EPA has promulgated a final rule removing from the *Code of Federal Regulations* the byproduct and sludge provisions of the 1998 mineral processing exclusion that the Court vacated in *ABR.* 67 FR 11251 (Mar. 13, 2002). Nonetheless, EPA views *ABR* as creating an opportunity to re-examine its rules and interpretations and clarify whether they regulate certain materials that are not ''discarded.'' In today's proposed rule, therefore, EPA is attempting to identify a certain class or category of materials that EPA has determined are *not* discarded for purposes of Subtitle C. As explained in more detail elsewhere in this notice, EPA generally believes that such materials may include those that are recycled by being reclaimed within the same industry in which they were generated. EPA thinks that other classes of recycling activities, such as ''burning for energy recovery,'' ''use constituting disposal,'' and recycling of materials classified as ''inherently waste-like'' clearly involve elements of discard.

EPA is today proposing that any material which is generated and reclaimed in a continuous process within the same industry (as defined in today's proposal) is not ''discarded'' for purposes of Subtitle C, provided that the recycling process is ''legitimate.'' Guided by the *AMC I* and *ABR* opinions, EPA is proposing to exclude these materials from the definition of solid waste for purposes of Subtitle C. Under this approach, EPA is proposing that when generation and reclamation occur on a continuous basis within a single industry (as the terms are defined in this proposal), secondary materials would not be regulated as solid wastes.

Looking to the D.C. Circuit decisions for guidance, EPA is proposing today to exercise its discretion to interpret the statutory term ''discard'' for Subtitle C purposes. EPA is proposing that materials recycled in a continuous process within the generating industry would not be considered solid wastes for Subtitle C purposes. For reasons articulated later in this preamble, EPA believes that it must draw lines to provide a measure of regulatory certainty. EPA believes that the lines it is proposing today reflect reasonable judgments.

EPA notes that the term ''solid waste'' is used in several places in the statute in addition to Subtitle C. EPA, however, is limiting the specific definitions in today's proposal to its Subtitle C regulations. While the general concepts that the Court articulated may also play a role in other RCRA provisions, EPA does not think the detailed scheme involving ''industry'' classifications and time limits on processing which it has developed for this rule are necessarily appropriate for other RCRA provisions. For example, RCRA section 7003 gives EPA authority to compel actions to abate conditions that may present an ''imminent and substantial endangerment'' involving solid wastes. EPA uses this authority on a case-by-case basis. The Agency can determine in a specific factual context whether a material which causes an endangerment is discarded. Finally, EPA notes that it continues to regard any material intended for recycling that escapes into the environment as ''discarded'' and, therefore, within its statutory jurisdiction.

E. What Suggestions Have Stakeholders Offered for Future Efforts To Revise the Current Recycling Regulations?

In the final rule responding directly to the vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers*, v. *EPA 208 F.3d 1047 (2000)* (67 FR 11251–4, March 13, 2002), EPA asked stakeholders to submit suggestions for possible future revisions to the current recycling regulations.

The Agency received responses from both States and industry stakeholders. Some comments pertained to specific waste streams or industrial processes, but others were broader in nature. Although many of the broader suggestions are outside the scope of the current proposal, EPA would like to briefly summarize the comments here in order to continue the public dialogue on possible future efforts. In addition, the full set of these suggestions are included in the docket to today's proposed rulemaking. EPA requests comment on both these and any other possible revisions to the definition of solid waste that might be included in future proposals.

Most of the comments from industry stakeholders focused on the regulatory definition of ''discarded material'' found in 40 CFR 261.2(a)(2). Many of these stakeholders encouraged the Agency to address broadly the issue of when ''discard'' of recyclable materials occurs. Several commenters, including the American Chemistry Council (ACC), American Petroleum Institute (API), Chevron-Texaco and the International Precious Metals Institute (IPMI) suggested removing ''recycled'' from the definition of discarded materials. Commenters offered different regulatory alternatives to ensuring that ''sham recycling'' does not occur as a result of removing recycling from the definition of discard, including suggesting that EPA specify ''legitimacy criteria'' (ACC), suggesting EPA delineate material management factors that would indicate discard (IPMI), or including specific

''sham'' practices in the definition of solid waste (API and Chevron-Texaco).

The Synthetic Organic Chemical Manufacturers Association (SOCMA) raised issues on clarifying the terms ''continuous industrial process,'' ''generating industry'' and ''off-site/on-site.'' SOCMA provided examples of how the different terms could be applied to the Association's members. SOCMA also provided specific comments and regulatory language for an expanded variance procedure to exempt materials from the definition of solid waste.

API and Chevron-Texaco offered the most specific comments, attaching regulatory language for discussion. Chevron-Texaco suggested adding a requirement that material with hazardous constituents above Universal Treatment Standard (UTS) levels that is managed such that the material is released to the environment would be considered discarded. API offered several possible new additions to the definition of discarded material, which closely follow examples that EPA has used in past rulemaking and guidance. (see October 3, 2002 letter from API to EPA).

Several commenters (*e.g.* API, SOCMA) focused on the decision's discussion of a waste being recycled in a ''continuous industrial process.'' They stated that a ''continuous'' process encompasses all of the steps between original production of a raw material and eventual disposal, including any reclamation that might occur. These commenters believed that ''continuous industrial process'' did not necessarily imply only a single industry. Commenters cited examples of generators sending material off-site to recyclers who reclaim the material for reuse in other industries.

Other industry-suggested revisions include creating a variance process for waste going to environmentally protective recycling (ACC), adding specific language that co-products are not solid waste (Hogan and Hartson, LLP), extending the storage accumulation times (SOCMA), revising the definition of ''accumulated speculatively'' in 40 CFR 261.1(b)(8) for the mining and mineral processing industry (National Mining Association), and a recycling exclusion for spent pickle liquor recycling efforts (American Iron and Steel Institute).

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) expressed general support for simplifying the current regulations and encouraging recycling. However, they also expressed the strong opinion that codified legitimacy criteria should be included in any changes, and that a notification or certification provision be added to allow state regulatory agencies to determine whether recycling practices are legitimate.

F. What Is the Scope of Today's Proposed Rule?

As discussed previously in this section of today's preamble, spent materials, listed sludges and listed byproducts that are recycled by being reclaimed are currently considered wastes for RCRA regulatory purposes. Today's proposal would affect a particular subset of these waste materials. Specifically, materials that are ''generated and reclaimed in a continuous process within the same industry'' (as defined in this proposal) would no longer be regulated under RCRA's Subtitle C hazardous waste management system.

Today's proposed 40 CFR 261.2(g)(2) also requires that reclamation of excluded materials within the generating industry must produce a product or ingredient that can be used or reused without any further reclamation. This requirement is intended to prevent situations where excluded materials might be only partially reclaimed within the generating industry, and then sent to a different industry for one or more ''final'' reclamation steps. We do not believe that such partial reclamation practices would be consistent with the concept of ''continuous process within the same industry'' as it is articulated in today's proposal.

Today's proposal would not affect materials that are reclaimed in other ways. Thus, spent materials, listed by-products and listed sludges that are generated and reclaimed in different industries would generally remain subject to regulation as wastes. This proposal would also not affect materials that are currently considered wastes because they are recycled in a certain way. This category of wastes includes materials that are ''inherently waste-like,'' materials that are ''speculatively accumulated,'' materials that are recycled and ''used in a manner constituting disposal,'' and materials that are ''burned for energy recovery.'' The regulatory provisions for these categories of wastes are found in 40 CFR 261.2.

Today's proposal would also codify in regulations criteria for assessing ''legitimate recycling'' of hazardous secondary materials. These criteria would apply not only to the materials that would be excluded under today's proposal, but more broadly to recycling of hazardous wastes, as well as recycling of hazardous secondary materials that are not considered wastes when they are recycled. These criteria for legitimate recycling would not, however, apply to materials that are not hazardous wastes, or materials that do not exhibit a hazardous characteristic.

III. Detailed Description of Today's Proposed Rule

A. Exclusion for Hazardous Secondary Materials Generated and Reclaimed in a Continuous Process Within the Same Industry

1. What Is the Intent of the Proposed Exclusion?

Today's proposal would exclude from the RCRA regulatory definition of solid waste hazardous secondary materials that are generated and reclaimed in a continuous process within the same industry. As discussed in the previous section of this preamble, the D.C. Circuit Court's decisions have provided general direction to the Agency as to the meaning of ''discarded materials'' in section 1004(27) and the extent of the Agency's Subtitle C jurisdiction over recycling. Today's proposed rule is intended to define ''solid waste'' for Subtitle C purposes in a way that we believe is consistent with the Court's general direction, to establish specific rules for how the exclusion will be implemented, and explain how the exclusion fits into RCRA's general regulatory framework.

Today's proposal would modify the current regulatory provision at 40 CFR 261.2(c)(3), which specifies that some types of hazardous secondary materials are wastes if their recycling involves reclamation. In effect, we are proposing to relinquish regulatory controls over such materials, provided that they are generated and reclaimed in accordance with today's proposal. This proposal, which we believe is consistent with the Court's opinions, would generally exclude materials that are recycled in a manner more akin to normal industrial production than waste management.

2. What Is ''Reclamation?''

''Reclamation'' of materials can involve a number of different types of activities and end results. As defined in 40 CFR 261.1(c), a material is reclaimed ''* * *if it is processed to recover a usable product, or if it is regenerated.'' From a technical standpoint, some reclamation processes are relatively simple, such as magnetic separation of ferrous metals from a pollution control sludge. Other types of reclamation may be much more complex, and may involve a series of processing steps to

obtain the desired end-product. An example could be where a solid-form secondary material is separated into different fractions and then smelted to recover metal constituents.

In some cases, reclamation essentially involves extraction of a valuable component from a waste or other material. An example of this type of reclamation occurs in the mineral processing industry, such as when smelter by-products are processed in a series of steps to successively extract several different precious metals. Another type of reclamation involves ''regenerating'' used products or materials so that they can be reused for their original purpose, or some other purpose. A common example of this type of reclamation is found in the steel making industry, where ''pickling'' acids are used to remove scale and other impurities from steel, eventually lose their acidic properties, and must be reclaimed before they can be used again as pickling agents. In this case, the reclamation process may yield both regenerated pickling acid, as well as a marketable iron oxide product.

3. What Types of Materials Would Be Eligible for the Proposed Exclusion?

Under the current regulations, certain hazardous secondary materials that are recycled by being reclaimed are considered wastes (see 40 CFR 261.2(c)(3)). These materials include sludges and by-products that are listed hazardous wastes (see listings in 40 CFR 261.31 and 40 CFR 261.32), scrap metal, and listed or characteristic ''spent materials.'' As defined in 40 CFR 261.1(c), materials are ''spent'' when they are used and as a result of contamination can no longer serve the purpose for which they were produced without processing. Additional guidance on the definition of ''spent material'' may be found on the Agency's ''RCRA Online'' Internet data base, at *http://yosemite.epa.gov/OSW/rcra.nsf//Documents/8D46F076812A58D0852565DA006F0565*.

An example of a spent material would be a solvent that is used for degreasing metal parts, and which eventually becomes too contaminated for further use in degreasing. Similarly, under the current regulations some types of scrap metal are wastes prior to reclamation (although they are subject to less stringent Subtitle C regulations under 40 CFR 261.6).

Some materials that are ''generated and reclaimed in a continuous process within the same industry'' (as proposed today) would not be eligible for the exclusion. As specified in proposed 40 CFR 261.(g)(1), the exclusion would not apply to recycling of materials that are ''inherently waste-like'' (*see* 40 CFR 261.2(d)), materials used in ''a manner constituting disposal'' (*see* 40 CFR 261.2(c)(1) and part 266, subpart C), or materials that are ''burned for energy recovery'' (*see* 40 CFR 261.2(c)(2)). Any of these recycling practices could potentially be conducted intra-industry. Nevertheless, these particular recycling practices have been identified by the Agency as being akin to discard, and therefore materials that are recycled in these specific ways are explicitly identified as wastes under the current regulations. The Agency does not intend to change the way these waste materials are regulated in today's proposal. We believe that the original logic for maintaining regulatory jurisdiction over these materials remains valid.

The basic premise of today's proposed exclusion is that materials that are ''generated and reclaimed in a continuous process within the same industry'' (as defined in this proposal) would not be considered wastes for Subtitle C purposes. Generally, when a material is reclaimed within the same industry that generated it, the material can remain useful to that industry, and thus is not discarded. In effect, the industry has not ''finished'' with the material; rather, it is to the advantage of the industry to continue using it as a substitute for other types of materials.

While the Agency believes that the types of material that would be eligible for the exclusion in today's proposal would generally not be discarded, we believe there may also be more technical reasons for excluding such materials. For one, processes and facilities that operate within the same industry are likely to use similar raw materials and process them in a similar manner. They are also likely to have expertise as to the types of secondary materials produced by their industry, their potential for recycling, and appropriate practices for managing such materials. For these practical reasons, EPA believes that the potential for environmental harm from de-regulating this type of recycling practice is likely to be relatively small compared to other types of recycling practices.

While we are proposing to define materials generated and reclaimed within the same industry as in-process materials that are not solid wastes for purposes of Subtitle C, this is not to say that all materials legitimately recycled between different industries are always solid wastes. In fact, the Agency has promulgated several specific exclusions to the definition of solid waste for materials that are generated in one industry and reclaimed in another. We are not proposing to revisit those exclusions.

4. What Is Meant by a ''Continuous Process Within the Same Industry?''

Proposed 40 CFR 261.2(g)(2) would establish the general regulatory framework for defining ''continuous process within the same industry,'' and thus, how recycling must be conducted in order to qualify for the exclusion. As explained below, we are co-proposing today two different options for defining ''continuous process within the same industry.'' The two options differ only in that one option (Option #2) would treat differently reclamation facilities that also accept hazardous wastes generated from different industries. We are co-proposing these two options today because the Agency believes both are viable and appropriate approaches and deserve equal consideration by commenters.

Co-Proposal Option 1: Under this option, hazardous secondary materials would have to be generated and reclaimed within a single industry in order to qualify for the exclusion (the definition of ''industry'' for the purpose of this proposal is discussed in section III.A.6 of this preamble, below). Thus, for example, if a hazardous secondary material was generated in the motor vehicle manufacturing industry and then shipped for reclamation to a facility in the ship and boat building industry, the exclusion would not apply, and the materials would be regulated as hazardous wastes.

Under proposed 40 CFR 261.2(g)(2), reclamation of excluded material could take place in multiple processing steps, provided that each processing step takes place in the same industry that generated the material. To illustrate, if a copper-bearing sludge required three separate reclamation steps in order to produce a marketable product such as copper sulfate, each of those reclamation steps would have to take place within the same industry in order to qualify for the exclusion.

Proposed 40 CFR 261.2(g)(2) would also allow reclamation of excluded material to take place at one or more different locations or facilities, as long as each reclamation step occurs within the generating industry. In fact, we anticipate that, in many situations, reclamation of materials will take place at a different facility from where the materials were generated, but would remain within in the same industry. In some cases, excluded materials might be reclaimed in several steps, each time at a different location or facility, but within the same industry. As proposed, therefore, the exclusion would not place

any geographical limits on movements of excluded materials, provided that each facility where the material is reclaimed is in the same industry that originally generated the material.

It is likely that there will be many situations in which reclamation of an excluded material results in a finished end-product that needs no further reclamation, as well as a residual secondary material that has no further use and must be disposed of. Such residuals would be wastes, and thus not eligible for the exclusion. If the wastes were hazardous, they would need to be managed according to applicable hazardous waste regulations.

Today's proposal also anticipates situations where residuals from reclamation of excluded materials are sent to a different industry for further reclamation. As proposed in 40 CFR 261.2(g)(2)(ii), such residual materials would not be eligible for today's exclusion, since they would no longer be managed within the same industry. The fact that such materials are sent to another industry and are thus ineligible for the exclusion would not, however, affect the exclusion for materials that remained within the generating industry. To illustrate, if intra-industry reclamation of an excluded metal-bearing sludge generated a residual material that was then sent to a different industry for further reclamation, that residual would be considered a waste, but the exclusion for the original metal-bearing sludge would not be affected. Similarly, a reclamation process might generate two types of residual materials—one which could be further reclaimed in the same industry, and another that is amenable to reclamation in a different industry. In such cases, the material that continues to move in the same industry would continue to be excluded, while the residual material sent to a different industry would not be excluded.

Co-Proposal Option #2: Today's co-proposed Option #2 is identical to the first option described above, with one exception. Under Option #2, hazardous secondary materials that are generated and reclaimed in a continuous process within the same industry would not be eligible for the exclusion if the reclamation takes place at a facility that also recycles regulated hazardous wastes generated in a different industry. This option would, however, allow the exclusion for materials recycled within the same industry if the reclamation facility is also recycling non-hazardous wastes, or hazardous materials that are excluded from regulation under other provisions (such materials could include, for example, characteristic by-products and sludges that are not solid wastes when reclaimed according to 40 CFR 261.2(c), or materials being used as effective substitutes for commercial products under 40 CFR 261.2(e)). This regulatory option would, in effect, establish a bright line to distinguish facilities that are engaged in recycling that is eligible for today's proposed exclusion, and facilities which could be considered to be engaged in commercial recycling, and which should thus be ineligible for the exclusion.

To illustrate this co-proposed option, if a paint manufacturer who reclaims spent solvents were to accept spent solvents from other paint manufacturers, as well as spent solvents from a generator in a different industry (*e.g.*, an automobile repair shop), none of the spent solvents managed by the paint manufacturer would be eligible for the exclusion proposed today. If, however, in this example the solvents from the automobile repair shop were excluded under a different regulatory provision (*e.g.*, because they are reused without reclamation—*see* 40 CFR 261.2(e)), the solvents generated and reclaimed within the paint manufacturing industry would be eligible for the exclusion.

Advantages and disadvantages of Options #1 and #2. The Agency believes that Option #1 described above would likely encourage more beneficial recycling, since it would allow the exclusion for a somewhat broader set of recycling practices. Another argument for this option might be that the exclusion for a material managed at a reclamation facility should not be affected by the fact that more stringently regulated materials (*i.e.*, hazardous wastes) are also being managed at the facility. Such facilities would typically have RCRA permits, and thus would be subject to stringent design, operating and corrective action requirements. Some might argue, therefore, that such regulated facilities are well-suited to manage materials that would not be regulated under the terms of today's proposed exclusion.

With regard to Option #2, an advantage to this approach would be greater certainty to the regulated community as to when they would be ineligible for the exclusion we propose today. Otherwise, it could be difficult for a generator to determine if facilities engaged in intra-industry recycling that also recycle hazardous wastes from one or more different industries are engaged in a continuous process within the generating industry. Option #2 clearly defines whether the recycling is taking place within the generating industry by drawing a bright line between excluded recycling and commercial recycling. As explained below, commercial recycling presents different legal and policy issues compared with recycling within other industries. For some facilities, this regulatory option would also address potential concerns regarding the mixing of excluded secondary materials with regulated hazardous wastes. Another concern is that if excluded secondary materials were allowed to be mingled with regulated hazardous wastes, it could be much more difficult for overseeing agencies to determine whether the generator and/or reclaimer were in compliance with the terms of the exclusion.

EPA requests comment on the two co-proposed regulatory options described above, particularly with regard to the advantages and disadvantages of the different approaches, their potential associated benefits, and whether such approaches would be consistent with the general direction given in this area by the D.C. Circuit Court of Appeals.

5. What Other Options Were Considered for Defining ''Continuous Process Within the Same Industry?''

In developing the exclusion in today's proposal, the Agency considered several alternative approaches to defining the concept of ''continuous process within the generating industry.'' One option that was considered would define the scope of the exclusion depending on who uses the products of the recycling process after the secondary materials are reclaimed. Under this approach, to be eligible for the exclusion, the products from reclamation of secondary materials could be: (a) Sold to the general public if such products were considered typical products of the generating industry; or (b) reused as a product or ingredient within the generating industry, if the reclaimed material was not a typical product of the generating industry.

To illustrate this option, if a paint manufacturer received spent solvent from another paint manufacturer that s/he then reclaimed, the reclaimed solvent could not be sold to the general public and maintain the exclusion, under the assumption that solvent is not a typical product of the paint manufacturing industry. In this example, the reclaimed solvent would have to be reused within the paint manufacturing industry in order to maintain the exclusion. The paint manufacturer would thus have the option of reusing the solvent (*e.g.*, as an ingredient in making paint), or selling it to another party within the paint manufacturing industry. Under this alternative approach, if the reclaimed

solvent were sold to, for example, a semi-conductor manufacturer, the incoming spent solvent would not be covered by the exclusion. This approach would, however, allow metal manufacturers to reclaim metals from excluded metal-bearing secondary materials and sell it to the general public, since metals would be a typical product of the metals industry.

EPA believes that promulgating the exclusion in this way could be a reasonable interpretation of the concept of ''continuous process within the generating industry.'' One important issue that such an approach would raise, however, would be defining what would be considered a ''typical product'' of the generating industry (*i.e.*, what is a typical product of an industry as identified by a particular 4-digit NAICS code?). We request comment on this alternative generally, and on how to define ''typical product of the generating industry.''

EPA requests comment on the regulatory alternatives described above, particularly with regard to the need for such additional restrictions, their potential associated benefits, and whether such approaches would be consistent with the general direction given in this area by the D.C. Circuit Court of Appeals.

6. How Is EPA Proposing To Define ''Industry?''

Considerations for Defining ''Same Generating Industry''

Consistent with the court's language, we are proposing to limit EPA's regulatory jurisdiction in cases where hazardous secondary materials are being generated and legitimately reclaimed in a continuous process within the same industry, because the activity is essentially ongoing manufacturing. In order to draft a regulation that sets out this principle, however, we needed to develop a useful definition of ''industry'' so that today's proposed exclusion could be implemented across a variety of materials, activities, and industries. In developing a definition of industry for this proposal, we considered (1) whether the definition could be easily identified and readily implemented; (2) whether it was simple (versus unnecessarily complicated); and (3) the degree to which the definition, when used as part of an ''intra-industry'' exclusion, resulted in outcomes consistent with the principle described above (*i.e.*, that the materials were being continuously used rather than discarded). After consideration of these criteria against several approaches described in more detail below, we decided to propose using the North American Industry Classification System (NAICS) developed by the Office of Management and Budget (OMB) as the foundation for industry definitions in today's proposed rule.

We considered proposing a narrative definition of industry, using an engineering-oriented approach based on similarity of inputs, processes, and/or outputs (products). Under this comparative approach, industry would first be defined as a set of manufacturing or service activities. Conceptually, two or more industries would be considered the same industry where this set of manufacturing or service activities applies similar processes to input materials (*e.g.*, feedstocks, reagents, catalysts, etc.) having similar composition and/or value, to produce products or services with similar composition and/or value. We would then set out specific criteria, in a regulation, for measuring these similarities and determining when they were similar enough to be considered the same industry.

For example, this regulation could establish that processes are similar if they utilize comparable equipment and/or engineering principles; compositions (of either input materials, or products produced) are similar if concentrations of specific constituents (*e.g.*, hazardous constituents, valuable constituents) are within an order of magnitude; and values (again, of either input materials, or products produced) are similar if they are within some specified amount (*e.g.*, ±30%) on a per unit basis. We would also have to consider what the relative importance should be amongst the three elements described (inputs, processes, and outputs). For example, we would need to decide whether we consider similar inputs to be more important than similar outputs, in determining whether two industries would be considered the same.

This approach was initially attractive because it would not require us to evaluate or compile industry categories or lists, it could possibly be tailored to reflect certain principles to help distinguish discard from ongoing production, or it might have been more flexible than a prescriptive industry list. However, we found this approach unworkable for a number of reasons. Primarily, it would leave too much uncertainty about the boundaries of the Agency's jurisdiction. Specifically, it would provide little certainty to the regulated community, and would require regulatory agencies to consider individual reclamation scenarios on a case-by-case basis. Therefore, we decided not to pursue this approach.

We also considered creating our own list of specific industries or industry categories. We found, however, that while there might be some advantages to drafting our own list based on our own institutional knowledge and experience across Agency programs, a large amount of time and resources would be needed to classify many of the diverse types of industrial, service and government operations that produce waste and/or engage in recycling. While we have studied wastes and recycling for some industries in great detail (usually when making hazardous waste listing determinations), we have not studied many others. Another disadvantage to developing our own list would be that such a list would not necessarily reflect standardized, commonly accepted definitions of industry. The most widely-recognized existing industry classification system in the United States is the NAICS. In the past, we have used the Standard Industrial Classification (SIC) system (predecessor to the NAICS) to implement parts of RCRA Subtitle C. EPA has also commonly used the SIC system to implement portions of regulatory programs under other statutes.

We are therefore proposing to use the NAICS as the foundation for the industry definitions in today's proposed rule. We believe that the developers of the NAICS are more familiar with many of these diverse operations, and the NAICS list is also well known and widely accepted by industry. Consequently, we find it to be a reasonable starting point for defining ''industry'' with regard to identifying materials that are not ''discarded'' for purposes of RCRA Subtitle C.[2]

Background of NAICS

NAICS is a new industry classification system that has replaced the Standard Industrial Classification (SIC) system (most recently updated in 1987) that has traditionally been used by government agencies for collecting statistical data and for other administrative and regulatory purposes. Beginning in 1992, NAICS was developed on behalf of the OMB by the Economic Classification Policy Committee (ECPC), which was comprised of representatives of the

[2] EPA does not assert that all processes classified as the same industry within a single NAICS code are, in fact, so similar that spent materials, by-products and sludges from one process can easily be used by all other processes in the classification. However, given the structure and the purposes of the NAICS, EPA believes that it is reasonable to assume that they are substantially similar. EPA needs to classify broad categories of materials in this rule; it is impracticable to study every factual variation on a case-by-case basis.

Bureau of Economic Analysis, the Bureau of the Census, and the Bureau of Labor Statistics. On April 9, 1997, OMB published a **Federal Register** Notice of final decision (62 FR 17288) to adopt the NAICS for the United States.

Table 1 below provides an overview of the NAICS hierarchy, including identification of the 20 NAICS sectors and the number of entities contained within the hierarchy at each of the various levels of detail. Under the NAICS classification hierarchy, the first two digits (of the 6-digit code) designate the Sector, the third digit designates the Sub-sector, the fourth digit designates the Industry Group, the fifth digit represents the NAICS Industry (the most detailed level for making data comparisons across the U.S., Mexico, and Canada), and the sixth digit designates individual country-level national industries.

TABLE 1.—NAICS UNITED STATES STRUCTURE (FROM NAICS, 2002)

Sector and name	Sub-sectors (3-digit)	Industry groups (4-digit)	NAICS industries (5-digit)	6-digit industries		
				U.S. detail	Same as 5-digit	Total
11—Agriculture, Forestry, Fishing and Hunting	5	19	42	32	32	64
21—Mining	3	5	10	28	1	29
22—Utilities	1	3	3	6	4	10
23—Construction	3	10	28	4	27	31
31–33—Manufacturing	21	86	184	408	65	473
42—Wholesale Trade	3	19	71	0	71	71
44–45—Retail Trade	12	27	61	24	51	75
48–49—Transportation and Warehousing	11	29	42	25	32	57
51—Information	7	16	30	12	24	36
52—Finance and Insurance	5	11	32	15	27	42
53—Real Estate and Rental and Leasing	3	8	19	9	15	24
54—Professional, Scientific, and Technical Services	1	9	35	17	30	47
55—Management of Companies and Enterprises	1	1	1	3	0	3
56—Administrative and Support and Waste Management and Remediation Services	2	11	29	23	20	43
61—Educational Services	1	7	12	7	10	17
62—Health Care and Social Assistance	4	18	30	16	23	39
71—Arts, Entertainment, and Recreation	3	9	23	3	22	25
72—Accommodation and Food Services	2	7	11	7	8	15
81—Other Services (except Public Administration)	4	14	30	30	19	49
92—Public Administration	8	8	29	0	29	29
Total	100	317	725	669	510	1,179

While the NAICS uses a 6-digit coding system as just described, the 1987 SIC system it replaced employed a 4-digit coding system, where the fourth digit designates the industry. According to OMB, the two extra digits in the NAICS system (1) allow for more sectors [3] to be used (compared with the SIC system which was limited to ten sectors), and (2) allow for a category at the six-digit level to be available for national industry detail (that is, industries that would not appear on the Canadian or Mexican version of the NAICS). The additional two digits in the NAICS add flexibility to the hierarchy, but do not necessarily reflect a greater level of detail in the classification compared with the SIC. 62 FR 17291.

There are several important points we wish to emphasize regarding the NAICS system. First, this system was developed using a ''production-oriented'' concept, whereby producing units that use identical or similar production processes are grouped together in NAICS. 62 FR 17289. We believe this is relevant for our purposes, because it makes sense that materials being generated from, and returned to, ''identical or similar production processes'' can be likewise viewed as being beneficially recycled ''within the same industry.'' Second, the NAICS, and its SIC predecessor, were designed solely for statistical purposes. The OMB emphasizes that while the NAICS will also be used for non-statistical purposes, such as regulatory purposes, the ''requirements of government agencies that use it for non-statistical purposes have played no role in its development.'' 62 FR 17294. Thus, we want to be clear that our proposal to rely on the NAICS system is, above all else, based upon its functionality as an existing, recognized system for classifying industries, which serves our purpose well. Finally, under the NAICS system, the owner/operator of a facility (or more appropriately, of an establishment) is tasked with determining his/her own industry classification, largely using the NAICS Manual for help in determining how to categorize his/her own establishment. In today's proposal, we will not be ''assigning'' NAICS categories to particular facilities or establishments. Rather, we are designing a system under which owners of facilities handling secondary materials will identify which NAICS code applies to them for RCRA recycling purposes. It simply is not practicable for EPA to review and make determinations for all of the individual facilities involved.

This aspect of NAICS (and its predecessor SIC) is not new. There are already EPA regulations where certain facility owner/operators need to identify their SIC category (*e.g.*, for determining the applicability of the Toxic Chemical Release Reporting/Community Right-To-Know requirements; see 40 CFR 372.22); or that refer to the SIC categories (*e.g.*, RCRA regulations that rely in part on SIC codes to delineate the scope of certain existing industry-specific hazardous waste listings and exclusions); or that require SIC classification information as part of required reporting for large quantity hazardous waste generators and RCRA permit applicants). There is a relatively long history of the use of an accepted

[3] ''Sectors'' are at the top of the classification hierarchy, the most fundamental category, such as agriculture, mining, manufacturing, education, retail, etc.

industrial classification system for both regulatory and non-regulatory purposes. We believe that the regulated community's familiarity with the NAICS system and its implementation is an important justification for our proposing this approach. We also believe this is particularly the case for those industries that generate hazardous secondary materials. We request comment on whether the regulated community will be unfamiliar with the existing NAICS system, or its implementation, particularly for those industries that would most directly be affected (*i.e.*, those that generate hazardous secondary materials).

Finally, we are proposing to identify industry for purposes of today's rule at the Industry Group level, or the 4-digit NAICS level of classification. Two establishments will be considered within the ''same industry'' if they share the same 4-digit NAICS code. In arriving at this approach, we considered using the 3-digit, 4-digit, and 5-digit level (NAICS Sub-sector, Industry Group, and Industry, respectively). We selected the 4-digit level because we believe that this level struck the appropriate balance between being overly broad (*i.e.*, undermining any meaningful distinctions of industry) and too narrow. We think operations that are similar, but not identical, can generate and reclaim secondary materials without discarding them. Moreover, we think the narrower 5- and 6-digit NAICS classifications would potentially be more complicated (*i.e.*, more categories to consider), and this could be considerably more difficult to implement. In addition, narrower industry categories could unrealistically and inappropriately restrict beneficial resource recovery and recycling opportunities.

Specifically, we first looked at the overall distribution of industry classifications within the NAICS hierarchy, as shown in Table 1, focusing in particular on the Manufacturing Sectors (31–33). We would estimate that the Manufacturing Sector in general, and the Chemical Manufacturing Sub-sector in particular, have the potential to generate the widest array of listed hazardous secondary materials, based on the industries found in these sectors and the listing descriptions in 40 CFR part 261, Subpart D. Under the NAICS Manufacturing Sectors, there are 184 Industries (5-digit), 86 Industry Groups (4-digit), and 21 Sub-sectors (3-digit). While it is evident simply from the number of categories that industry classification under NAICS is broader at the 3-digit level compared with the 5-digit level, it is difficult to make any further conclusions as to the effect of this broadening or narrowing without looking at specific examples.

Looking more closely within the Chemical Manufacturing Sub-sector, there are seven Industry Groups at the 4-digit level, and 17 Industries at the 5-digit level. According to the NAICS 2002 Manual, the seven Industry Groups within the Chemical Manufacturing Sub-sector were defined with a particular relationship in mind. That is,

> The Chemical Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process and the formulation of products. This subsector distinguishes the production of basic chemicals that comprise the *first industry group* from the production of intermediate and end products produced by further processing of basic chemicals that make up the *remaining industry groups.* (emphasis added).

In other words, the ''first industry group'' under the Chemical Manufacturing Sub-sector is NAICS 3251, Basic Chemical Manufacturing, which includes basic chemical industries such as Petrochemical and Industrial Gas manufacturing. Looking at the remaining 4-digit Industry Groups, this relationship is evident—away from the production of basic chemicals, towards the production of more refined chemical intermediates and end products. For example, the next several Industry Groups: 3252 (industries that manufacture Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments), 3253 (Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing), 3254 (Pharmaceutical and Medicine Manufacturing), and 3255 (Paint, Coating, and Adhesive Manufacturing) all represent the ''further processing of basic chemicals.''

We think that these distinctions made at the 4-digit level in the Chemical Manufacturing industry present a reasonable and logical categorization of the different parts of the Chemical Manufacturing industry. In our view, these distinctions are important, and should be preserved by using the 4-digit level in this proposed approach. In general, we found that the use of the 3-digit codes grouped together processes that are too dissimilar to be considered the same ''industry'' under a basic, ''common sense'' approach. Use of the 3-digit NAICS would have the effect of collapsing these distinct categories into the NAICS 325 Sub-sector. A 3-digit NAICS classification might, however, have certain advantages, such as possibly providing more opportunities for recycling, or fewer disputes over the classification of establishments (because it is a broader categorization). Alternatively, use of the 5-digit level increases the number of industry categories within the NAICS 325 Sub-sector to 17. Within the Chemical Manufacturing Industry Groups, this results largely in a breakout of the industries that are described in the Industry Group title. For example, the 4-digit Industry Group ''Paint, Coating, and Adhesive Manufacturing'' splits into ''Paint and Coating'' and ''Adhesive'' manufacturing at the 5-digit level; or, ''Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments'' breaks out to ''Resin and Synthetic Rubber'' and ''Artificial and Synthetic Fibers and Filaments'' at the 5-digit level. Because we are using the NAICS principally because it is a widely recognized, familiar system that can be consistently applied, we do not necessarily see an advantage in further dividing (in the Chemical Manufacturing example) the 4-digit Industry Groups into 5-digit Industries. In fact, the more finely divided one makes the NAICS hierarchy, the more complex the overall approach can become. We believe that using 4-digit NAICS industry groups strikes the appropriate balance for this rule, given the options available using the NAICS hierarchy.

Therefore, we do not find that the possible advantages of a 3-digit approach outweigh the reasons articulated for proposing the 4-digit NAICS classification; nor do we see the advantage for using the 5-digit approach, and have identified possible disadvantages compared with the 4-digit approach. Although this review involved only the chemical industry hierarchy, we would point out that the chemical manufacturing industry is an important component of the universe of RCRA generators, and therefore how it is defined under today's proposal is important. (As will be discussed further below, two other important industry categories in terms of waste generation—petroleum and mineral processing—are being handled in a manner different from the NAICS approach described here, for reasons explained in the next section of this preamble.) Nevertheless, we request comment on whether or not the 4-digit NAICS classification is the most appropriate, given the goals we have articulated, or whether the 3-digit or 5-digit approach would be more appropriate, and why.

Finally, we note that there are a number of 4-digit NAICS industry codes that are designated as ''Other'' activities

within an industry Sub-sector.[4] Generally, these categories seem to represent a more diverse set of process activities than occurs under other 4-digit NAICS codes. For example, NAICS 3259 (Other Chemical Product and Preparation Manufacturing) includes Printing Ink Manufacturing; Explosives Manufacturing; Custom Compounding of Purchased Resins; Photographic Film, Paper, Plate, and Chemical Manufacturing; and All Other Miscellaneous Chemical Product and Preparation Manufacturing. Moreover, as illustrated by the example 3259 industry group, even within the ''Other'' 4 digit designation there are classifications (usually ending with an ''8'' or ''9'') that are often labeled as ''All Other.'' Using the proposed 4-digit NAICS approach, all of these categories, and activities under these categories, would fall under the same Industry Group (3259).

The ''All Other'' classifications also occur in industry groups that are not designated as ''Other'' in and of themselves. Using the Chemical Manufacturing example, there is NAICS 325188 (All Other Basic Inorganic Chemical Manufacturing) and 325199 (All Other Basic Organic Chemical Manufacturing). Within each of these categories, the NAICS provides eight examples of chemical manufacturing that fall under these categories (e.g., Enzyme Proteins, Plasticizers, and Silicone manufacturing under Organic; Hydrochloric acid, Sulfuric acid, Carbides, and Fluorine manufacturing under Inorganic). Using the proposed 4-digit NAICS approach, these categories would fall under the same Industry Group (3251).

Although EPA rejected an approach that would mix and match industry definitions using differing levels of the NAICS hierarchy, due to concerns that this would result in a NAICS list that would be too complicated while not achieving a clear benefit, EPA is soliciting comment on whether those Industry Groups or Industry designations that involve ''Other'' or ''All Other'' categorizations should be handled differently given the potential diversity within those categories.

[4] For example: NAICS 2379—Other Heavy and Civil Engineering Construction; 2389—Other Specialty Trade Contractors; 3259—Other Chemical Product and Preparation Manufacturing; 3279—Other Nonmetallic Mineral Product Manufacturing; Other Electrical Equipment and Component Manufacturing; 3379—Other Furniture Related Product Manufacturing; 3399—Other Miscellaneous Manufacturing.

Existing Definitions of ''Industry'' in RCRA Regulations

In some cases, EPA has promulgated definitions of certain ''industries'' in the RCRA regulations, to clarify the scope of a particular hazardous waste listing, hazardous waste exemption, or exclusion from the definition of solid waste. For example, the hazardous waste listing for ''spent pickle liquor from the iron and steel industry'' (K062) references SIC codes 331 and 332 to describe the scope of the listing. 40 CFR 261.32. Other examples are found at 40 CFR 261.32, a list of hazardous wastes from ''specific sources.'' These wastes are grouped by ''industry'' category (*e.g,* inorganic pigments, organic chemicals, inorganic chemicals, pesticides, etc.), and each waste has a detailed listing description to help identify the waste.

The definition of industry being proposed today is only applicable to the changes we are proposing to make to the definition of solid waste for purposes of Subtitle C. For example, we are not proposing to change how the ''source specific'' hazardous wastes listed in 40 CFR 261.32 are defined. We also do not intend today's proposed redefinition of solid waste to change existing exclusions in a manner that regulates hazardous secondary materials as solid wastes, where prior rulemakings have established that these materials are excluded.

Finally, EPA has previously defined the scope of the petroleum and mineral processing industries in earlier rules establishing exclusions from the definition of solid waste for Subtitle C regulatory purposes. We are proposing to retain these definitions for these industries in lieu of using the NAICS approach under today's rule. As discussed below, we have already looked closely at the recycling of hazardous secondary materials within these industries, and have already described in various rulemaking documents the types of activities and operations that comprise these industries, for purposes of existing exclusions. To implement these existing definitions under today's proposal, we have added clarifying provisions to proposed Appendix X (Industries for the Purpose of 40 CFR 261.2(g)).

Primary Mineral Processing. EPA has described the scope of the primary mineral processing industry in several previous rulemakings, beginning with the 1986 Regulatory Determination on extraction and beneficiation wastes (51 FR 24496), and the September 1, 1989 Mining Waste Exclusion (54 FR 36592). In the September 1, 1989 rule, we articulated the factors we would use to determine the scope of the mineral processing industry.[5] We are proposing to require the use of these same factors for determining whether a generating or reclamation process falls within the mineral processing industry. Specifically:

- Operation must follow the beneficiation of an ore or mineral and does not include beneficiation as defined in 40 CFR 261.4(b)(7)(i).
- Operation must serve to remove the desired product from or enhance the characteristics of an ore or mineral or a beneficiated ore or mineral.
- Operation uses feedstock that is comprised of less than 50 percent scrap materials.
- Operation produces either a final or an intermediate to the final mineral product.
- Operation does not combine the mineral product with another material that is not an ore or mineral, or beneficiated ore or mineral (*e.g.,* alloying) and does not involve fabrication or other manufacturing activities.

EPA is proposing to retain this industry classification, rather than deferring to the various NAICS categories, for purposes of implementing the exclusion for primary mineral processing secondary materials recycled within the industry, because it has examined this sector in detail and believes that its current system reflects the boundaries of this industry better than the 4-digit NAICS approach.

For secondary materials that would not be excluded under today's proposed rule, mineral processing facilities may continue to determine whether those materials are exempt from Subtitle C regulation under the Bevill exclusion, section 3001(b)(3)(A)(iii) of RCRA and 40 CFR 261.4(b)(7). They must use currently applicable regulatory provisions, as clarified by the criteria articulated in preamble to the September 1, 1989 **Federal Register** (54 FR 36592). Note that to be excluded under the Bevill Amendment, solid wastes must be uniquely associated with the mineral processing industry. For purposes of today's rule, non-uniquely associated wastes, although not Bevill exempt, are still eligible for today's proposed exclusion if they are generated and reclaimed within the mineral processing industry.

[5] Additional guidance was provided in the Phase IV Land Disposal Restrictions (LDR) preamble (63 FR 28556; May 26, 1998). EPA stated that it views ''mineral processing'' to include but not be limited to 41 primary mineral processing sectors described in the Agency's 1996 Identification of Mineral Processing Sectors and Waste Streams.

Petroleum Industry. EPA has previously promulgated exclusions related to the recycling of oil and oil-bearing hazardous secondary materials. See July 28, 1994 **Federal Register** (59 FR 38536); see also August 6, 1998 **Federal Register** (63 FR 42110). In those rules, EPA identified the various industry sectors related to petroleum (*e.g.,* exploration and production, transportation and storage, refining and marketing, etc.) that collectively were defined as the petroleum industry for purposes of excluding recovered oil, when such oil is returned to the petroleum refinery for insertion. (We note that this particular ''intra-industry'' exclusion is uni-directional, that is, it is conditioned on the recovered oil being sent from facilities at any point within the industry, back to a petroleum refinery.) In order to avoid any confusion between this existing definition, and the approach being proposed in today's rule for defining ''industry,'' we would like to make several clarifications, and request comment on specific questions.

First, we reiterate that in today's notice we are not proposing to change the definition of petroleum industry as it is used in the exclusions already mentioned, specifically, 40 CFR 261.4(a)(12)[6]. *See* Section A.III.7. of today's preamble for additional discussion of conforming changes to the regulatory framework. Second, because the reuse of secondary materials by burning for energy recovery or the manufacture of fuels is not within the scope of today's proposal (as mentioned elsewhere in today's preamble and reiterated in the proposed regulatory text) there may not be any overlap between today's proposed exclusion, and the existing exclusion that utilizes the broad definition of petroleum industry. However, because there may be some hazardous secondary materials that could be generated and legitimately reclaimed in a continuous process within the petroleum industry, in a manner that does not produce a fuel, to avoid confusion we have proposed to define petroleum industry in today's rule the same way as described in 40 CFR 261.4(a)(12). Therefore, we have added a clarifying provision in proposed Appendix X to effect this departure from using the NAICS.

[6] We note that the exclusion for oil-bearing hazardous secondary materials in 40 CFR 261.4(a)(12)(i) is limited only to refinery-generated materials, returned to a refinery; and the exclusion for recovered oil in 40 CFR 261.4(a)(12)(ii) involves the broader definition of petroleum industry. We are not proposing to change the scope of either exclusion in today's rule.

We request comment on using the definition of petroleum industry from existing 40 CFR 261.4(a)(12) for hazardous secondary materials that are not already excluded under that same provision, or are reclaimed within the petroleum industry for reasons other than making fuels, in lieu of using the 4-digit NAICS approach. We believe that retaining the existing definition of petroleum industry makes the most sense, because we have already looked closely at the recycling of hazardous secondary materials within the petroleum industry, and have already described in various rulemaking documents the types of activities and operations that comprise these industries. We also request comment on whether or not the definition of industry using the 4-digit NAICS Industry Group 3241 (Petroleum and Coal Products Manufacturing) should instead be used for hazardous secondary materials reclaimed within the petroleum industry for reasons other than making fuels.

Waste Management and Remediation Services. We are not including ''Waste Management and Remediation Services'' (NAICS 562) on the list of industries in Appendix X of today's proposed rule. We think that this industry is in business to manage waste, and presents different legal and policy issues than do traditional manufacturing industries. Put another way, this type of activity is essentially waste management, as opposed to ongoing manufacturing. We do not think that most materials reclaimed by waste management industries are generated within those industries. On the contrary, we believe that most if not all materials reclaimed in waste management operations are first discarded by another entity that has no further use for them, such as used solvents generated at an automobile repair shop sent to a third-party solvent reclaimer, or lead from spent batteries being reclaimed in a secondary smelter (*see U.S.* v. *Ilco,* 996 F.2d 1126 (11th Cir. 1993)).

Therefore, we have expressly excluded ''Waste Management and Remediation Services'' from the scope of today's proposal. NAICS codes corresponding to these operations do not appear on the list of industries in Appendix X of today's proposed rule. The NAICS 562 Sub-sector includes the Industry Groups ''Waste Collection'' (NAICS 5621), ''Waste Treatment and Disposal'' (NAICS 5622), and ''Remediation and Other Waste Management Services'' (NAICS 5629).

In addition, we have identified specific activities described within certain NAICS industry categories that should remain within our Subtitle C jurisdiction under the same logic (that is, they manage materials that have been discarded by another entity that has no further use for them). These are activities that fall within two separate Industry Groups within the Chemical Manufacturing Sector (325). Based upon the NAICS description for these activities, they appear to reclaim secondary materials from facilities that generate them, and unlike the other operations in the same NAICS codes, they do not produce any products made from non-secondary materials, nor do they provide the kinds of services that the other operations provide. Moreover, they are often owned and operated by independent third parties. We are proposing to exclude these activities from the industry classifications as follows:

3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing (except for third-party operations that reclaim drycleaning fluids at sites that do not conduct drycleaning).

3259 Other Chemical Product and Preparation Manufacturing (except for third-party operations that reclaim degreasing solvents at sites that do not conduct degreasing operations).

Finally, we assume that identifying facilities properly classified under the Waste Management Services NAICS Industry Group should be relatively straightforward, and that such facilities would not be readily confused with facilities that are recycling secondary materials in a continuous process within the generating industry. Generally speaking, where such waste service facilities are stand-alone operations (*i.e.*, are not physically on-site with respect to industrial or manufacturing operations), and it is clear that virtually all materials reclaimed at such facilities are secondary materials received from off-site generators (in one or more industry categories), then reclamation services are quite obviously the principal activity undertaken at the site, and the secondary materials have been discarded by the generators, as discussed above. In addition to excluding facilities with NAICS Codes 5621, 5622, and 5629 from the list of industries in Appendix X as described above, proposed 40 CFR 261.2(g)(2)(iv) makes clear that materials sent to these waste service industries are not excluded from the definition of solid waste under today's rule.

Manufacturing Versus Other NAICS Sectors

Today's proposed rule is incorporating all of the NAICS

categories into Appendix X, with the exception of the categories described above for mineral processing, petroleum, and waste management services.

However, because we are relying on the NAICS list, which is designed to capture the entire breadth and scope of the U.S. economy, there may be categories on the list that do not generally generate or recycle hazardous secondary materials. Including such industries on the list used in this regulation makes the list rather large and unwieldy. In addition, for some industries, inclusion on the list in Appendix X may create some confusion and concern as to whether we are implying that a particular industry generates hazardous secondary material by virtue of it appearing on this list in the RCRA regulations (which we are not). We believe that the majority of hazardous secondary materials presently being recycled are generated within traditional manufacturing industry sectors (*e.g.*, NAICS Sectors 31–33). For example, it may be more straightforward to limit the list of industries in Appendix X to mining and manufacturing sectors. We are requesting comment on whether the list of industries in Appendix X should be modified, beyond what is being proposed today, based on the knowledge that certain industry categories do not generate hazardous secondary materials or will not engage in reclamation of hazardous secondary materials.

How Will the Regulated Community Identify Which NAICS Code Applies for Purposes of This Rule?

The 2002 NAICS Manual contains guidelines for using the system, along with fairly detailed descriptions of the industry categories. Individual NAICS categories contain information, such as examples, to help identify an establishment's industry classification. We are proposing today to require the regulated community to use the existing NAICS guidance (NAICS 2002 Edition) to identify what industry their operations fall within for purposes of today's exclusion from the RCRA definition of solid waste. *See* paragraph (d) in proposed Appendix X.

The NAICS is a ''classification system for establishments.'' As discussed in more detail below, an establishment is a collection of one or more activities, and under NAICS the establishment is what is classified as a particular industry. The introductory text to the 2002 NAICS Manual states that ''The establishment as a statistical unit is defined as the smallest operating entity for which records provide information on the cost of resources, materials, labor, and capital employed to produce the units of output.'' Establishment is further clarified in the same text as ''generally a single physical location, where business is conducted or where services or industrial operations are performed (for example, a factory, a mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office).''[7] In cases where distinctly different and potentially significant activities occur at one location, in determining whether these activities should be classified as a separate establishment, the 2002 NAICS Manual states that an ''activity is treated as a separate establishment provided: (1) No one industry description in the classification includes such combined activities; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, and expenses; and (3) employment and output are significant for both activities.

Thus, the NAICS system first defines what is an establishment. An establishment is then classified to an industry when its primary activity meets the definition of that industry. In the simplest case, where an establishment consists of one activity, the industry classification for that establishment is that which best describes that single activity. When there are two or more activities, the NAICS Manual describes procedures for identifying the primary activity. The NAICS Manual states:

> In most cases, if an establishment is engaged in more than one activity, the industry code is assigned based on the establishment's principal product or group of products produced or distributed, or services rendered. Ideally, the principal good or service should be determined by its relative share of current production costs and capital investment at the establishment. In practice, however, it is often necessary to use other variables such as revenue, shipments, or employment as proxies for measuring significance.[8]

Thus, establishments are classified under NAICS based on the primary activity within that establishment. It should also be pointed out, however, that for certain types of combined activities, the NAICS guidance provides exceptions to this ''primary activity'' rule approach. For example, vertically-integrated facilities can be described as consecutive stages of production in which the output of one step is the input to the next. Rather than determining which of these stages of production are the largest (or primary), NAICS would classify this series of activities based on the final process. One example of this is where the NAICS Manual specifies that a physical location with both a Pulp Mill activity and Paper Mill activity, should be classified as a Paper Mill because that is the final stage of production. But there are even exceptions to this, such as where the NAICS Manual specifies that a particular set of vertically-integrated activities should be classified based upon the first stage of the manufacturing process (*e.g.*, a Steel Mill where other activities such as producing Steel Castings occurs, should be classified as a Steel Mill nonetheless). An important point here, other than illustrating how the ''primary activity rule'' may be superseded by the way in which the NAICS manual defines particular vertically-integrated establishments, is that the NAICS Manual will specify how such an establishment is classified, rather than the owner/operator having to in every case make a judgement (such as determining the primary activity, for example).

Another example of how NAICS may classify certain combined activities, other than via the primary activity rule, is in certain examples of joint production of goods and services. Some establishments may have two activities (*e.g.*, a gasoline station with a convenience store) where the combined activities have been identified in the NAICS as a third, separate industry. Thus, rather than making a determination of which activity (gasoline retail versus convenience store) is primary using receipts/sales and revenue data as a proxy, NAICS provides a category Gasoline Stations with Convenience Stores (NAICS code 44711). In this case, this third category should be used in lieu of determining the ''primary activity'' for these establishments.

Because today's rule proposes to use the NAICS for classifying establishments (at the 4-digit, or Industry Group level) for determining whether or not the generating industry and the reclaiming industry are the same, the concept of the establishment is important. We are proposing to add a definition of establishment to the RCRA regulations, where establishment means ''an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. An establishment is the smallest such unit for which records provide

[7] NAICS Manual, 2002, p. 21.

[8] NAICS Manual, 2002, p. 22.

information on the cost of resources, materials, labor and capital employed to produce the units of output.'' The language in this definition follows closely the language in the 2002 NAICS Manual, and is also consistent with the same language EPA used in a separate rulemaking under EPA's Toxic Chemical Release Reporting program (*see* 40 CFR 372.3). We request comment on our use of this definition for today's proposed rule. (An additional point, the phrase ''generally at a single physical location'' in the proposed definition of establishment does not mean that under today's proposal, ''same industry'' is somehow limited only to materials generated and reclaimed on site. As discussed throughout this preamble, today's proposed exclusion can apply to materials sent off site from the generator facility.)

Multiple Establishments. Thus far, we have discussed how the NAICS system defines an establishment, and how that establishment is classified to an industry from the 2002 NAICS Manual of industry classifications. We are proposing that hazardous secondary materials, generated at an establishment, are excluded if reclaimed at the same or another establishment, whether on-site or off-site, where the establishment reclaiming the material is classified under the same NAICS (at the 4-digit level) classification as the generating establishment (industry). This approach is relatively straightforward when it involves transactions within and between sites where each site has a single establishment, classified to a particular NAICS industry group. All one needs to know is the correct industry classifications, and then determining whether or not the secondary material is being reclaimed within the generating industry in accordance with today's proposed exclusion should be a straightforward task.

However, some locations will have two or more establishments operating, where these establishments are classified differently from one another under the NAICS. Where there are two or more different industries (establishments) operating at the location where the secondary material is generated, or at the location where the secondary material is reclaimed, the individual establishments that generate and reclaim the secondary materials, respectively, must be classified the same under NAICS, in order to be excluded under today's proposed rule. In other words, where there are multi-industry sites, we look to whether NAICS classifications of the specific establishments generating and reclaiming the secondary material are the same. We are not suggesting that a particular multi-industry site be classified as a single industry, based for example on some type of determination of the ''dominant'' or ''primary'' industry or establishment at that site.[9] In fact, one scenario under today's proposal would be that secondary materials are not considered to be reclaimed in a continuous process within the same industry when sent from one industry to a different industry on the same site. While there may be opportunities for legitimate recycling between two different industries at the same site, for reasons already discussed, we are limiting today's exclusion to a ''same industry'' approach. Although ''inter-industry'' recycling is outside the scope of today's proposal, we would be interested in obtaining additional information on specific examples of situations where two different industries (based upon the NAICS definition proposed today) are located at the same site, and where hazardous secondary materials are generated in one industry and could be reclaimed in a different, on-site industry. Again, this type of recycling is outside the scope of today's proposal, but we solicit comment and would be interested in obtaining examples of where this type of recycling might occur.

Specialty Batch Chemical Manufacturers. EPA is also aware of certain practices within the chemical manufacturing industry that might present unique situations regarding defining ''intra-industry'' reclamation using the NAICS approach. Specifically, within the chemical manufacturing industry, larger manufacturers will contract out production of certain chemicals to smaller manufacturers (referred to as batch or tolling operations). These smaller manufacturers produce chemicals in batches, where the product slates may change several times over the course of a year, for example. These smaller manufacturers (often referred to collectively as Specialty Batch Chemical Manufacturers) may generate hazardous secondary materials that could be returned to the larger chemical manufacturer for reclamation along with similar secondary materials (generated by the larger facility from producing the same chemical). To the extent that the NAICS approach proposed today classifies both establishments (the specialty batch establishment, and the larger chemical manufacturing establishment) the same at the 4-digit level, this reclamation would be excluded under today's proposal. As stated above, we would look to whether the NAICS classifications of the specific establishments generating and reclaiming the secondary material are the same. However, we solicit comment on this particular situation, and are interested to know if there are specific examples of where 'same industry' reclamation, as outlined under today's proposed rule, would be precluded as a result of uncertain application of the NAICS classification approach at specialty batch chemical facilities (*e.g.*, due to frequently changing product slates, or different products being produced from the same equipment at different times, etc.).

Under today's definition of industry, we are proposing that owners and operators, as well as implementing agencies, rely on the NAICS system to identify establishments and define the bounds of an industry. As our lead approach, we are not proposing to overlay additional criteria to determine whether or not particular reclamation units, processes, or activities are ''adequately'' associated with an industry so as to be included within the scope of that industry definition. In fact, we believe the NAICS approach simplifies this determination because it generally views establishments as a collection of activities, and provides a consistent system for classifying the collection of activities as an industry. Generally, where reclamation units, processes or activities are located at a particular site, and are supporting the principal activities of that industry in a legitimate fashion, they should be considered part of that establishment (industry) unless the NAICS approach (*e.g.*, industry descriptions or other guidance in the 2002 NAICS Manual) yields a different answer.

For instance, in the example provided in Section III.A.4. above, if a paint manufacturer reclaims used solvents from within the paint manufacturing industry, the used solvents would not be wastes under today's proposed exclusion. If, based upon the NAICS,

[9] Whereas the NAICS attaches an industry classification to an individual establishment based upon the most significant activity within that establishment (determined using either the 'primary' activity rule, or in some other way as discussed for certain establishments with combined activities), the NAICS Manual does not appear to have any type of 'primary rule' for identifying the primary industry at multi-industry facilities. However, there is at least one example of where determining the primary industry is required in a different program; the EPA Toxic Release Inventory (TRI) regulations require that a primary establishment, or industry, be identified at multi-establishment complexes. This is in order to determine applicability of the TRI rules, because the TRI rules, because the TRI program applies to some industries and not others. 40 CFR 372.22(b).

this solvent reclamation activity is part of the paint manufacturing process, and thus merely one of several activities comprising an establishment best classified as paint manufacturing under NAICS, then the reclamation activity would be part of the paint manufacturing industry. Alternatively, if the solvent reclamation activity became a centralized solvent reclamation facility for paint manufacturers, then under the NAICS approach the reclamation could ultimately become so significant (*e.g.*, due to the number of employees, or receipts from its activities, etc.) as to be a separate establishment. In that case, the reclamation activity would likely be classified in an industry other than paint manufacturing, and the used solvents would no longer be excluded because they are not being reclaimed in a continuous process within the same industry.

The key point here is that in one instance, the reclamation activity clearly supports paint manufacturing, and is one of several activities in an establishment called paint manufacturing. In the other instance, the reclamation activity has become significant enough to be a separate establishment, and is thus classified based on its own activity, which would be different from the activity of the establishment (paint manufacture) it serves in this example. Classifying establishments based on their own activity, rather than the activity of the establishment being served, is consistent with the way in which the NAICS is intended to operate in situations involving ''auxiliary'' establishments.[10]

While we believe the NAICS appears to offer a clear, consistent, and familiar way to classify establishments for purposes of today's rule, we acknowledge that there may be some situations where this system might not provide definitive, ''bright line'' answers. As discussed above, a reclamation process could expand to a point where such a ''sideline'' reclamation process would rightly be considered significant enough to be a separate establishment, and a different industry, for the purpose of this rule. The reclamation establishment likely would then be classified as a waste management industry.

As stated above, the 2002 NAICS Manual contains guidance to help identify whether a particular activity can be defined as a separate establishment, in situations where there are other activities occurring at the same location.[11] However, our concern is whether this guidance is sufficient for determining more precisely when ''sideline'' reclamation systems would become ''significant'' enough to be considered separate establishments. Today's proposal would help resolve such issues for certain types of on-site reclamation processes. First, under proposed 40 CFR 261.2(g)(2)(v), if there is still some question (after consulting the 2002 NAICS Manual) as to the correct classification of a particular reclamation unit, process, or activity, we are proposing that with respect to hazardous secondary materials generated and reclaimed on site (as defined in 40 CFR 260.10), the on-site reclamation unit, process, or activity be considered part of the generating industry with which it is associated. This proposed provision reflects the idea that the scale or ''significance'' of on-site reclamation processes should be less relevant for the purpose of this rule when only materials that are generated on-site are involved.

The issue of when an on-site reclamation process would be significant enough to be considered a separate establishment under NAICS is more complex when the process also reclaims hazardous secondary materials generated off-site. Facilities that decide to accept such secondary materials from off-site for reclamation need to know at what point such reclamation processes would be considered separate establishments. In the paint manufacturer example discussed above, a risk-averse facility manager might unnecessarily restrict his or her reclamation activity. We believe that it may be advisable in the final rule to provide some more specific means of determining when such sideline reclamation processes would be significant enough to be considered separate establishments and, therefore, separate (and different) industries.

In order to clarify when a sideline operation becomes a waste management operation, EPA could identify several relevant criteria for facilities and regulators to evaluate. One of the criteria could be how much secondary material from off-site is being reclaimed in the process. For example, the regulation could specify that an on-site reclamation process should be a separate establishment if more than 50% of the material reclaimed originates from off-site. Some different percentage (*e.g.*, 25% or 75%) could also be appropriate for this purpose. Another criterion could be based on how much of the facility's revenue (*e.g.*, more than 50%) is generated from reclaiming material from off-site. Another criterion might be based on the number of off-site generators (*e.g.*, more than five) that supply secondary material to the reclamation process. The Agency requests comment on the need for additional regulatory clarification to determine when such sideline reclamation processes would be significant enough to be considered separate establishments, particularly where reclamation processes take materials from off-site generators. We also request comment on the specific options outlined above for addressing this issue.

We point out that elsewhere in today's preamble, we discuss co-proposing two options as part of defining what is a ''continuous process within the generating industry.'' (*See* Section III.A.4. above, where under one option we propose that hazardous secondary materials that are generated and reclaimed in a continuous process within the same industry would not be eligible for today's exclusion, if the reclamation takes place at a facility that also recycles regulated hazardous wastes generated in a different industry.) However, here in this section we are requesting comment on possible ways to more clearly define industry, or more specifically, establishment, particularly where there are materials being received and reclaimed from off-site sources. While these two aspects of today's proposal address similar issues (*e.g.*, improving clarity, and identifying reclamation outside the scope of today's proposal), we emphasize that here we are asking for comment on possible criteria for further defining establishment, which would conceivably apply under either of the co-proposed options described in section III.A.4.

EPA also requests comment on using the existing 2002 NAICS Manual for implementing the definition of industry under today's rule, and specifically as it is incorporated into the industry categories and definitions in the newly proposed Appendix X. We anticipate that for most locations, in most cases, the NAICS classification system described in the 2002 NAICS Manual,

[10] Under the SIC, establishments that primarily provided services to manufacturing establishments were classified based on the establishment being served: NAICS changed this to emphasize that each establishment should be classified based upon what the establishment does. (See NAICS Clarification Memorandum No. 3 in docket to today's proposed rulemaking.)

[11] These are (1) No one industry description in the classification includes such combined activities; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, and expenses; and (3) employment and output are significant for both activities. NAICS Manual, 2002, pp. 21–22.

summarized above, will serve the purpose of a clear and consistent definition of industry.

Regulatory Option for On-Site Recycling

As explained in the preceding discussion, today's proposed exclusion would only be available for materials recycled within the same industry in which they are generated, and we are proposing to use the NAICS system as the primary means of identifying and classifying the industries associated with generation and reclamation of recyclable materials. However, as discussed above, we acknowledge that our proposed approach may have certain drawbacks, particularly with regard to situations where the recycling activities all occur on-site. For example, we expect there will be numerous facilities that will have two or more establishments that would be classified as separate industries according to the NAICS system (*e.g.*, a facility that produces petrochemicals as well as pharmaceuticals). As proposed today, materials would not be excluded if the generating and reclaiming establishments were in different industries according to NAICS, even if both establishments were situated at the same site and operated by the same company. In a somewhat different example, a large manufacturer such as an integrated steel production plant may find it advantageous to have a separate, specialized company operate a dedicated reclamation process at the plant site. Under the NAICS system, that reclamation process would likely not be classified as part of the steel making industry, since it could be viewed as a distinct, separate economic unit. We also acknowledge that for large, integrated facilities it could be difficult using the NAICS guidance to easily classify processes that may produce different types of outputs, but are physically or operationally linked. Finally, as discussed previously, a specific unit or process at a facility may be flexibly designed to produce a variety of outputs, and its NAICS classification might thus change relatively often, depending on which products are being produced at any given time.

In developing today's proposal, several stakeholders suggested that an exclusion for on-site recycling could be a more practical and simpler approach to encouraging legitimate recycling while maintaining environmental protections. The Agency believes that such an option may have merit, and in light of the potential difficulties in making clear, definitive NAICS classifications at more complex facilities, we are considering a regulatory option that could simplify implementation of today's proposed exclusion in situations where materials are all generated and reclaimed in a continuous process on-site.[12] Under this option, the NAICS system would be used to classify generating and reclaiming industries that are located at different sites, consistent with today's proposal. However, materials that are generated and reclaimed in a continuous process at the same site would be excluded, regardless of whether different industries were involved. This option would also involve the same notification requirements that would apply to off-site, intra-industry recycling excluded under today's proposal.

It should be noted that such an on-site recycling exclusion would not be based on the direction of the D.C. Circuit Court (in the opinions discussed in section II.D of this preamble), but rather would rest on the premise that materials recycled on-site in a continuous process are unlikely to be discarded because they would be closely managed and monitored by a single entity who is intimately familiar with both the generation and reclamation of the material, no off-site transport of the material (with its attendant risks) would occur, and there would be few questions as to potential liability in the event of mismanagement or mishap.

We believe that this regulatory option would have the advantage of being somewhat more straightforward to implement, both for industry and regulators, by avoiding many of the uncertainties and complexities of using the NAICS system, particularly at larger facilities. We also believe that it would likely encourage more legitimate recycling than would occur under today's proposed regulatory framework for intra-industry recycling. We request comment on this regulatory option.

7. How Is EPA Proposing to Define ''Continuous Process?'

What Is a ''Continuous Process?'

As explained above, we are proposing today to define ''discard'' for Subtitle C purposes in the context of the opinions of the D.C. Circuit pertaining to the definition of solid waste. EPA is proposing to exclude from the Subtitle C definition of ''solid waste'' materials recycled in a continuous process within the generating industry. In this section of the preamble, we propose that generation and reclamation of materials would take place in a ''continuous process'' only if the materials are handled exclusively by facilities or entities (except for transporters) that are within the generating industry, and the materials are not ''speculatively accumulated'' as defined in 40 CFR 261.1(c)(8).

Today's proposed definition for continuous process would not allow a generator to ship excluded materials to a broker or other middleman before it is received at a reclamation facility. While middlemen such as brokers are often better able to find markets for recyclable secondary materials, and thus can facilitate their beneficial reuse, we do not believe that such arrangements are consistent with the idea of recycling in a ''continuous process.'' Brokers do not manufacture the same goods or provide the same type of services as the entities which generate the secondary materials. We do not regard them as falling within the same industry as the generators. Moreover, often a generator who consigns materials to a broker does not know where or how the material will be reclaimed. This suggests that these generators are more likely to be ''finished'' with a material and to be willing to let the material go to a different industry for reclamation. We also note that brokers have been associated with releases requiring cleanups, though we have not compiled definitive data on any such recent damage cases. In sum, we regard the use of brokers as a significant discontinuity in the use of a secondary material, although we request comment on this issue. Today's proposal would, however, allow the use of independent transporters (who typically would not be in the same industry that generated the secondary material) to ship excluded materials from one facility to another, as long as each facility is within the generating industry.

In addition to requiring materials to be shipped directly between generator and reclaimer, we believe that a continuous process requires some limitations on the timing of the activities in question; *i.e.*, how soon a material is reclaimed and reused after being generated. Obviously, if a secondary material is generated but never reclaimed and reused it must be considered a waste. On the other hand, if a material is generated and subsequently reclaimed and reused more or less immediately (*e.g.*, within a few hours or days), it might easily be concluded that such recycling takes place in a ''continuous process.''

To address this timing aspect in defining continuous process, we are proposing to use RCRA's existing ''speculative accumulation'' provisions (see 40 CFR 261.1(c)(8)) to distinguish

[12] ''On-site'' is defined for RCRA Subtitle C purposes in 40 CFR 260.10.

between processes that are continuous and those that are not. Under this existing rule, a material is accumulated speculatively if the person accumulating it cannot show that the material is potentially recyclable and has a feasible means of being recycled. More importantly for the purpose of this proposal, the person accumulating the material must show that during a calendar year (beginning January 1) the amount of material that is recycled, or transferred to a different site for recycling, must equal at least 75 percent by weight or volume of the amount of that material at the beginning of the period. This provision already applies to secondary materials not otherwise considered to be wastes when recycled, such as materials used as ingredients or commercial product substitutes, materials that are recycled in a closed-loop production process, or unlisted sludges and byproducts being reclaimed. These restrictions on speculative accumulation have been an important element of the RCRA recycling regulations since they were promulgated on January 4, 1985.

EPA believes that using the existing regulatory provisions for speculative accumulation as the time limit for defining ''continuous process'' in this rule is consistent with the D.C. Circuit Court's direction, and fits well within the existing regulatory structure for hazardous waste recycling. In the ABR decision, the Court suggested that temporary storage of secondary materials prior to reclamation may be a necessary phase in the overall reclamation process. However, in that decision the court did not suggest a particular time limit beyond which accumulation of materials could no longer be considered part of a continuous process.

For most types of recycling that are excluded from regulation under RCRA, the existing speculative accumulation provisions serve to define the point at which potentially recyclable secondary materials nevertheless become solid and hazardous wastes. As an example, secondary materials that can be directly used or reused without reclamation are not considered wastes, as long as they are not speculatively accumulated. Today's rule is consistent with this regulatory approach, in that it applies the same logic and limitations to storage of materials prior to recycling. We see no compelling reason why the speculative accumulation provisions should not serve the same purpose for recycling that would be excluded under today's proposal, and recycling that is excluded under other, existing regulatory provisions.

With regard to implementing the existing restrictions on speculative accumulation, persons accumulating secondary materials are required to demonstrate that they are recycling materials in the amounts specified in 40 CFR 261.1(c)(8). Making such demonstrations will generally require such persons to provide appropriate documentation to substantiate their claims, as specified in existing 40 CFR 261.2(f). In the preamble to the final speculative accumulation rule (50 FR 636, January 4, 1985), the Agency discussed certain types of documentation that would be appropriate in making satisfactory demonstrations, such as customarily maintained data on industrial process throughputs, and bills of lading for shipments sent off-site to a recycler. Other such documentation could include records identifying the recyclers receiving the secondary materials, or contracts and correspondence with a recycler.

The Agency believes that today's proposed definition of ''continuous process'' is consistent with the direction in the D.C. Circuit Court's opinions. Thus, this definition, as it fits within the broader context of today's proposed exclusion, should help to ensure that materials that would be excluded from regulation under today's proposal will not be discarded, and therefore do not need to be regulated as wastes under Subtitle C.

What Alternatives Did EPA Consider for Defining ''Continuous Process?'

EPA considered several alternative approaches to placing time limits on ''continuous process'' in this proposed rule. One such alternative was to establish a limit of 90 days for accumulation of recyclable materials as the maximum time limit for a ''continuous process.'' This would in some ways be consistent with the current time limit for accumulation of hazardous wastes by large quantity generators that do not have RCRA permits. Another alternative could be to establish a somewhat longer limit, such as 180 days (this alternative has some support in the decision of the U.S. Court of Appeals for the Fourth Circuit in Owen Electric Steel Co. v. Browner, 37 F. 3d 146 (4th Cir. 1994)). This is also the allowable accumulation time for small quantity generators that do not have RCRA permits.

Establishing a specific time limit in this rule (such as 90 or 180 days) to define ''continuous process'' could be coupled with a provision that would allow generators to exceed such time limits (for example, up to one-year) in cases where they could demonstrate that recycling of the materials would be done within the extended time frame.

EPA chose not to set such stricter time limits to define ''continuous process,'' largely because we believe that using the speculative accumulation provisions is more consistent with the current regulatory framework for recycling, and is familiar to the regulated community. It represents EPA's longstanding judgment that materials recycled within the one calendar year timeframe are in continuous use, and therefore are not discarded. Moreover, EPA is concerned that it might be difficult to select a shorter time limit that would be appropriate to the wide variety of materials and industries covered by this rule. This approach also offers greater flexibility for generators and reclaimers to optimize recycling opportunities. Shorter time limits could discourage some promising recycling opportunities, particularly in industries that tend to generate recyclable secondary materials episodically, as is often the case with (for example) specialty batch chemical manufacturers.

The Agency is aware, however, that there may be some potential complications with using the speculative accumulation time limit to define ''continuous process.'' For one thing, establishing how long specific secondary materials have been stored at a generator's facility can be difficult for regulatory agencies, particularly since there are no explicit record keeping requirements in the regulations for speculative accumulation. Although we are not proposing today to modify the current regulations for speculative accumulation, we solicit comment as to whether those regulations should be strengthened as they would apply specifically to today's proposed exclusion, or perhaps more generally. Specifically, we request comment on the idea of requiring generators and off-site recyclers to maintain records that would serve to establish when specific volumes of materials were generated, and when they were recycled. EPA believes that such record keeping requirements might assist inspectors from regulatory agencies to verify that secondary materials stored for recycling are actually being reclaimed on a regular basis, rather than accumulating in increasing volumes over months and years. We also believe that such record keeping would likely impose a minimal burden on generators, since we understand that maintaining such records of inputs and outputs, and bills of lading for off-site shipments, is a standard business practice.

In addition to requiring direct transfer of excluded materials from generators to reclaimers, and using the speculative accumulation concept to establish a time limit on storage of such materials, we considered whether there are other aspects of ''continuous process'' that we should attempt to capture in defining the term. For example, it could be argued that inherent in the concept of ''continuous process'' is the idea of regularity or predictability; *i.e.*, that the generation and subsequent reclamation of materials should take place in a more or less routine, ongoing manner. It might be further argued that the term ''continuous process'' implies some kind of physical linkage between the processes that generate specific secondary materials and the processes that reclaim them. Similarly, some might say that some type of geographic limit should also be imposed, such that (for example) materials shipped from New Jersey to California might not be considered within a continuous process, even if they remained within the same industry.

EPA chose not to impose further tests or requirements in defining continuous process, beyond the limits established for speculative accumulation. For one thing, we believe that placing additional restrictions on what we would consider to be a continuous process for the purpose of this rule could create additional complexity in its implementation. Such additional restrictions might also be somewhat arbitrary, since it would be difficult to develop restrictions appropriate to the wide range of materials and processes potentially covered by this rule. Such an approach could also discourage beneficial recycling in some industries where generation and reclamation of secondary materials happen in a less than routine, predictable manner. We are interested, however, in receiving comments on this issue, particularly any specific suggestions as to how today's proposed definition of continuous process could be refined or enhanced, and the benefits that such changes would bring.

8. What Type of Notification Would Be Required?

Today's proposal would require generators who wish to use the 40 CFR 261.2(g) exclusion to submit a one-time notice to EPA or the authorized state. As specified in 40 CFR 261.2(g)(3), the notice would need to identify the name, address and EPA ID number (if applicable) of the generating facility, the name and telephone number of a contact person for that facility, the type of material(s) that would be subject to the exclusion, and the industry that generated the material, as classified according to Appendix X of Part 261.

This notice requirement would only apply to generators of secondary materials that have previously been regulated under RCRA Subtitle C, and that would become excluded under today's proposal. Thus, generators of materials that have been previously exempted or excluded from regulation under other provisions because they are recycled would not need to submit a one-time notice. If a generator were to generate both types of materials (*i.e.*, materials that were previously regulated, as well as materials that were previously excluded or exempted under different provisions), the generator would have to submit a one-time notice only for the materials that were previously regulated.

As discussed in the following section of this preamble, we are proposing today to modify or eliminate existing exemptions and exclusions that ''overlap'' with the proposed 40 CFR 261.2(g) exclusion. Thus, materials that heretofore have not been subject to regulation under existing provisions would remain unregulated, but would be subject to the new exclusion. It should be noted that, with few exceptions, the current regulations do not require generators of excluded materials to notify EPA or authorized state agencies. Requiring these generators to submit one-time notices once they become subject to the new 40 CFR 261.2(g) exclusion would in effect be a more stringent requirement. Since today's proposal is intended to be generally de-regulatory, we do not believe it appropriate to impose such a new notice requirement on generators who have not been required to submit such notices under the current regulations.

To illustrate, generators of secondary materials that (for example) are recycled in a ''closed loop'' system have been excluded from regulation under 40 CFR 261.2(e)(iii), and have not heretofore been required to notify the Agency of their recycling activities. Since we assume that closed loop recycling is intra-industry, today's proposal would subsume and eliminate the existing closed loop exclusion, and the materials would become subject to today's proposed exclusion. These generators would not need to submit the one-time notice required under proposed 40 CFR 261.2(g)(4). However, if a generator has been recycling regulated hazardous wastes that would become newly excluded under today's proposal, he/she would need to submit the notice.

The Agency is not proposing any specific format or form for these one-time notices. However, to provide one idea of how such a notice might be formatted, we have included a sample form in the docket for today's rule (*see Sample Notification Form for Materials that are Excluded from the Definition of Solid Waste Under 40 CFR 261.2(g)).* This sample form is also available on the web site that EPA has established for this rulemaking.

The intent of today's proposed notification requirement is to provide basic information to regulatory agencies as to who would be managing hazardous secondary materials under the terms of today's exclusion, and the types of materials being recycled. We believe our right to require such basic notification is inherent in our authority to regulate discarded materials, and we consider this to be the minimum information needed to enable credible oversight of such activities, and ensure that the terms of the exclusion are being met by generators and recyclers. As such, we believe that this minimal notification is a reasonable requirement for those who will find advantage in the regulatory exclusion proposed today. We estimate that this requirement will impose an incremental reporting ''burden'' of approximately one hour per affected facility.

It should be understood that as proposed, providing this notification would not be required more than once. We are also requesting comment, however, on an alternative option for such notification. Under this alternative, generators would be required to submit revised notices if certain information on the original notice were to change. Requiring submission of revised notices might particularly be appropriate, for example, if the location or ownership of the generating facility changes or if the type of excluded material were to change.

Another option being considered with regard to reporting would be a requirement that notifications be signed by a responsible corporate official. In addition, we are considering the option of requiring persons using the 40 CFR 261.2(g) exclusion to submit periodic (*e.g.*, annual) reports detailing their recycling activities, to provide information on the types and volumes of materials recycled, where off-site shipments were sent, the types of reclamation processes used, the types of products produced from the reclamation processes, how residuals from reclamation processes were managed, and other relevant information. Requiring such additional information could give regulators and the public a

much clearer picture of the types of recycling being conducted under this exclusion, where it is being done, and by whom. We are also considering (and solicit comment on) the option of requiring the information in the proposed notice to be submitted in a particular format (such as in the sample form cited above), or submitted electronically.

Recordkeeping. Section 261.2(f) requires persons managing materials under exclusions from the Subtitle C definition of solid waste to be able to provide ''appropriate documentation'' that they meet the terms of the exclusion they are claiming. Nevertheless, in addition to the notification requirements discussed above, we are considering the option of requiring generators and reclaimers to keep on-site records relating to types and volumes of materials they handle. For example, we are considering requiring generators of materials subject to this exclusion to keep records of volumes generated, volumes reclaimed onsite, and volumes sent offsite, while requiring offsite reclaimers to keep records of shipments received and volumes actually recycled.

The Agency chose not to include more frequent or more detailed reporting requirements in today's proposal such as those discussed above, primarily because we are committed to minimizing recordkeeping and reporting requirements. In fact, the Agency recently proposed a ''burden reduction'' rule that would eliminate a number of existing RCRA reporting and record keeping requirements that the Agency believes are unnecessary or duplicative (67 FR 2517, January 17, 2002).

We invite comment on whether or not any (or all) of the regulatory options discussed above for increased reporting and recordkeeping by generators and other parties may be necessary and appropriate in providing sufficient data for regulatory oversight, and should therefore be included in the final rule.

9. What Conforming Changes to Existing Regulations Are Proposed?

As discussed above, today's proposed exclusion for intra-industry recycling would affect a number of existing regulatory provisions that also provide regulatory relief for hazardous secondary materials that are recycled. We are therefore proposing a number of specific ''conforming changes'' to the existing regulations to address these situations where today's proposed regulatory exclusion ''overlaps'' with existing regulatory provisions. Since we are co-proposing two different options for defining ''continuous process within the same industry'' (see section III.A.3 of this preamble), the conforming changes that would be necessary would differ depending on which option is adopted in the final rule. The following is an explanation of our proposed conforming changes for each regulatory option.

a. Proposed conforming changes for co-proposed regulatory Option #1—Provisions that would be deleted. Under regulatory Option #1, several existing regulatory provisions that provide waivers or exclusions for recycled hazardous secondary materials would be rendered entirely moot, since all of the materials that are potentially subject to these provisions would be excluded under today's proposal for intra-industry recycling. To illustrate, 40 CFR 261.4(a)(6) currently provides an exclusion from the definition of solid waste for ''pulping liquors * * * that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively.'' Under proposed Option #1 this existing exclusion would no longer be needed, since we believe that the exclusion for intra-industry recycling would cover all of the pulping liquors that are currently excluded under 40 CFR 261.4(a)(6).

The following is a list of existing provisions that would be eliminated entirely under today's co-proposed Option #1. We believe that each of these provisions would completely overlap with the Option #1 exclusion, and we are thus proposing to delete them entirely if the Agency decides to finalize this option.

A. Section 261.2(e)(1)(iii). Under this existing provision, materials are not solid wastes when they are recycled by being ''returned to the original process from which they are generated, without first being reclaimed or land disposed.'' We are proposing to eliminate this provision, since we believe that all of the materials that it potentially applies to would be addressed by today's proposed exclusion (Option #1) for intra-industry recycling.

B. Section 261.4(a)(6). This existing provision excludes from the definition of solid waste ''pulping liquors (*i.e.*, black liquors) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively.'' We believe that all of the materials excluded under this current provision would be excluded under 40 CFR 261.2(g) (Option #1), and are therefore proposing to eliminate this provision.

C. Section 261.4(a)(8). This existing ''conditional exclusion'' is for ''secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process.'' This is often referred to as the ''closed loop reclamation'' exclusion. The following conditions apply to this exclusion:

- Only tank storage may be involved, and the entire process through completion of reclamation must be closed by being entirely connected with pipes or other comparable closed means of conveyance;
- Reclamation must not involve controlled flame combustion;
- The secondary materials must not be accumulated in tanks for over twelve months without being reclaimed; and
- The reclaimed material must not be used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

This conditional exclusion would no longer be necessary if the exclusion in today's proposed Option #1 were promulgated, and we are thus proposing to eliminate it. In fact, such closed loop recycling processes may be particularly clear examples of intra-industry recycling that does not involve discard, and that would therefore be covered under the proposal.

2. Exclusions and Variances That Would Be Partially Affected by Today's Co-proposed Option #1

In addition to the existing regulatory provisions that could be eliminated completely under today's proposed Option #1, we are proposing conforming changes to several other provisions that would only partially ''overlap'' with the 40 CFR 261.2(g) exclusion. Most of these existing exclusions and exemptions are not contingent on intra-industry recycling, and allow secondary materials to be generated and reclaimed in different industries. Thus, in cases where materials are generated and reclaimed in different industries, the existing exclusions would still be needed to provide regulatory relief for such materials. Accordingly, EPA is proposing to retain existing exclusions and waivers that allow for recycling across different industries, while clarifying that the proposed 40 CFR 261.2(g) exclusion will apply to materials that are recycled in a continuous process within the same industry. These existing provisions are in some cases conditioned on compliance with certain management practices and/or notification or record keeping requirements; we are not proposing to modify the substance of these provisions. Rather, in each case we are simply proposing to add regulatory language to clarify that the

existing exemptions and exclusions will be somewhat narrower in scope, and the exclusion for intra-industry recycling may instead apply to some materials previously subject to the existing provisions.

The following is a brief description of existing exclusions and variances that would likely apply to a smaller universe of materials if today's proposed Option #1 exclusion were promulgated, and for which we are proposing clarifying conforming changes:

A. Conforming change to 40 CFR 261.4(a)(9). This existing conditional exclusion is for ''spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose,'' and ''wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.'' The conditions for this exclusion, which are prescribed in more detail in 40 CFR 261.4(a)(9)(iii)(A)–(E), are as follows:

- The excluded materials must be reused on-site for their original intended purpose;
- Prior to reuse, the excluded materials must be managed to prevent releases to land or groundwater;
- Units managing excluded materials must be readily determined to be preventing such releases;
- Drip pads used to manage excluded materials must comply with the standards for drip pads in Subpart W of 40 CFR Part 265; and
- A one-time notice must be submitted by the facility owner/operator to the appropriate regulatory agency.

Some of these wood preserving solutions would actually be eligible for today's proposed exclusion, and some would not. Thus, the existing exclusion would need to be maintained in order for some of these materials to continue to be managed outside the Subtitle C regulatory system. The reason these materials would not be eligible for today's proposed 40 CFR 261.2(g) exclusion is because the product of the recycling process (treated lumber) is often used in ''a manner constituting disposal'' (*i.e.*, the treated lumber is used in or on the land, such as for landscaping timbers, fenceposts, railroad ties, etc.). As explained in previous sections of this preamble, this is one of the specific types of recycling that the Agency believes should remain regulated, even if the recycling is conducted intra-industry.

It is possible, of course, that in some cases lumber treated with recycled spent wood preserving solutions would not be used in a manner constituting disposal. In these cases the new exclusion for intra-industry recycling would apply. Thus, both exclusions are needed for this particular recycling practice. For the purpose of clarity, we are proposing today to add a new paragraph (F) to the current 40 CFR 261.4(a)(9) exclusion, which would read as follows: ''If the products of this recycling practice are not used in a manner constituting disposal, the spent wood preserving solutions are subject to the exclusion in 40 CFR 261.2(g), rather than this paragraph, provided the wood preserving solutions are generated and reclaimed in a continuous process within the same industry.''

B. Conforming change to 40 CFR 261.4(a)(17). EPA is proposing to revise the existing conditional exclusion at 40 CFR 261.4(a)(17) to conform with today's proposal. Currently, 40 CFR 261.4(a)(17) excludes from the definition of solid waste ''spent materials * * * generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation.'' Under today's proposal, spent materials from mineral processing that are subsequently reclaimed within the mineral processing industry would not be solid wastes for purposes of Subtitle C. We are therefore proposing to delete the reference to mineral processing in the existing exclusion, since it would no longer be needed for those materials. However, ''beneficiation'' is not included within the ''mineral processing industry'' and, therefore, the existing exclusion as it pertains specifically to beneficiation would still be necessary and would remain in effect.

C. Conforming change to 40 CFR 260.30(b), and the associated criteria in 260.31(b)). Current 40 CFR 260.30(b) allows variances to be granted on a case-by-case basis for materials that are ''reclaimed and then reused within the original production process in which they were generated.'' This provision is sometimes known as the ''closed loop reclamation'' variance. The standards and criteria for granting such variances are specified in 40 CFR 260.31(b). This provision is not, however, limited to intra-industry recycling—there may be situations in which a generator of a secondary material could arrange for reclamation of the material by a reclaimer in a different industry (*e.g.*, the waste management industry). We therefore intend to maintain this existing variance to address such situations. We are proposing, however, to clarify its applicability by adding the following language: ''If the materials are reclaimed as part of a continuous process within the generating industry, they are subject to the exclusion in 40 CFR 261.2(g) rather than the standards and criteria listed in 40 CFR 260.31(b).''

D. 40 CFR 260.30(c), and the associated criteria in 40 CFR 260.31(c). Under this existing provision, a variance from being classified as a solid waste can be obtained on a case-by-case basis for materials that ''have been reclaimed but must be reclaimed further before the materials are completely recovered.'' This is commonly referred to as the ''partially reclaimed'' variance. Since this type of recycling may occur within the same industry or between two or more different industries (similar to 40 CFR 260.30(b), discussed above), we are proposing to add the following language as a conforming change: ''If the materials are reclaimed as part of a continuous process within the generating industry, they are subject to the exclusion in 40 CFR 261.2(g) rather than the standards and criteria listed in 40 CFR 261.31(c).''

E. Section 261.4(a)(7). This provision excludes from the definition of solid waste ''spent sulfuric acid used to produce virgin sulfuric acid,'' unless it is accumulated speculatively. To address situations where this type of recycling occurs in a continuous process within the same industry, we are proposing to add the following language as a conforming change to 40 CFR 261.4(a)(7): ''Spent sulfuric acid that is reclaimed to produce virgin sulfuric acid in a continuous process within the generating industry is subject to the exclusion in 40 CFR 261.2(g), rather than this paragraph.'' Similar language is proposed to be added as a conforming change to each of the following provisions (F through J, below) that would be partially affected by today's proposed rule:

F. Section 261.4(a)(10). This is a conditional exclusion for certain types of hazardous wastes that are recycled to coke ovens or to produce coal tar.

G. Section 261.4(a)(11). This conditional exclusion applies to non-wastewater splash condenser dross residue from treatment of K061 in high-temperature metals recovery (HTMR) units.

H. Section 261.4(a)(13). This exclusion is for certain scrap metal being recycled.

I. Section 261.4(a)(14). This provides a conditional exclusion for shredded circuit boards being recycled.

J. Section 261.4(a)(19). This is a conditional exclusion for ''spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid.''

The Agency solicits comment on these proposed conforming changes.

3. Proposed Conforming Changes for Co-proposed Regulatory Option #2

As explained above, under co-proposed Option #1 some existing regulatory waivers and exclusions would be rendered moot, since all of the materials addressed by those provisions would also be covered under the proposed 40 CFR 261.2(g) exclusion. However, this would not be the case under Option #2, since a recycler of these currently unregulated materials would be ineligible for today's proposed exclusion if the recycling facility also managed regulated hazardous wastes generated from a different industry. To illustrate, a recycler handling pulping liquors that are currently excluded from regulation under 40 CFR 261.4(a)(6) would not be able to use the 40 CFR 261.2(g) exclusion if he/she also were recycling hazardous wastes from a different industry. Thus, under this option we would need to maintain the existing 40 CFR 261.4(a)(6) exclusion in order to avoid changing the coverage of the existing exclusion.

If the Agency chooses to adopt Option #2 in the final rule, we are proposing that the four existing provisions which would be rendered moot and deleted under Option #1 (these are discussed above in section III.A.7.a of this preamble) would be retained, but would be amended so that they would remain effective for recyclers that would not be eligible for the 40 CFR 261.2(g) exclusion. For example, the current 40 CFR 261.4(a)(6) exclusion for pulping liquors would be retained, but would be amended to add the following sentence: ''Pulping liquors that are reclaimed as part of a continuous process within the generating industry are subject to the exclusion in 40 CFR 261.2(g) rather than this paragraph.'' The other three provisions that would otherwise be eliminated completely under Option #1 would be amended similarly if Option #2 were promulgated in the final rule.

In the above discussion of conforming changes for co-proposed Option #1, we identify a number of existing provisions that would be only partially affected by today's proposed exclusion, and we are proposing to add text to each provision specifying that if the materials are reclaimed as part of a continuous process within the generating industry they would be subject to the exclusion in 40 CFR 261.2(g), rather than the existing provision. Under Option #2, these provisions would also be only partially affected. We are thus proposing to make the same conforming changes to those provisions in the final rule if we choose to adopt Option #2 to define ''continuous process within the generating industry.''

EPA invites comment on the proposed conforming changes described above, for both regulatory options.

4. Used Oil Regulations—40 CFR Part 279

This part contains management standards for used oil, including used oil that is recycled. Used oil is a solid waste under RCRA. Because EPA promulgated these provisions pursuant to a specific Congressional mandate governing used oil (*i.e.*, section 3014 of RCRA, as amended by the Used Oil Recycling Act of 1980), they will not be affected by today's proposed 40 CFR 261.2(g).

10. How Would the Proposal Be Implemented and Enforced?

Implementation. Since the exclusion from the definition of solid waste in today's proposal is de-regulatory in nature, implementing the rule as proposed may have important consequences at certain facilities where recycling activities are currently regulated under RCRA, but would no longer be regulated if this rule were promulgated and became effective.

One key issue has to do with the effects of the rule on facilities that currently have RCRA permits or interim status, and are managing hazardous wastes that would become excluded under this rule. Under one scenario, a facility that manages a variety of hazardous waste materials, including some that become excluded under this rule, would be affected only to the extent that certain units or processes at the facility would no longer be subject to hazardous waste regulations. A somewhat different scenario could involve a facility whose hazardous wastes would all become excluded from regulation when this rule takes effect (*i.e.*, the facility is no longer a hazardous waste management facility).

For permitted facilities that would be managing hazardous secondary materials excluded under this rule in addition to regulated hazardous wastes, some changes to the facility's permit would likely need to be made, though they may be relatively minor. These facilities would need to maintain their permits, but the units used solely to manage excluded materials would no longer need to be subject to permit conditions. In such cases, the facility owner/operator could seek a permit modification from EPA or the authorized state agency to remove the formerly subject unit(s) from the permit.

A permitted facility that would no longer be considered a hazardous waste management facility under the exclusion (*e.g.,* a facility managing only hazardous secondary materials that become excluded under today's proposal) would no longer need a hazardous waste operating permit. Owner/operators of such facilities could therefore apply to the overseeing agency to have the facility's permit terminated. However, where such a facility has not yet completed facility-wide corrective action (*see* 40 CFR 264.101), the obligation to conduct such cleanup would remain in effect. Therefore, in such cases, the permit would not be terminated, but could be modified to remove the requirements that applied to the now-excluded material, and maintain the corrective action provisions of the permit. In such a case, the facility would thereafter have a Acorrective action-only@ permit that would expire only when facility-wide corrective action is determined to be complete. It should be noted that for facilities in these situations, EPA or an authorized state might also choose to address a facility's cleanup obligations under an alternative Federal or State enforcement mechanism that may be available, rather than continuing to pursue corrective action under a permit.

A facility that is operating under RCRA interim status would be affected by promulgation of today's proposed rule in much the same way as permitted facilities, and the issue of corrective action would be addressed in a similar manner. For an interim status facility managing only materials that become excluded under today's proposal, the part 265 interim status standards that applied to the hazardous waste management units at the facility, as well as the general facility standards in part 265, would be moot and no longer in effect. Under RCRA regulations, however, cessation of hazardous waste operations alone does not eliminate a facility's interim status. *See* 40 CFR. 270.73. A facility that wishes to no longer be in interim status could seek a denial of its pending permit application. Since the Agency believes it appropriate to ensure that corrective action is addressed prior to denying a permit under these circumstances, we would expect to grant the denial only when we concluded that the facility's corrective action obligations have been satisfied.

In addition to the above described issues relating to permits and corrective action, today's proposed rule may also have implications with regard to closure of hazardous waste storage units at affected facilities. In cases where hazardous waste storage units would only be managing excluded material pursuant to today's proposal, the

current regulations could be read as triggering the closure requirements for those units, since owners/operators of non-land based hazardous waste units (*e.g.,* tanks, containers, containment buildings) must begin closure within 90 days of receiving a unit's final volume of hazardous wastes. *See* 40 CFR 264.113(a) and 265.113(a). EPA is concerned that requiring closure of units in these situations would serve little environmental purpose, since after closure the unit would be immediately reopened and used to store the same (now excluded) material. It should also be noted that, under today's proposal, units storing excluded materials would be considered essentially the same as similar units used to store products. Thus, we do not believe that requiring these particular units to close through RCRA Subtitle C procedures is necessary to protect human health and the environment.

The Agency is today proposing that closure of storage units would not be required when such units cease storing hazardous wastes and are subsequently used to store the same materials that would no longer be regulated as wastes under today's proposed exclusion. If, however, such units were used previously to store different types of hazardous wastes, the units would be subject to hazardous waste closure requirements. We request comment as to whether more explicit regulatory provisions to address RCRA closure requirements in these types of situations would be appropriate in the final rule.

Enforcement

Today's proposed rule describes an exclusion from Subtitle C regulations for hazardous secondary materials recycled in certain ways, with the regulatory text describing the ''boundaries'' of the exclusion. If a material is not managed within these boundaries, the material is not excluded and is a hazardous waste for Subtitle C purposes from the time the generator first generated it. Therefore, each person who manages a hazardous secondary material that loses its exclusion would have to manage it consistently with hazardous waste management requirements from the point when the material was first generated, regardless of whether the person is the one who actually causes the loss of the exclusion.[13] EPA could choose to bring an enforcement action under RCRA section 3008(a) for all violations of Subtitle C requirements occurring from the time the material is generated through the time that it is finally disposed. States could choose to enforce for violations of state hazardous waste requirements under state authorities. Any enforcement action would address the management of those hazardous secondary materials that are outside the boundaries of the exclusion.

EPA believes that this approach, which treats hazardous secondary material that does not come within the boundaries of the exclusion as hazardous waste from its point of generation, provides everyone involved with an incentive to handle materials to prevent the loss of the exclusion. It also encourages each person to use all appropriate steps to see that others handle the material so it is legitimately reclaimed.

To illustrate, if the generator of a hazardous secondary material claims the exclusion and then sends the material, via a transporter, to a reclamation facility not in the same industry, then the material would not be excluded. It would be a hazardous waste. Further, if a generator considered a hazardous secondary material to be excluded, and sent the material via a transporter to a reclaimer who decided to dispose of it rather than reclaim it, the material again would be a hazardous waste. In both cases, EPA and an authorized state could choose to bring an enforcement action against the reclaimer, transporter, and/or generator, for violations of applicable RCRA hazardous waste requirements. The material would be a hazardous waste from the time the generator first generated it. Those who managed the waste also could be subject to EPA and/or state enforcement.

As with any violation, EPA and authorized states would have a range of enforcement options. Enforcing agencies would use their discretion to select the option that is appropriate to a specific case and its factual circumstances. Some of these options include sending a notice of violation, ordering that the situation be remedied, or assessing fines or other penalties as appropriate.

In an enforcement action, a respondent who claims that a particular hazardous secondary material is excluded because that material was managed consistently with 40 CFR 261.2(g) would have the burden of proof, including the burden of persuasion, to demonstrate that the material has been managed in a manner that maintains the exclusion from the point it was generated. 40 CFR 261.2(f). For example, a reclamation facility rebutting an allegation that it disposed of hazardous waste in violation of RCRA Subtitle C would have the burden of proving the material was an excluded hazardous secondary material because it had been managed consistently with 40 CFR 261.2(g) from the point when it was generated.

In addition, the exclusion in today's rule would not affect the obligation to promptly respond to and remediate any releases of hazardous secondary material that may occur. If, for example, a hazardous secondary material is spilled or released, then the material would be discarded. Any management of the released material not in compliance with applicable Federal and State hazardous waste requirements could result in an enforcement action. For example, a person who spilled or released a hazardous secondary material, and failed to immediately clean it up, could potentially be subject to enforcement for illegal disposal of the waste. See, for example, 40 CFR 264.1(g)(8). In addition, the waste could potentially be addressed through enforcement orders, such as orders under RCRA sections 3013 and 7003.

B. Legitimate Recycling

1. What Is Legitimate Recycling?

Under the current Subtitle C definition of solid waste, many hazardous secondary materials that would otherwise be subject to regulation under RCRA's ''cradle to grave'' system are not considered wastes if they are recycled. The general idea behind this construct is that recycling of such materials often closely resembles normal industrial production, rather than waste management. Since there can be a considerable economic incentive to manage recyclable materials outside the RCRA regulatory system, there is a clear potential for some handlers to claim that they are recycling, when in fact they are conducting waste treatment and/or disposal in the guise of recycling.

In the preamble to the 1985 regulations (50 FR 638, January 4, 1985), EPA articulated the need to distinguish between ''sham'' and ''legitimate'' recycling of hazardous secondary materials. The issue is whether these activities are legitimate recycling, or are rather some form of treatment or disposal being called recycling in an attempt to evade regulation. The 1985 preamble discussion cited above outlined several guidelines for making such distinctions. Subsequent guidance

[13] The loss of the exclusion for some materials at a facility does not automatically effect the status of other hazardous secondary materials managed under the exclusion. For example, if a hazardous secondary material at a reclaimer loses the exclusion and thus is hazardous waste, the status of other hazardous secondary materials managed by that reclaimer remain unaffected, provided that they are managed consistently with the boundaries of the exclusion.

(discussed in more detail below) elaborated on those guidelines, and reinforced the principle that recycling of hazardous secondary materials that is not legitimate amounts to treatment or disposal, which is a regulated activity under RCRA.

In recent years, a wide range of RCRA stakeholders, including many state agency officials, have expressed concern that the statements in preamble and current guidance on legitimate recycling do not provide sufficient clarity or predictability for making recycling legitimacy determinations. Because of these concerns, many stakeholders have encouraged EPA to revise and clarify the current legitimacy criteria, and to promulgate them in regulations.

EPA believes that today's proposed rulemaking is a good opportunity to establish RCRA's recycling legitimacy criteria in regulations, and at the same time to make clarifying revisions to them. Accordingly, today's proposal includes specific regulatory provisions for distinguishing legitimate recycling from sham recycling practices, which reorganize and clarify the existing criteria that have been articulated in preamble statements and guidance. Today's proposal to codify recycling legitimacy criteria is not based on any direction from the D.C. Circuit Court.

Today's proposed legitimacy criteria are intended primarily to clarify and simplify the same basic legitimacy principles that have been in use since 1985. We believe that the new codified regulatory criteria will, when applied to actual recycling scenarios, result in determinations that are consistent with those based on current guidance. As such, we do not anticipate the need for overseeing agencies to revisit previous legitimacy determinations if the proposed criteria are finalized.

2. What Is the Current Guidance for Legitimate Recycling?

In the January 4, 1985 preamble to the final rule that established the current definition of solid waste regulations, EPA described several indications of sham recycling. A similar discussion that addressed legitimacy as it pertains to burning materials for energy recovery was presented in the preamble to the January 8, 1988 proposed amendments to the definition of solid waste (53 FR 522), portions of which were never finalized. On April 26, 1989, the Office of Solid Waste issued a memorandum that consolidated preamble statements concerning legitimate recycling into a single list of criteria to be considered in evaluating legitimacy (OSWER directive 9441.1989(19)). This memorandum has been, and still is, the primary source of guidance for the regulated community and for overseeing agencies in distinguishing between legitimate and sham recycling.

As explained in the 1989 memorandum, a legitimacy determination involves evaluating case-specific information to determine whether or not a secondary material being recycled is in effect being used as a commodity, rather than as a waste. The 1989 memorandum identified six criteria to be considered in evaluating this fundamental question, explaining that each recycling scenario is likely to require a case-specific evaluation. The memorandum further explained that, depending on the case-specific facts and circumstances, certain criteria may weigh more heavily than others in making legitimacy determinations. The general criteria presented in the 1989 guidance memorandum are as follows:

- Is the secondary material similar to an analogous raw material or product?
- What degree of processing is required to produce a finished product?
- What is the value of the secondary material?
- Is there a guaranteed market for the end product?
- Is the secondary material handled in a manner consistent with the raw material/product it replaces?
- Other relevant factors (*e.g.,* economics of the recycling process, toxic constituents ''along for the ride'')?

3. Today's Proposed Criteria for Legitimate Recycling

A. What types of recycling would be addressed by today's legitimacy criteria? Today's proposal would add a new paragraph (h) to the 40 CFR 261.2 definition of solid waste, specifying four general criteria to be used in determining whether recycling of hazardous secondary materials is legitimate.[14] These legitimacy criteria are intended to apply generally to the following types of materials:

- Recyclable hazardous secondary materials that would be excluded from Subtitle C regulation as wastes under today's proposal for intra-industry recycling.
- Hazardous secondary materials that, because they are recycled, are excluded or exempted from Subtitle C regulation under other regulatory provisions (see, for example, the exclusions in 40 CFR 261.4).
- Recyclable hazardous wastes that are regulated under Subtitle C prior to recycling.

Today's proposal is the Agency's first attempt to codify in regulatory form general, broadly applicable principles for making recycling legitimacy determinations. It should be noted, however, that the Agency has examined in depth a number of waste-specific and industry-specific recycling practices, and has promulgated regulations that address the legitimacy of many of these practices in much more specific terms. Thus, there will be situations where today's broadly-applicable proposed criteria would in a sense overlap with these more specific legitimacy provisions. One example of this would be the recently promulgated regulations for zinc fertilizers made from recycled hazardous secondary materials, which (among other things) specifies numerical limits on five heavy metal contaminants and dioxins in these zinc fertilizer products (67 FR 48393, July 24, 2002). Other examples of more specific legitimacy provisions are found in the regulations promulgated for comparable fuels (63 FR 33782, June 19, 1998), the ''use constituting disposal'' provisions in 40 CFR part 266, subpart C, and the ''burning for energy recovery'' provisions in 40 CFR part 266, subpart H.

Where more specific criteria or requirements have been established in regulations, affected parties should look to those regulatory provisions, in addition to the generic legitimacy criteria being proposed in today's rule. For example, for a zinc micronutrient fertilizer manufacturer, the analysis of ''toxics along for the ride'' (see Criterion #4, discussed below) would involve an analysis of whether his fertilizer product meets the contaminant limits specified in 40 CFR 261.4(a)(21). The Agency specifically requests comments on any scenarios where the public sees a conflict between the generic legitimacy criteria and more specific regulatory provisions for a particular recycling practice, and what potential problems could arise from any such conflicting legitimacy provisions.

If EPA or an authorized state agency determines that a process is not legitimate recycling, the activity would be considered waste treatment or disposal and would thus be subject to regulation under RCRA Subtitle C, if hazardous. These proposed criteria are intended to apply to all recycling of hazardous secondary materials,

[14] It should be noted that today's proposed legitimacy criteria are not intended to apply to recycling of materials that are non-hazardous (*i.e.,* materials that are not listed hazardous wastes, and that do not exhibit a hazardous characteristic). Thus, for example, recycling of non-hazardous household wastes, such as newspapers and aluminum cans, would not be subject to the proposed criteria. Likewise, the proposed criteria would not apply to recycling of non-hazardous secondary materials generated from industrial operations.

including any recycling that may be covered under today's proposed exclusion for ''materials recycled in a continuous process within the generating industry.'' If an owner/operator claims they are conducting legitimate recycling but the appropriate regulatory agency determines that the process is sham recycling, the recycler and the generator(s) of the recycled material may be subject to enforcement action. As noted earlier, if a hazardous secondary material is discarded through sham recycling, the generator and all others who have handled or managed the material may be subject to enforcement for violations of RCRA Subtitle C requirements. To avoid enforcement, a prudent generator will take steps to ensure that the recycling of his materials is legitimate.

B. What are today's proposed legitimacy criteria, and how would they be used? The following is a discussion of today's proposed legitimacy criteria, with an explanation of how each of the proposed criteria relates to preamble statements and guidance currently in use. The four proposed criteria are:

1. Criterion #1: The secondary material to be recycled is managed as a valuable commodity. Where there is an analogous raw material, the secondary material should be managed in a manner consistent with the management of the raw material. Where there is no analogous raw material, the secondary material should be managed to minimize the potential for releases into the environment.

2. Criterion #2: The secondary material provides a useful contribution to the recycling process or to a product of the recycling process and evaluating this criterion should include consideration of the economics of the recycling transaction. The recycling process itself may involve reclamation, or direct reuse without reclamation.

3. Criterion #3: The recycling process yields a valuable product or intermediate that is: (i) Sold to a third party; or (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as a useful ingredient in an industrial process.

4. Criterion #4: The product of the recycling process:

(i) Does not contain significant amounts of hazardous constituents that are not found in analogous products; and

(ii) Does not contain significantly elevated levels of any hazardous constituents that are found in analogous products; and

(iii) Does not exhibit a hazardous characteristic that analogous products do not exhibit.

As proposed today, these legitimacy criteria are not expressed as questions to be answered, as they were in the 1989 guidance. Rather, they are expressed as principles to be assessed on a case-specific basis. As proposed, therefore, a legitimacy determination would be a case-specific judgment as to whether a particular recycling practice is consistent with the four criteria in 40 CFR 261.2(h).

The proposed legitimacy criteria are intended to apply to a wide range of recycling scenarios across a wide array of industries. Although EPA expects that most, if not all, legitimate recycling practices will conform to each of the four criteria, the application of the criteria will require some subjective evaluation and balancing. Furthermore, there may be situations when a recycling activity that does not conform to one or more of the criteria could be considered legitimate. For example, with regard to the first criterion listed above, there could be a situation in which the secondary material to be recycled is managed in a different (though protective) manner than analogous raw materials are managed. Such recycling might nevertheless be considered legitimate if the recycling process satisfied the other three criteria, and management of the materials is reasonable and appropriate. There are likely to be other types of situations where a particular legitimacy criterion may not be met, but where the overall recycling practice would nevertheless be considered legitimate. Although we believe that today's proposed criteria would provide a sound basis for making legitimacy determinations, we are interested in any examples of legitimate recycling practices that might not meet all of the criteria proposed today.

The proposed legitimacy criteria, if finalized, would continue to be used in the same way as the current guidance has been used. That is, we would expect the regulated community to continue to evaluate their recycling operations using the criteria, and reach their own conclusions without prior approval by an overseeing agency. Such conclusions would, of course, be subject to review by EPA or the authorized state should the need arise.

EPA requests comment as to whether the proposed legitimacy criteria should be structured differently in the final rule, such as in the form of mandatory requirements that must all be met, or perhaps in a system where certain criteria are mandatory and others are not. We are especially interested as to whether structuring the legitimacy criteria differently would necessitate revisiting previous legitimacy determinations made by regulated entities or implementing agencies. We are also interested in comments as to any case-specific examples of legitimate recycling where one or more of the proposed factors would not be relevant in making determinations, and whether or not other additional criteria beyond those proposed today should be considered in making legitimacy determinations.

The following is an explanation of each of the four proposed legitimacy criteria, including a discussion of how each proposed criterion relates to existing guidance.

1. Criterion #1: ''The secondary material to be recycled is managed as a valuable commodity. Where there is an analogous raw material, the secondary material should be managed in a manner consistent with the management of the raw material. Where there is no analogous raw material, the secondary material should be managed to minimize the potential for releases into the environment.''

In EPA's view, a recycler will value secondary materials that provide an important contribution to his process or product and will manage them in a manner consistent with a valuable feedstock material (*i.e.*, will manage them to minimize their loss). If the recycler does not manage them as he would manage valuable feedstock, it may indicate that the ''recycling'' practice actually involves disposal of the secondary material.

Therefore, the secondary material to be recycled should be managed prior to recycling in essentially the same way as raw materials are managed in the course of normal manufacturing. EPA expects all parties involved in handling secondary materials destined for recycling to handle them as carefully as ''analogous'' raw materials would be handled. Such parties include generators, transporters, and recyclers, as well as any other parties that manage the secondary materials prior to recycling. To illustrate, hazardous metal-bearing secondary materials can often be used as substitutes for ''raw'' metal ore concentrates in making metal products. Assuming both types of materials have similar physical properties, the Agency would expect the secondary materials and the metal ore concentrates to be managed in the same or similar units. If, however, in this example the secondary materials were managed in outdoor piles, while the ore concentrate materials were managed in containers, an overseeing agency might well determine that the practice of storing the secondary materials in outdoor piles indicates sham recycling.

(In addition, any releases of the hazardous secondary materials to the environment would also be considered discard under RCRA.)

In some recycling situations, a hazardous secondary material could be used as a substitute for a raw material that has very different physical characteristics, and thus would not be considered ''analogous'' for the purposes of this criterion. This could be the case, for example, if a secondary material is in dry powder form, while the raw material is a solid material that is not susceptible to dispersal by wind or rain. Similarly, if the secondary material contains hazardous constituents that the raw material it replaces does not, it also might not be considered ''analogous'' for the sake of this criterion. Similarly, there may be some situations where there is no ''analogous'' raw material, such as where the recycling process is uniquely designed to use a specific secondary material.

In these types of situations, where it may be difficult to compare management of secondary materials with ''analogous'' practices for raw materials, consideration of this specific legitimacy criterion should focus on whether or not the secondary material is managed to minimize the potential for releases into the environment. This is consistent with the idea that normal manufacturing processes are designed to use valuable material inputs efficiently, rather than allowing them to be released into the environment. Thus, in situations where it is not feasible to compare management practices for hazardous secondary materials with analogous practices, assessment of this legitimacy criterion would involve examining the effectiveness of a facility's equipment and systems in preventing releases of the hazardous secondary materials into the environment.

How Does This Criterion Compare to Existing Guidance?

Although worded somewhat differently, this criterion is essentially the same as the fifth criterion in the previously cited 1989 guidance memorandum (''Is the secondary material handled in a manner consistent with the raw material/product it replaces?''). The 1985 preamble similarly asked whether recyclable secondary materials were ''handled in a manner consistent with their use as raw materials or commercial product substitutes * * *.'' In one respect, however, today's proposed criterion is less restrictive—the 1989 guidance posed an additional question ''Is the secondary material stored on the land?,'' implying that storage on the land is an indication of sham recycling. However, the Agency is aware of situations where storage of raw materials on the land is a normal part of the manufacturing process (this is the case with certain large-scale mineral processing operations, for example). Thus, today's proposal does not identify land storage as a specific indicator of sham recycling. EPA notes, however, that land storage may result in releases to the environment that constitute discard.

2. Criterion #2: ''The secondary material provides a useful contribution to the recycling process or to a product of the recycling process and evaluating this criterion should include consideration of the economics of the recycling transaction. The recycling process itself may involve reclamation, or direct reuse without reclamation.''

This criterion expresses the fundamental principle that secondary materials should actually be useful (*i.e.,* contribute value) to a recycling process. This is intended to prevent the practice of adding secondary materials to manufacturing operations simply as a means of disposing of them, which is sham recycling. An example of a recycling operation that would fail to satisfy this criterion would be a wastewater treatment sludge that is fed into a metals smelter, but that contains no recoverable amounts of metal, and does not otherwise contribute to the smelting process. Another example would be using a toxic metal-bearing sludge as a feedstock to make ceramics, where neither the toxic metals or other components of the sludge contribute valuable properties to the ceramic products. There may also be situations where some amount of a secondary material is useful to a recycling process, but much larger volumes of the material are actually introduced into the process. A material that is added in excess of the amount actually needed to make an end-product might also fail to meet this criterion for useful contribution.

Not every component of a secondary material would necessarily have to contribute to the product or process to satisfactorily meet this criterion. For example, a legitimate recycling operation involving recovery of precious metals might not recover all of the components of a hazardous secondary material, but would recover precious metals with sufficient value to justify the recycling. A similar example might be where recycling involves recovery of the hazardous component of a secondary material (*e.g.,* cadmium in batteries), where the more inert constituents of the secondary material are not recovered or reused, but the recovered portion is of sufficient value to justify reclamation.

This proposed criterion consolidates and clarifies existing guidance that addresses how useful or valuable a hazardous secondary material should be to a recycling process. In practice, this issue has often been viewed primarily as an economic question, such as whether the secondary material is marketable as a valuable commodity, or whether it has a marketplace value comparable to an analogous virgin material. EPA is not proposing a particular economic test for evaluating this criterion, nor do we necessarily believe that a secondary material must be marketable to the public in order for it to have sufficient value for the recycling process to be legitimate recycling. In general, we believe that evaluation of the usefulness of a secondary material to the recycling process should be based on the nature of the material and its value to the recycling process. The question of who pays whom, the amounts of money involved, and other aspects of the transaction between the generator and recycler can be an indicator as to whether or not the recycling is legitimate or is disposal in the guise of recycling. It is EPA's experience that in many legitimate recycling transactions the generator pays the recycler to accept the material to be recycled. However, the Agency is also aware that in many sham recycling cases the recycler has received payment from the generator. The usefulness of the secondary material to the recycling process (whether established through knowledge of the material and process or consideration of the economics of the transaction) needs to be evaluated along with the other legitimacy criteria articulated in today's proposal in evaluating whether the recycling is legitimate.

Another issue that could arise in evaluating this ''useful contribution'' criterion is the efficiency of a recycling process in recovering or regenerating the useful component of a recyclable material. For example, if the objective of a recycling process were recovery of copper from a secondary material, but only a small fraction of the copper in the material is actually recovered, sham recycling could be indicated. If, however, the recycling process was reasonably efficient and recovered all but a small amount of the copper (*e.g.,* 90 to 95 percent), it would likely meet this criterion and thus indicate legitimate recycling. A pattern of mismanagement of the residues by the recycling facility may also be an indicator of sham recycling.

In a similar vein, there may be instances where more than one secondary material is used in a single recycling process, and the materials are mixed or blended as part of the process. In such cases, each of the recyclable materials used would need to satisfy the ''useful contribution'' criterion. This is to avoid situations where a relatively worthless secondary material could be mixed with a more valuable or useful material in an attempt to disguise and dispose of it, which is sham recycling.

Given the wide variety of possible recycling practices that may be subject to legitimacy determinations under today's proposed criteria, and the many different ways materials may be ''useful'' to those practices, the following examples are offered to clarify what we mean by ''useful contribution'' under this criterion.

The secondary material contributes valuable ingredients to a product of the recycling process. Secondary materials often contribute to a recycling process by becoming ingredients in a product. For example, spent solvents from a paint spray booth can often be used directly as ingredients in manufacturing paint. In some cases, secondary materials will need to be reclaimed first to remove contaminants or to make them otherwise suitable for use as ingredients in making a product. An example would be a zinc-bearing sludge that is first processed (*i.e.,* reclaimed) into zinc oxide, which is used as a feedstock in an electrolytic zinc refinery that manufactures zinc metal.

The secondary material replaces a catalyst or carrier in the process. In some cases, secondary materials can be reused (either directly, or after being reclaimed) in production processes, but are not incorporated as ingredients in the resulting products. This includes catalysts and chemicals that act as carriers or synthesis media for other chemicals in a production process. In either case, the secondary material must be useful for that purpose.

The secondary material is the source of a valuable constituent(s) recovered in the recycling process. Many legitimate recycling operations involve reclamation of a secondary material primarily to recover a specific, valuable component of the material. A common example is mineral processing, where metal-bearing secondary materials such as baghouse dusts and other sludges are reclaimed to extract valuable minerals.

The secondary material is regenerated by the recycling process. Regeneration is a type of ''useful contribution,'' where a spent material is reclaimed to restore its original useful properties so that it can be reused. Regeneration of spent solvents through distillation is one example of this type of recycling. Another example is regeneration of acid baths used to ''pickle'' steel by removing impurities and restoring their acidic properties.

The secondary material is used as an effective substitute for a commercial product. In many cases, a secondary material can be used directly as a substitute for a commercial product without reclamation. This type of recycling is perhaps the clearest example of ''useful contribution,'' in that the secondary material is used productively, and it replaces a commercial product that would otherwise have to be purchased. Use of spent pickling acid as a conditioning agent in wastewater treatment plants is an example of such a practice.

How Does This Criterion Compare to Existing Guidance?

This proposed criterion addressing ''useful contribution'' has been distilled from and clarifies concepts in the Agency's existing guidance for legitimate recycling. For example, the preamble to the January 4, 1985 recycling regulations noted that if a secondary material is ''ineffective or only marginally effective for the claimed use, the activity is not recycling but surrogate disposal.'' Similarly, the January 8, 1988 proposed rule discussed as a legitimacy concept ''how much energy or material value each waste contributes to the recycling purpose.'' In the 1989 legitimacy guidance, the issue of effectiveness was addressed by the questions: ''Is much more of the secondary material used as compared with the analogous raw material/product it replaces?''; ''Is only a nominal amount used?''; and ''Is the secondary material as effective as the raw material or product it replaces?'' The guidance also addressed the value of the secondary material by posing the questions, ''Is it (the secondary material) listed in industry news letters, trade journals, etc.?'' and ''Does the secondary material have economic value comparable to the raw material that normally enters the process?''

3. Criterion #3: ''The recycling process yields a valuable product or intermediate that is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as a useful ingredient in an industrial process.''

This proposed criterion is intended to capture the fundamental precept that legitimate recycling must produce something of value. If a ''recycling'' process creates a material that no one wants or will use, it can be presumed that the process is conducted to dispose of the material; *i.e.,* it is sham recycling.

For the purpose of this criterion, a recycled product may be considered ''valuable'' if it can be shown to have either economic value, or a value that is more intrinsic (*i.e.,* it is useful to the end user, though it may not be salable as a product or commodity in the marketplace). One relatively simple way to demonstrate that the recycling process yields a valuable product would be the documented sale of a recycled product to a third party. Such documentation could be in the form of receipts, as well as contracts or agreements establishing the terms of sale or transaction. A recycler that has not yet arranged for sale of its product to a third party could establish the value of the recycled product by demonstrating that it can replace another product or intermediate (process input) that is available in the marketplace. It is also possible that in some situations a recycled product could be sold at a loss (*e.g.,* as a ''loss leader'' to attract customers, or because of normal market fluctuations), and nevertheless be considered a ''valuable product'' under this criterion. In such cases, however, the recycler would need to demonstrate how selling the product at a loss is economically beneficial to the seller, and that the product is actually valuable to the person who uses it.

Many recycling processes produce outputs that are not sold to another party, but are instead used by the generator or recycler. For example, some recycled products or intermediates may be very useful as feedstocks in a specific manufacturing process, but may have no established monetary value in the marketplace. Such recycled products or intermediates would be considered to have ''intrinsic'' value, though demonstrating that value may be less straightforward than for products that are sold in the marketplace.

Demonstrating the value of recycled products that are not sold to third parties could involve showing that the recycled product replaces an alternative product or material that would otherwise have to be purchased. In other cases, the recycler could show that the product or intermediate meets certain specific product specifications, or meets established industry standards. Another approach to demonstrating the value of these types of recycled products or intermediates could be to compare their characteristics (*e.g.,* their physical/chemical properties, or their efficacy for certain uses or applications) with

comparable products or intermediates made from raw materials.

Some recycling processes may consist of multiple steps, which may occur at separate facilities. In some cases, each processing step will yield a valuable product, such as when a metal-bearing sludge is processed to reclaim a precious metal, and is then put through another process to reclaim a different mineral. When each step in the process yields a valuable product that is salable or usable in that form, that recycling process would meet this proposed criterion. If, however, a particular step in a recycling process does not yield a separate salable or ready-for-use product, that process step would typically need to add value to the material in some way in order to satisfy this criterion. Thus, for example, if the first step in reclaiming a metal-bearing secondary material results in a fused or agglomerated material, a second step consisting of particle size reduction may be necessary to facilitate the next reclamation step. Although reducing the particle size in this case would not by itself produce a valuable product, it may add value to the recycling process and is consistent with the intent of this criterion.

How Does This Criterion Compare to Existing Guidance?

This proposed criterion distills several of the questions posed by the 1989 legitimacy guidance. In that guidance, the value of recycled products sold to third parties was addressed by posing the questions, ''Is there a guaranteed market for the end product?'' and ''Is there a contract in place to purchase the ''product'' ostensibly produced from the hazardous secondary materials?'' The guidance addressed recycled products used by the recycler or the generator as process ingredients by posing the questions ''* * * is the product used by the (recycler)? The generator? Is there a batch tolling agreement?'' The ''usefulness'' of a recycled material was addressed by the questions: ''Is the (recycled) product a recognized commodity?'' and ''Are there industry-recognized quality specifications for the product?'' The language we are proposing today attempts to reflect these concepts in a concrete manner by, for example, making it clear that one needs to assess not only whether there are industry-recognized quality specifications, but also that the recycled product would need to meet or exceed any applicable specifications to be considered legitimate recycling. We believe that today's proposed Criterion #3 captures the essence of the original guidance.

The 1989 guidance posed additional questions aimed at distinguishing recycling operations that involve direct use or reuse of secondary materials from recycling operations that involve reclamation. These concepts, however, are not particularly relevant to distinguishing legitimate from sham recycling, and we therefore did not attempt to capture them in today's proposed legitimacy criteria.

4. Criterion #4: ''The product of the recycling process:

(i) Does not contain significant amounts of hazardous constituents that are not found in analogous products; and

(ii) Does not contain significantly elevated levels of any hazardous constituents that are found in analogous products; and

(iii) Does not exhibit a hazardous characteristic that analogous products do not exhibit.''

This proposed criterion addresses ''toxics along for the ride'' in products made from recycled secondary materials. Put another way, the question posed by this criterion is whether hazardous constituents are ''discarded'' by being incorporated into a product made from hazardous secondary materials, which would indicate sham recycling.[15]

In evaluating this aspect of legitimacy, a recycler would ordinarily compare the recycled product to an analogous product made with raw materials. Thus, if a recycling process produced (for example) paint, the levels of hazardous constituents in the paint could be compared with the levels of the same constituents found in similar paint made from raw materials.

Although this criterion focuses on hazardous constituents that may be found in the end-products of recycling processes, a recycler could choose to evaluate this criterion indirectly by comparing the hazardous constituents in the secondary material feedstock with those in an analogous raw material feedstock. If the secondary material feedstock does not contain higher concentrations of hazardous constituents than the raw material feedstock, then the end product of the recycling process should not contain excess hazardous constituents ''along for the ride.'' This feedstock comparison may be simpler than the product comparison when the recycler knows the secondary material is very similar in profile to the raw material. It may also be more practical than the product comparison when there is no analogous product, or when production of the recycled product has not yet begun.

Today's proposed criterion #4 identifies three specific tests for evaluating whether or not this criterion is met. This criterion is designed to determine whether or not unacceptable amounts of toxic constituents are passed through to recycled products. The first test specifies that where analogous products made with raw materials do not contain hazardous constituents, the recycled product should not contain significant amounts of any hazardous constituent. For example, if paint made from reclaimed solvent contains significant amounts of cadmium, while the same type of paint made from raw materials does not contain cadmium, it would likely indicate that the cadmium serves no useful purpose and is being passed through the recycling process and discarded.

The second test addresses situations where an analogous product does contain some hazardous constituents, and asks whether those hazardous constituents are found in the recycled product at levels significantly higher than in the analogous product. This test ensures that levels of hazardous constituents in recycled products are comparable to levels of the same constituents in analogous products made from raw materials. For example, if a lead-bearing hazardous sludge was used as an ingredient in making ceramic tiles, and the amount of lead in the tiles was significantly higher than the lead level found in similar tiles made of raw materials, discard would likely be indicated. As with the previous test, the comparison could be made product-to-product, or could be made by comparing the constituent levels in the secondary material with those in the analogous raw material.

The third test under this criterion is whether the recycled product exhibits a hazardous characteristic that analogous products do not exhibit. This test ensures that recycled products do not exhibit the characteristics of toxicity, ignitability, corrosivity, or reactivity when the analogous products do not.[16] The Agency believes that most issues associated with ''toxics along for the ride'' will involve the presence of toxic constituents, which are addressed under the first two tests discussed above. We believe that there are few, if any, cases where the first two tests described above would be met for a recycled product, but the product would nevertheless

[15] Hazardous constituents are defined in 40 CFR part 261, Appendix VIII.

[16] These characteristics are defined in 40 CFR Part 261, Subpart C.

exhibit the hazardous characteristic of toxicity.

It is possible, though, that the use of a hazardous secondary material as an ingredient could cause a product to exhibit a hazardous characteristic, such as corrosivity, that is not exhibited by analogous products. We seek comments as to how often this test might be relevant to making legitimacy determinations, and information as to any specific recycling processes that might be affected by this test.

In evaluating this criterion for a particular recycling process, regulators and the regulated community may frequently need to assess what amount of a hazardous constituent is a ''significant amount'' or a ''significantly elevated level.'' EPA is not proposing a specific formula or method for defining ''significant'' in this context. Given the exceptional diversity and variability of potentially recyclable materials, we believe that this issue is best addressed on a case-by-case basis, instead of imposing a generic limit that could apply to all recycling and all recyclable materials.

The following examples are offered to illustrate how ''significant'' might be evaluated for certain recycled products. In one example, if zinc galvanizing metal made from recycled hazardous secondary materials contains 500 parts per million (ppm) of lead, while the same zinc product made from raw materials typically contains 475 ppm, this difference in concentration would likely not be considered ''significant'' in evaluating this legitimacy criterion. If, on the other hand, in this example the lead levels in the recycled zinc product were 1,000 ppm, it would likely indicate discard of significant amounts of lead. To offer another example, if a ''virgin'' solvent contains no detectable amount of barium, while spent solvent that has been reclaimed contains a minimal amount of barium (*e.g.*, 1 ppm), this difference might not be considered significant. If, however, the barium in the reclaimed solvent were at much higher levels (*e.g.*, 50 ppm), it would likely indicate discard of the barium.

Evaluating the ''significance'' of levels of hazardous constituents in recycled products for the purpose of this criterion may involve taking into account several factors, such as the type of product, how it is used and by whom, whether or not elevated levels of hazardous constituents compromise in any way the efficacy of the product, and other factors. To illustrate one such situation, if a recycled plastic product contains low but detectable levels of vinyl chloride (a human carcinogen) that analogous plastics do not contain, and the plastic could be used to make children's teething toys, a more rigorous evaluation of the ''significance'' of the vinyl chloride in the recycled product would be called for than if the product were used for some type of industrial application.

How Does This Criterion Compare to Existing Guidance?

The 1989 guidance and the preamble statements that support it have addressed the question of ''toxics along for the ride'' in a more general way than today's proposed criterion. The 1989 guidance, for example, places emphasis on examining the presence of toxic constituents in the secondary material destined for recycling, rather than focusing primarily on the presence of such constituents in the recycled product. As noted above, today's criterion is intended to primarily address the question of ''toxics along for the ride'' in the products of recycling. We believe that the presence of toxic constituents in recyclable secondary materials is less relevant to assessing the legitimacy of recycling, primarily because much if not most recycling (as well as manufacturing) involves removing or destroying such harmful materials. As reflected in this proposed criterion, the central question is whether or not (and in what amount) hazardous constituents pass through the recycling process and become incorporated into the products of recycling.

We do not believe that this shift in emphasis will substantially affect the outcome of legitimacy determinations. In fact, the approach in today's proposal (*i.e.*, focusing on toxic constituents in recycled products) may be somewhat less restrictive than the guidance it would replace. It is possible, however, that by focusing the proposed criterion on toxics in recycled products, some recycling that may have previously been considered legitimate might not be under today's proposal. We invite comment on this issue, and specifically solicit examples where existing legitimacy determinations could change if today's proposed criterion were finalized.

Alternatives Considered

The Agency examined two main alternative approaches to addressing the issue of ''toxics along for the ride'' that would have provided greater specificity in assessing the ''significance'' of elevated levels of toxic constituents in recycled products. These regulatory alternatives are discussed below.

''Bright Line'' Approach. One alternative approach would be to establish a specific numerical limit to define ''significant'' for the purpose of evaluating this legitimacy criterion. This approach would in effect establish a ''bright line'' for defining ''significant amounts'' and ''significantly elevated levels'' under today's proposal. Under such an approach, this criterion might specify that the amount of hazardous constituents in a recycled product could be present at levels no greater than one or two standard deviations above those in an analogous product made from raw materials. The limit could also be expressed as a percentage (*e.g.*, ''no greater than 5 percent more * * *'').

Such a bright line approach could provide greater clarity and predictability to the regulated community and state and federal agencies overseeing new regulations for legitimate recycling. On the other hand, this alternative, in establishing a specific quantitative test for whether hazardous constituents are along for the ride in a recycled product, could be somewhat arbitrary, and depending on the particular constituents of concern and product use, could result in either over-regulation or under-regulation, or both.

Risk-based Approach. The ''bright line'' approach described above would only function to compare levels of constituents in recycled products with those in analogous products. That approach would not, therefore, directly address the issue of the potential risks posed by those hazardous constituents. Depending on the hazardous constituents of concern and the uses of the recycled product, some increased levels of hazardous constituents may not pose any risk to workers (where the recycled product is a process intermediate) or the public (where the recycled product is a consumer product). It is also possible that such hazardous constituents could pose unacceptable risks, even if they are present at levels below a statistical ''cutoff'' limit that might be established under the option described above. Thus, in developing this proposed criterion, we considered an alternative approach that would more explicitly address the risks posed by toxic constituents in recycled products.

One possible approach could be to specify that if a recycled product contains hazardous constituents at higher levels than those in an analogous product made with raw materials, the recycler would need to assess the risks to human health and the environment posed by those increased levels. This criterion would be met if the risks were acceptable (''acceptable'' risks would presumably also be defined under such an approach).

This approach would likely require recyclers in many cases to perform a life-cycle risk assessment, examining potential exposure scenarios from use of recycled products, and estimating the risks associated with such exposures. In many cases, such analyses could be relatively straightforward ''screening'' analyses, though in other cases more elaborate analysis might be needed, particularly for consumer products.

EPA is not proposing a risk-based approach to setting limits on ''toxics along for the ride,'' primarily due to its potential complexity. It can also be argued that the legitimacy of a recycling process relates more directly to how it compares with normal industrial production, rather than the risks that may be posed by recycled products (since products made from raw materials can also pose risks). Finally, a risk-based approach in assessing toxics along for the ride would be a radical departure from how this issue is currently considered, which is not our intent in today's proposal.

The Agency invites comment on the alternative approaches described above, and other approaches for establishing legitimate recycling with regard to hazardous constituents or characteristics in recycled products.

IV. Request for Comment on a Broader Exclusion for Legitimate Recycling

While the scope of today's lead proposal is limited to materials that are generated and reclaimed within the same industry, discussions with various stakeholders during the development of this proposal identified an alternative regulatory option that could further encourage recycling and reuse while maintaining protection of human health and the environment. EPA is considering this regulatory option, and may adopt it in the final rule; we therefore solicit comment on the option, as described below.

This option, as identified by stakeholders, would provide a broader regulatory conditional exclusion from RCRA regulation for essentially all materials that are legitimately recycled by reclamation, whether the recycling is done within the generating industry, or between industries. Although RCRA provides the authority to regulate many of those materials recycled between industries, such a broader regulatory exclusion, properly crafted, could encourage additional recycling and reuse while protecting human health and the environment. It is not envisioned that such a broader regulatory exclusion would alter the current status of the three types of recycling practices that are specifically outside the scope of today's proposal (*i.e.*, burning for energy recovery, as defined at 40 CFR 261.2(c)(2); use constituting disposal, as defined at 40 CFR 261.2(c)(1); or recycling of inherently waste-like materials, as defined at 40 CFR 261.2(d)).

By removing most regulatory controls from all legitimate reclamation, this broader option could encourage additional recycling of hazardous secondary materials above and beyond that expected as a result of the intra-industry option proposed today. This broader regulatory exclusion could thus potentially result in less disposal of valuable materials, less use of virgin materials, and better resource conservation. In addition, it could result in lower costs associated with RCRA permits, manifesting, and other requirements. Such an approach might be of particular benefit for an industry that is composed primarily of small business entities. For onsite recycling to be economically feasible, large quantities of secondary materials may be required. Small businesses generally do not generate such large quantities. Therefore, smaller businesses may often not be able to recycle materials themselves, and may rely primarily on third party recyclers that are considered part of the waste management industry. These specialized recycling businesses may have particular expertise with reclaiming materials and finding markets for them. A broader exclusion would tend to encourage these types of inter-industry recycling transactions. Stakeholders suggesting this approach also believe that legitimate recycling activities do not pose risks of hazardous material releases or human exposures to such releases, and hence such an exclusion could achieve the benefits of increased recycling and at the same time protect human health and the environment.

A broader regulatory exclusion of this kind would apply only to hazardous secondary materials that are legitimately recycled by reclamation. With regard to defining legitimate recycling, today's proposal specifies four legitimacy criteria that would be evaluated on a case-by-case basis in judging whether a particular recycling practice is legitimate. As discussed in detail in section III.B., there may be some situations in which a recycling activity that does not conform to one or more of the criteria could be considered legitimate. The proposed criteria, and the manner in which they would be used, are modeled on EPA's current guidance for legitimate recycling.

Today's proposed legitimacy criteria could be adopted as part of a broader regulatory exclusion for legitimate recycling. Alternatively, the same legitimacy principles could be expressed as explicit regulatory requirements that would each have to be met, rather than as criteria to be considered, as discussed in section III.B. Expressing legitimacy principles as regulatory requirements could result in more transparent and predictable legitimacy determinations, which could be an advantage in implementing a broader regulatory exclusion that would apply to a wider, more diverse set of industries and recycling practices. However, such an approach would be a departure from the current system for evaluating legitimacy, and could be considered more stringent than the legitimacy criteria proposed today. We anticipate that, whichever approach to defining legitimacy is adopted in the final rule (*i.e.*, the approach proposed today, or expressing legitimacy principles as regulatory requirements), the new legitimacy provisions would apply universally to all recycling, rather than only to materials affected by the new exclusion. We solicit comment on this issue.

If a broader regulatory exclusion were to be adopted, we envision that certain key requirements in today's proposal would be maintained. For example, persons claiming the exclusion would be required to submit a one-time notification to the appropriate State or EPA Region, as proposed today in 40 CFR 261.2(g)(4). Persons handling these materials would also be required to comply with the existing requirements for speculative accumulation (see 40 CFR 261.1(c)(8) and 261.2(c)(4)). We generally impose these limits when we issue conditional exclusions from the definition of solid waste, to help ensure that secondary materials are actually recycled.

In addition, to ensure protection of human health and the environment, it might be appropriate to impose additional requirements or conditions beyond those included for the intra-industry option discussed in section III.A of this preamble. For example, more frequent reporting and recordkeeping requirements might be appropriate, similar to those types of conditions included in EPA's recently-promulgated rulemaking for zinc fertilizers made from hazardous secondary materials (*see* 67 FR 48393, July 24, 2002). Alternatively, recordkeeping approaches as discussed in section III.A.8. of today's rule could provide additional safeguards through monitoring and documentation. Additional safeguards on storage or handling (*e.g.*, a ban on land placement,

or requiring a tracking system for off-site shipments) might also be appropriate to ensure environmental protection and/or assist regulatory agencies in their oversight efforts.

Regulatory text implementing such a broader exclusion for legitimately reclaimed materials would be codified in 40 CFR 261.4(a), which lists a series of exclusions from the definition of solid waste. Specifically, a new exclusion would be added at 40 CFR 261.4(a), stating that secondary materials that are legitimately recycled by reclamation are not solid wastes, provided that certain conditions are met. The exclusion would include a notification requirement identical to that set out in 40 CFR 261.2(g)(4) of the regulatory text proposed today for the intra-industry option, except that identification of the industry would not be required. The exclusion would also include a requirement prohibiting speculative accumulation identical to that set out in 40 CFR 261.2(g)(3)(ii) of the regulatory text proposed today for the intra-industry option. If it were determined appropriate to express the legitimacy principles for this broader exclusion as regulatory requirements, the exclusion would restate the legitimacy criteria proposed today in 40 CFR 261.2(h), and would specify that each of the four criteria must be met. If it were determined appropriate to apply today's proposed legitimacy criteria to this broader option, restating the criteria would not be necessary because 40 CFR 261.2(h) as proposed would apply to all recycling (including materials subject to the broader exclusion).

The regulatory text for this broader exclusion would also include a provision specifying that materials used in a manner constituting disposal, materials burned for energy recovery, and inherently waste-like materials are not eligible for the exclusion. This provision would be identical to that set out in 40 CFR 261.2(g)(1)(i)–(3) of the regulatory text proposed today. Finally, the text for the broader exclusion would (if deemed necessary) include a provision specifying any additional reporting and any recordkeeping requirements applied to the exclusion, and any other conditions determined appropriate to protect human health and the environment.

EPA seeks comment on the potential advantages and disadvantages of the broader regulatory exclusion for reclaimed materials described above. Specifically, we request comment on the increased recycling and reuse that would result from broadening the rule in this way, as well as comment on the potential effects to human health and the environment. We also request comment on whether the legitimacy criteria proposed today would be sufficient to ensure that only real recycling and reuse would be exempted under such a provision, and on whether the proposed criteria should be reformulated into more prescriptive regulatory requirements. We are further interested in whether a case-by-case variance mechanism (*i.e.*, analogous to the existing provision for variances from classification as a solid waste—*see* 40 CFR 260.30) would be a more appropriate means of providing the type of regulatory relief for reclaimed materials that would flow from a broader exclusion based on legitimate recycling. Finally, we request comment on any additional requirements, restrictions or conditions that should be added to such a broader exclusion. The Agency will carefully consider all comments received on this regulatory option in determining the appropriate scope of the final rule.

V. Effect of Today's Proposal on Other Programs

A. Exports and Imports

The 40 CFR 261.2(g) exclusion in today's proposed rule for materials that are recycled ''intra-industry'' does not place any geographic restrictions on movements of such materials, provided they remain within the generating industry. It is therefore possible that in some cases excluded materials could be generated in the United States and subsequently exported for reclamation to a facility in a foreign country that is in the same industry that generated the material. Under today's proposal, the exclusion would be effective while the excluded material is within the United States. However, such excluded materials may be subject to regulation as hazardous wastes in the receiving country, even if they are excluded from the definition of solid waste domestically (*i.e.*, under RCRA). If this is the case, the U.S. exporter of the excluded material will need to comply with any applicable requirements of the importing country.

It is also important to note that there is an international agreement regarding imports and exports of hazardous wastes and other wastes that can affect international waste shipments. As of November 2002, 152 countries are Parties to the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (''Basel Convention''). The Basel Convention prohibits transboundary movements of Basel-controlled hazardous and other wastes between Parties and non-Parties, unless a Party and a non-Party have concluded a separate agreement pursuant to Article 11 of the Basel Convention. The United States signed the Basel Convention in 1990, but has not ratified it and therefore is not a party to the Convention. The United States is a party to two bilateral agreements and one multilateral agreement governing exports of RCRA-defined hazardous wastes. The 1986 ''Agreement Between the Government of United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste,'' and the 1986 ''Agreement of Cooperation Between the United Mexican States and the United States of America Regarding the Transboundary Movement of Hazardous Waste and Hazardous Substances'' are valid Basel Convention Article 11 bilateral agreements, and the 2001 ''Decision C(2001)107 Concerning the Revision of Decision C(92)39 on the Control of Transboundary Movements of Wastes Destined for Recovery Operations'' of the Organization for Economic Cooperation and Development (OECD) is a valid Basel Convention Article 11 multilateral agreement among the 30 OECD member countries.

The U.S. government over the last decade has considered ratification of the Basel Convention at various times. In order to ratify the Convention, legislation must be enacted that would amend RCRA to provide new authorities necessary to implement the terms of the Convention fully. The Basel Convention defines ''hazardous waste'' more broadly than RCRA does, subjecting a larger universe of materials to its jurisdiction. EPA is currently studying options for implementing the Basel Convention, including ways of defining ''waste'' for import and export purposes. Under various approaches, certain materials that are excluded from the RCRA definition of solid wastes domestically would be regulated for purposes of the Basel Convention when they are exported. Basel Convention protocols would not affect the domestic classification of excluded materials while such materials are physically located within the legal jurisdiction of the United States.

If the U.S. ratifies the Basel Convention, Basel-covered hazardous and other wastes, potentially including certain domestically excluded materials that are exported, would be subject to notice and consent procedures. Furthermore, if such wastes and excluded materials were to be exported to countries with which we do not have Article 11 agreements, EPA would have

to be satisfied that there is no reason to believe the exported wastes and materials would not be managed in an ''environmentally sound manner'' (ESM) at the receiving facility in the importing country. For example, certain copper plating wastes are excluded from the RCRA definition of solid waste, even though they may exhibit the toxicity characteristic for lead, cadmium, chromium, or even cyanide. If the U.S. were to ratify the Basel Convention, these materials would be subject to the Basel Convention (assuming the importing country defined the materials as hazardous wastes), and the U.S. exporter would be required to comply with notification and consent procedures for the export of the materials. Additionally, if these materials were to be exported to smelters in countries with which we do not have existing Article 11 agreements, such as Chile or Peru, the export would be subject to additional requirements, including ESM determinations by EPA.

Imported Basel Convention hazardous and other wastes that meet domestic exclusions under the definition of solid waste would become subject to their exclusions upon entry into the legal jurisdiction of the United States; however, U.S. importers of such excluded materials may be required to comply with certain Basel Convention requirements if necessary for the U.S. to meet its Basel obligations and/or if the exporting Basel Party requires it. For example, the Basel Convention requires that, ''* * * each person who takes charge of a transboundary movement of hazardous wastes or other wastes, sign the movement document upon delivery or receipt of the wastes in question.'' (Basel Convention Article 6, paragraph 9). Thus, the U.S. importer, transporter(s) and receiving facility would be required to undertake this responsibility for the excluded material when it is imported into the United States.

B. Superfund

A primary purpose of today's proposed rule is to encourage safe, beneficial recycling of hazardous secondary materials. In 1999, Congress enacted the Superfund Recycling Equity Act (SREA), explicitly defining those hazardous substance recycling activities that potentially may be exempted from liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA section 9627. Today's proposed rule does not change the universe of recycling activities that could be exempted from CERCLA liability pursuant to CERCLA section 127. Today's proposed rule only changes the regulatory definition of solid waste for purposes of implementing the RCRA Subtitle C regulatory requirements. The proposed rule also does not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA Subtitle C hazardous waste program within the state. Following authorization, EPA retains Subtitle C enforcement authority, although authorized states have primary enforcement responsibility. EPA retains (and does not delegate) authority under sections 3007, 3008(h), 3013 and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized state until the State adopted the Federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HWSA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Today's proposed rule is less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they do not have to adopt the exclusions being proposed, although EPA encourages them to do so. If a state's standards for the materials discussed here are less stringent than those in today's proposed rule, the state will need to amend its regulations to make them equivalent to today's standards and pursue authorization.

C. Interstate Transport

Because some states may choose not to seek authorization for today's proposed rulemaking, there will probably be cases where the materials in question will be transported through states with different regulations governing these wastes.

First, a waste which is subject to an exclusion from the definition of solid waste regulations may be sent to a state, or through a state, where it is subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, and must move the waste in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22, 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional

Information) each state where the wastes are not covered by an exclusion.

Second, a hazardous waste generated in a state which does not provide an exclusion for the waste may be sent to a state where it is excluded. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not excluded. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the waste would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (*see* 40 CFR 262.23 and 262.42).

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although other portions of the trip may be from, through, and to states in which it is excluded. Transport through the State must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not excluded. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As more states streamline their regulatory requirements for these wastes, the complexity of interstate transport will be reduced.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule may have an annual effect on the economy of $100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, we completed an economic analyses for this rule. Copies of these analyses (entitled ''Economic Assessment of the Association of Battery Recyclers Proposed Rule'') have been placed in the RCRA docket for public review. The Agency solicits comment on the methodology and results from the analysis as well as any data that the public feels would be useful in a revised analysis.

1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the affected volume of hazardous secondary materials and affected entities. The Agency has evaluated a baseline (pre-regulatory) scenario based on prior management practice in the 1997 and 1999 Biennial Reporting System database. The Agency identified on-site recycling or recycling that occurred offsite between facilities with the same 4 digit SIC code.[17] Entities that reclaimed hazardous wastes in 1997 but abandoned (*e.g.,* landfilled or incinerated) in 1999 are modeled to abandon their waste in the 1999 baseline and reclaim post-rule. Entities that reclaim in the 1999 baseline are modeled to continue reclaiming at lower costs. EPA has also evaluated regulated entities that recycled their waste off-site at facilities outside of their industry, generally commercially established hazardous waste treatment facilities. Finally, the Agency has evaluated entities that have land disposed of wastes that may be technically and economically recycleable under today's proposal.

EPA has estimated incremental costs and costs savings for affected entities through comparing hazardous waste management costs in the 1999 baseline (whether recycled or abandoned) with the cost of reclaiming these secondary materials as excluded from RCRA jurisdiction. To do this, the Agency examined two options as previously described above as Co-Proposal Option # 1 and Co-Proposal Option # 2. Option 1 provides that hazardous secondary materials that are recycled within the same generating industry are not solid wastes under RCRA irrespective of whether the recycling facility also receives wastes from other industries. By contrast, Option 2 limits the scope of the exclusion to facilities that solely recycle hazardous secondary materials from within the same generating industry and do not receive waste from other industries.

The benefits from today's proposed rulemaking are presented qualitatively. EPA solicits comment on the need and means to evaluate more quantitative benefits from today's rule.

2. Results

a. Volume

The estimated volume of secondary materials affected by this rulemaking for Option 1 are 1570 thousand tons. Of this total 1506 thousand tons of material are recycled onsite and 64 thousand tons of material recycled offsite. This volume of material is generated by 1749 affected plants. For Option 2 the estimated volume is 1534 thousand tons. Because it is possible for the affected volume of hazardous waste to be either higher or lower than the estimated volume, EPA notes that the estimated cost savings and impacts to affected entities could be greater or smaller as well. The Agency solicits comment on how it should adjust its methodology to account for this uncertainty and whether it would be more appropriate to use a range than this value.

b. Cost/Economic Impact

For Option 1, EPA has estimated the average annual cost savings from this

[17] Note: The Standard Industrial Classification (SIC) system was the predecessor to the North American Industrial Classification System (NAICS) that the Agency is using to define industry today. Because only the SIC code as a data element was reported in the 1997 and 1999 BRS, EPA is using 4 digit SIC codes as a proxy for the 4 digit NAICS code with the exception of the definitions of petroleum and mineral processing which remain as previously described and are discussed above in this proposal.

rulemaking at $178 million. For Option 2, EPA has estimated this amount at $172 million. These cost savings for both those who are modeled to switch to recycling and those who currently recycle either on-site or within the same industry comes from reduced administrative costs, transportation costs, disposal/management costs, state hazardous waste taxes, contingency planning costs and increased salvage revenue (for entities that shift from disposal to recycling). The Agency notes that the cost saving results are relatively sensitive (*i.e.,* change with) to the proportion of entities and volumes that are modeled to shift from disposal to recycling. In particular, the estimated cost savings in this rulemaking for entities that shift from treatment and disposal to recycling are much higher on a per ton basis due to the disposal cost avoided by recycling and the salvage revenue of the reclaimed product. Salvage revenue is the market price of the reclaimed material less the cost of recycling it. The Agency also notes that it has only been able to evaluate a portion of those entities in the Biennial Reporting Systems 1997 and 1999 database who potentially may elect to shift from disposal to recycling. And although there is uncertainty inherent in estimating these cost savings for both entities that are modeled to recycle pre-rule and post-rule, as well as those who are modeled to shift from disposal to recycling, the Agency notes that the potential magnitude of this uncertainty is greater in those who are modeled to shift from disposal to recycling both because the cost savings are more sensitive to these volumes and because the coverage of these types of entities is less complete than it is for those who currently recycle. EPA solicits comment on additional methodologies, sources of data or other information that would help to minimize this uncertainty in prospective analysis.

To estimate the economic impact of this proposed rule, the Agency evaluated the cost savings or incremental costs as a percentage of firm sales. In virtually all cases, economic impacts are cost savings and are less than one percent of firm sales. The average cost savings for an affected entity that either recycles onsite or within the same industry in the 1999 BRS or did so in the 1997 and is projected to shift back to recycling post-rule from this proposal for both Options ranges from $4 thousand to $150 thousand annually.

c. Benefits

EPA has evaluated the qualitative benefits and to a lesser extent, the quantitative benefits of the proposed revisions to the definition of solid waste. Some of the benefits resulting from today's rule include conservation of landfill capacity, increase in resource efficiency, growth of a recycling infrastructure and development of innovative technologies for affected secondary materials. EPA estimates that approximately 425 thousand tons or over 460 thousand cubic feet of secondary materials would be redirected away from landfills towards recycling under the Agency's proposal today. In addition, as mentioned above, the use of secondary materials generated onsite or within the same industry benefits the manufacturer by mitigating the need to purchase expensive virgin feed materials. This rule will facilitate the growth and development of the innovative recycling technologies in the United States by reducing regulatory barriers to new technologies becoming established.

The Agency acknowledges that some 1500 thousand tons of hazardous secondary materials would be no longer subject to regulation as hazardous waste under subtitle C of RCRA under this proposal. As part of today's proposal, EPA has not evaluated any potential for changes resulting in either higher or lower releases to the environment of hazardous constituents from different handling methods for affected secondary materials. The Agency notes that most hazardous waste that is currently recycled is stored in tanks, containers or buildings prior to the reclamation process. And this practice is likely to continue post-rule both because most affected entities have already purchased these storage units and as a means of avoiding legal liability for releases to groundwater from land based units (materials excluded from RCRA subtitle C regulation if recycled under this proposal would still be considered hazardous wastes if released to the environment and then abandoned). Also, residuals from excluded recycling processes would still be considered hazardous wastes if they exhibit a hazardous characteristic and are discarded.[18] However, residuals from formerly listed hazardous wastes would not be considered hazardous wastes under the derived-from rule if recycled under this proposal. In such cases, these residuals could be land disposed in units other than hazardous waste landfills. The Agency has not evaluated the potential for such management of these materials to result in a change in releases to the environment.

[18] Note, characteristic sludges and byproducts from recycling processes that are themselves recycled are not solid wastes or hazardous wastes currently (40 CFR 261.2(c)(3)) and would not be under today's proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2106.01) and a copy may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epamail.epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Under Section 3001 of RCRA, Congress directed EPA to promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes. The proposed exclusion, when finalized, will be self-implementing. Notification of a facility's basis for claiming the exclusion would allow authorized States or EPA Regions to more effectively render assistance to recyclers wishing to ensure that their operations are within the exclusion. In addition, persons claiming to be excluded from hazardous waste regulation because they are engaged in recycling must be able to demonstrate that the recycling is legitimate. These demonstration criteria are comparable to, if not more streamlined than, the existing guidance. Following are the affected ICRs, along with a brief description of relevant assumptions:

Manifest ICR (EPA ICR Number 801): All claimants are expected to be relieved of manifesting their excluded waste under the proposal. O&M costs are associated with postage for sending and returning copies of the manifest forms.

Generator Standards ICR (EPA ICR Number 820): Large quantity generators (LQGs) generating excluded waste under 40 CFR 261.2(g) are expected to become small quantity generators (SQGs) under the rule, *i.e,* their excluded waste will not count toward their generator status determinations. SQGs are subject to less burdensome paperwork requirements than LQGs. O&M costs are associated with postage for sending various documents to EPA.

Biennial Report ICR (EPA ICR Number 976): Claimants are expected to be relieved of the need to prepare a Waste Generation and Management (GM) Form for their excluded materials. Destination facilities will be relieved of the need to prepare a Waste Received from Off-Site (WR) Form. O&M costs are associated with maintaining copies of GM and WR Forms.

Specific Units ICR (EPA ICR Number1572): EPA assumes that recyclers with a storage permit will be relieved of the need to comply with their permit conditions for their storage units, if they receive and recycle only hazardous materials generated, reclaimed, and legitimately reused within their same four digit NAICS code. Based on 1999 BRS data, EPA estimates that each year approximately 12 recyclers would be relieved of these requirements.

Part B ICR (EPA ICR Number 1573): EPA assumes that recyclers with a storage permit will be relieved of the need for a permit under the rule, if they receive and recycle only hazardous materials generated, reclaimed, and legitimately reused within their same four digit NAICS code. Based on 1999 BRS data, EPA estimates that each year approximately 12 recyclers would be relieved of the requirement to renew their permit.

EPA estimates the total annual burden to respondents to be approximately 226 hours and $7,018. The total bottom-line burden to respondents over three years is estimated to be approximately 678 hours and $21,054. EPA estimates the total annual aggregate burden savings to respondents to be approximately 15,985 hours and $531,169. The total bottom-line burden savings over three years is estimated to be approximately 47,955 hours and $1,593,507. EPA estimates the total annual burden to the Agency under the proposed rule to be about 260 hours and $10,807. The total bottom-line burden to the Agency over three years is estimated to be about 780 hours and $32,421.

EPA believes the proposed notification requirement is needed to ensure safe and compliant management of waste. Because the exclusion at 40 CFR 261.2(g) is self-implementing, EPA believes that submittal of the notification is necessary to inform the regulatory agency of the exclusion claim and the claimant's excluded waste. As shown in Exhibit 3 of ICR No. 2106.01, EPA believes the notification requirement would result in only a minor burden to respondents. This burden would be greatly offset by the expected savings for no longer complying with the existing RCRA paperwork requirements for the excluded waste. The public reporting burden from the notification requirement is estimated to be about 30 minutes per respondent. This time includes reading the rule and preparing/submitting the one-time notification. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2823); 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 28, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by November 28, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The economic impact analysis conducted for today's proposal indicates that these revisions to the definition of solid waste would generally result in savings to affected entities compared to baseline requirements. The rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least

costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's proposed rule imposes no enforceable duty on any State, local or tribal government or the private sector. This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Act generally excludes from the definition of ''federal intergovernmental mandate'' (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. Today's proposed rule is voluntary, and because it is less stringent than the current regulations, state governments are not required to adopt the proposed changes. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. The UMRA also excludes from the definition of ''Federal private sector mandate'' duties that arise from participation in a voluntary Federal program. Therefore we have determined that today's proposal is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. 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, as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule defines some of the limits of EPA's regulatory jurisdiction under Subtitle C of RCRA. It is not based on any analysis of health or safety risks. EPA believes that it is not subject to Executive Order 13045.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's proposed rule excludes secondary materials reclaimed within the generating industry from RCRA Subtitle C jurisdiction. By encouraging reuse and recycling, the rule may save energy costs associated with manufacturing new materials. It will not cause reductions in supply or production of oil, fuel, coal, or electricity. Nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 260

Administrative practices and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: October 20, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart C—[Amended]

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.30 is amended by removing and reserving paragraph (b), and by revising paragraph (c) to read as follows:.

§ 260.30 Variances from classification as solid wastes.

* * * * *

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered. If the materials are reclaimed as part of a continuous process within the generating industry, they are subject to the exclusion in § 261.2(g) rather than the standards and criteria listed in § 261.31(c).

§ 260.31 [Amended]

3. Section 260.31 is amended by removing and reserving paragraph (b).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—[Amended]

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

5. Section 261.2 is amended by:

a. Revising the heading for Column 3 of Table 1 in paragraph (c)(4) to read:

Reclamation (261.2(c)(3)), except for materials marked with an ''*'' that are generated and reclaimed in a continuous process within the generating industry, as provided in § 261.2(g).

b. Revising paragraph (c)(3).

c. Removing paragraph (e)(1)(iii).

d. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) Reclaimed. Materials noted with a ''-'' in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an ''*'' in column 3 of Table 1 are solid wastes except when generated and reclaimed in a continuous process within the same industry, as provided in paragraph (g) of this section.

* * * * *

(g) *Hazardous secondary materials generated and reclaimed in a continuous process within the same industry.* (1) Spent materials, listed sludges and listed by-products that are identified in paragraph (c)(3) of this section and accompanying Table 1 of this section are not discarded, and therefore are not solid wastes, if they are generated and reclaimed in a continuous process within the same industry. This exclusion does not apply, however, to the following materials:

(i) Materials that are inherently waste-like, as provided in paragraph (d) of this section.

(ii) Materials used in a manner constituting disposal, or used to produce products that are applied to the land, as provided in paragraph (c)(1) of this section.

(iii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, as provided in paragraph (c)(2) of this section.

Option 1 for Paragraph (g)(2)

(2) For the purposes of this paragraph:

(i) Both the generation and reclamation of the hazardous secondary materials must occur within a single industry listed in Appendix X of this Subpart. Such reclamation may involve one or more processing steps, provided that all steps take place within the same industry in which the secondary material was generated, and that such reclamation produces a product or ingredient that is used or reused without further reclamation. Reclamation steps need not take place at the site where the material was generated, provided such reclamation activities take place within the generating industry.

(ii) If such reclamation produces any materials that are sent to a different industry for further reclamation, those materials will not be eligible for the exclusion in paragraph (g)(1) of this section. This would not, however, affect the exclusion for other materials that are generated and reclaimed within the same industry.

(iii) The guidelines and industry classifications specified in Appendix X of this Part must be used to identify the appropriate industry classification of each establishment that generates or reclaims materials excluded under this paragraph (g). An ''establishment'' for the purpose of this paragraph is an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. An establishment is the smallest such unit for which records provide information on the cost of resources, materials, labor and capital employed to produce the units of output.

(iv) Facilities comprised solely of establishments engaged in waste management services are in industries not eligible for this exclusion. This includes facilities with establishments classified under NAICS Codes 5621, 5622, or 5629, and any other facility that reclaims secondary materials received from off-site generators, and that does not produce any products made from non-secondary materials. Hazardous secondary materials sent to these facilities are not considered to be generated and reclaimed in a continuous process within the same industry.

(v) If, using the guidelines in Appendix X of this Part, it is not clear whether a reclamation unit, process, or activity is part of the same industry in which the material was generated, then the generation and reclamation of these materials will be presumed to occur within the same industry, provided that the reclamation unit, process, or activity is located on-site (as defined in § 260.10) with respect to the process that generated the material.

Option 2 for Paragraph (g)(2)

(2) For the purposes of this paragraph:

(i) Both the generation and reclamation of the hazardous secondary materials must occur within a single industry listed in Appendix X of this Subpart. Such reclamation may involve one or more processing steps, provided that all steps take place within the same industry in which the secondary material was generated, and that such reclamation produces a product or ingredient that is used or reused without further reclamation. Reclamation steps need not take place at the site where the material was generated, provided such reclamation activities take place within the generating industry.

(ii) If such reclamation produces any materials that are sent to a different industry for further reclamation, those materials will not be eligible for the exclusion in paragraph (g)(1). This would not, however, affect the exclusion for other materials that are generated and reclaimed within the same industry.

(iii) The guidelines and industry classifications specified in Appendix X of this Part must be used to identify the appropriate industry classification of each establishment that generates or reclaims materials excluded under this paragraph (g). An ''establishment'' for the purpose of this paragraph is an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. An establishment is the smallest such unit for which records provide information on the cost of resources, materials, labor and capital employed to produce the units of output.

(iv) Facilities comprised solely of establishments engaged in waste management services are in industries not eligible for this exclusion. This includes facilities with establishments classified under NAICS Codes 5621, 5622, or 5629, and any other facility that reclaims secondary materials received from off-site generators, and that does not produce any products made from non-secondary materials. Hazardous secondary materials sent to these facilities are not considered to be generated and reclaimed in a continuous process within the same industry.

(v) If, using the guidelines in Appendix X of this Part, it is not clear whether a reclamation unit, process, or activity is part of the same industry in which the material was generated, then the generation and reclamation of these materials will be presumed to occur within the same industry, provided that the reclamation unit, process, or activity is located on-site (as defined in § 260.10) with respect to the process that generated the material.

(vi) The exclusion provided under this paragraph for materials that are generated and reclaimed in a continuous process within the same industry does not apply if the reclamation facility also recycles hazardous waste from a different industry.

(3) For the purpose of this paragraph, materials are generated and reclaimed in a continuous process if:

(i) The materials are not handled by any entity or facility outside of the generating industry, except for a transporter; and

(ii) The materials are not speculatively accumulated, as defined in § 261.1(c)(8).

(4) Generators of secondary materials that have previously been subject to regulation as hazardous wastes, but which will be excluded from regulation under this paragraph, must send a one-time notification to the Regional Administrator. The notification must identify the name, address, and EPA ID number (if applicable) of the generator facility; the name and phone number of a contact person; the type of material that will be excluded; and the industry that generated the material, as classified according to Appendix X of this Part.

(h) *Legitimate Recycling.* Materials that are not legitimately recycled are discarded and are solid wastes. Persons who recycle hazardous wastes, as well as persons claiming to be excluded from hazardous waste regulation under § 261.2 or § 261.4(a) because they are engaged in recycling, must be able to demonstrate that the recycling is legitimate. Moreover, hazardous wastes must be legitimately recycled to qualify for special management standards under 40 CFR 261.6 and 40 CFR Part 266. Determinations as to the legitimacy of specific recycling activities must be made by considering whether:

(1) The secondary material to be recycled is managed as a valuable commodity. Where there is an analogous raw material, the secondary material should be managed in a manner consistent with the management of the raw material. Where there is no analogous raw material, the secondary material should be managed to minimize the potential for releases to the environment.

(2) The secondary material provides a useful contribution to the recycling process or to a product of the recycling process and evaluating this criterion should include consideration of the economics of the recycling transaction. The recycling process itself may involve reclamation, or direct reuse without reclamation.

(3) The recycling process yields a valuable product or intermediate that is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient in an industrial process.

(4) The product of the recycling process:

(i) Does not contain significant amounts of hazardous constituents that are not found in analogous products; and

(ii) Does not contain significantly elevated levels of any hazardous constituents that are found in analogous products; and

(iii) Does not exhibit a hazardous characteristic that analogous products do not exhibit.

6. Section 261.4 is amended by removing and reserving paragraphs (a)(6) and (a)(8), and by revising paragraphs (a)(7), (a)(10), (a)(11), (a)(13), (a)(14), (a)(17) introductory text and (a)(19) and by adding paragraph (a)(9)(iii)(F) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(6) [Reserved]

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c). Spent sulfuric acid that is reclaimed to produce virgin sulfuric acid in a continuous process within the generating industry is subject to the exclusion in § 261.2(g), rather than this paragraph.

(8) [Reserved]

(9) * * *

(iii) * * *

(F) If the products of this recycling practice are not used in a manner constituting disposal, the spent wood preserving solutions are subject to the exclusion in § 261.2(g), rather than this paragraph, provided the wood preserving solutions are generated and reclaimed in a continuous process within the same industry.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-product processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in § 261.24 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the coal tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar. If the wastes described above in this paragraph are reclaimed and recycled in a continuous process within the generating industry and are not burned for energy recovery, they are subject to the exclusion in § 261.2(g), rather than this paragraph.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery. If the residue is reclaimed as part of a continuous process within the generating industry,

it is subject to the exclusion in § 261.2(g), rather than this paragraph.

* * * * *

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled. If the scrap metal is recycled in a continuous process within the generating industry, it is subject to the exclusion in § 261.2(g), rather than this paragraph.

(14) Shredded circuit boards being recycled provided that they are stored in containers sufficient to prevent a release to the environment prior to recovery; and free of mercury switches, mercury relays and nickel-cadmium or lithium batteries. Shredded circuit boards that are reclaimed in a continuous process within the generating industry are subject to the exclusion in § 261.2(g), rather than this paragraph.

* * * * *

(17) Spent materials (as defined in § 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by beneficiation, provided that:

* * * * *

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in § 261.1(c). Such spent caustic solutions that are reclaimed in a continuous process within the generating industry are subject to the exclusion in § 261.2(g), rather than this paragraph.

* * * * *

7. Part 261 is amended by adding new Appendix X, to read as follows:

Appendix X to Part 261—Industries for the Purpose of § 261.2(g)

(a) This Appendix defines ''industry'' for the purposes of § 261.2(g). It does not affect other industry definitions within 40 CFR Parts 260 through 283.

(b) Primary Mineral Processing Industry. For the purpose of this Appendix, an establishment falls within the primary mineral processing industry if it: (1) involves operations that follow beneficiation of an ore or mineral; (2) serves to remove the desired product from or enhance the characteristics of and ore or mineral or a beneficiated ore or mineral; (3) uses feedstock that is comprised of less than 50 percent scrap materials; (4) produces either a final or an intermediate to the final mineral product, and (5) does not combine the mineral product with another material that is not an ore or mineral, or beneficiated ore or mineral (*e.g.*, alloying) and does not involve fabrication or other manufacturing activities.

(c) Petroleum Refining Industry. This industry is defined as petroleum refining, exploration, production and bulk storage, and transportation incident thereto, as specified in 40 CFR 261.4(a)(12).

(d) All other industries are classified using the following categories; these classifications must be made in accordance with the reference document ''North American Industry Classification System'' or NAICS, effective January 1, 2002:

1111 Oilseed and Grain Farming
1112 Vegetable and Melon Farming
1113 Fruit and Tree Nut Farming
1114 Greenhouse, Nursery, and Floriculture Production
1119 Other Crop Farming
1121 Cattle Ranching and Farming
1122 Hog and Pig Farming
1123 Poultry and Egg Production
1124 Sheep and Goat Farming
1125 Animal Aquaculture
1129 Other Animal Production
1131 Timber Tract Operations
1133 Logging
1141 Fishing
1142 Hunting and Trapping
1151 Support Activities for Crop Production
1152 Support Activities for Animal Production
1153 Support Activities for Forestry
2111 Oil and Gas Extraction
2121 Coal Mining,
2122 Metal Ore Mining
2123 Nonmetallic Mineral Mining and Quarrying
2131 Support Activities for Mining
2211 Electric Power Generation, Transmission and Distribution
2212 Natural Gas Distribution
2213 Water, Sewage and Other Systems
2361 Residential Building Construction
2362 Nonresidential Building Construction
2371 Utility System Construction
2372 Land Subdivision
2379 Other Heavy and Civil Engineering Construction
2381 Foundation, Structure, and Building Exterior Contractors
2382 Building Equipment Contractors
2383 Building Finishing Contractors
2389 Other Specialty Trade Contractors
3111 Animal Food Manufacturing
3112 Grain and Oilseed Milling
3113 Sugar and Confectionery Product Manufacturing
3114 Fruit and Vegetable Preserving and Specialty Food Manufacturing
3115 Dairy Product Manufacturing
3116 Animal Slaughtering and Processing
3117 Seafood Product Preparation and Packaging
3118 Bakeries and Tortilla Manufacturing
3119 Other Food Manufacturing
3121 Beverage Manufacturing
3122 Tobacco Manufacturing
3131 Fiber, Yarn, and Thread Mills
3132 Fabric Mills
3133 Textile and Fabric Finishing and Fabric Coating Mills
3141 Textile Furnishings Mills
3149 Other Textile Product Mills
3151 Apparel Knitting Mills
3152 Cut and Sew Apparel Manufacturing
3159 Apparel Accessories and Other Apparel Manufacturing
3161 Leather and Hide Tanning and Finishing
3162 Footwear Manufacturing
3169 Other Leather and Allied Product Manufacturing
3211 Sawmills and Wood Preservation
3212 Veneer, Plywood, and Engineered Wood Product Manufacturing
3219 Other Wood Product Manufacturing
3221 Pulp, Paper, and Paperboard Mills
3222 Converted Paper Product Manufacturing
3231 Printing and Related Support Activities
3241 Petroleum and Coal Products Manufacturing [1]
3251 Basic Chemical Manufacturing
3252 Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing
3253 Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing
3254 Pharmaceutical and Medicine Manufacturing
3255 Paint, Coating, and Adhesive Manufacturing
3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing (except for third-party operations that reclaim dry cleaning fluids at sites that do not conduct dry-cleaning).
3259 Other Chemical Product and Preparation Manufacturing (except for third-party operations that reclaim degreasing solvents at sites that do not conduct degreasing operations).
3261 Plastics Product Manufacturing
3262 Rubber Product Manufacturing
3271 Clay Product and Refractory Manufacturing
3272 Glass and Glass Product, Manufacturing
3273 Cement and Concrete Product Manufacturing
3274 Lime and Gypsum Product Manufacturing
3279 Other Nonmetallic Mineral Product Manufacturing [2]
3311 Iron and Steel Mills and Ferro alloy Manufacturing [2]
3312 Steel Product Manufacturing from Purchased Steel [2]
3313 Alumina and Aluminum Production and Processing [2]
3314 Nonferrous Metal (except Aluminum) Production and Processing [2]
3315 Foundries
3321 Forging and Stamping
3322 Cutlery and Handtool Manufacturing
3323 Architectural and Structural Metals Manufacturing
3324 Boiler, Tank, and Shipping Container Manufacturing
3325 Hardware Manufacturing

[1] Although this industry classification may include establishments in the petroleum refining industry, note that as specified in subparagraph (c) of this Appendix, the petroleum refining industry for the purpose of the exclusion in § 261.2(g) is defined at § 261.4(a)(12).

[2] Although this industry classification may include establishments in the mineral processing industry, note that for the purpose of the exclusion provided in § 262.2(g), the mineral processing industry is defined in subparagraph (b) of this appendix.

3326 Spring and Wire Product Manufacturing
3327 Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing
3328 Coating, Engraving, Heat Treating, and Allied Activities
3329 Other Fabricated Metal Product Manufacturing
3331 Agriculture, Construction, and Mining Machinery Manufacturing
3332 Industrial Machinery Manufacturing
3333 Commercial and Service Industry Machinery Manufacturing
3334 Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing
3335 Metalworking Machinery Manufacturing
3336 Engine, Turbine, and Power Transmission Equipment Manufacturing
3339 Other General Purpose Machinery Manufacturing
3341 Computer and Peripheral Equipment Manufacturing
3342 Communications Equipment Manufacturing
3343 Audio and Video Equipment Manufacturing
3344 Semiconductor and Other Electronic Component Manufacturing
3345 Navigational, Measuring, Electromedical, and Control Instruments Manufacturing
3346 Manufacturing and Reproducing Magnetic and Optical Media
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3352 Household Appliance Manufacturing
3353 Electrical Equipment Manufacturing
3359 Other Electrical Equipment and Component Manufacturing
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3363 Motor Vehicle Parts Manufacturing
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3366 Ship and Boat Building
3369 Other Transportation Equipment Manufacturing
3371 Household and Institutional Furniture and Kitchen Cabinet Manufacturing
3372 Office Furniture (including Fixtures) Manufacturing
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4237 Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers
4238 Machinery, Equipment, and Supplies Merchant Wholesalers
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5152 Cable and Other Subscription Programming
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7112 Spectator Sports
7113 Promoters of Performing Arts, Sports, and Similar Events
7114 Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115 Independent Artists, Writers, and Performers
7121 Museums, Historical Sites, and Similar Institutions
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7132 Gambling Industries
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8113 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
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Federal Register

Tuesday,

October 28, 2003

Part III

The President

Proclamation 7725—Protection from Pornography Week, 2003

Proclamation 7726—United Nations Day, 2003

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Title 3—

The President

Proclamation 7725 of October 24, 2003

Protection from Pornography Week, 2003

By the President of the United States of America

A Proclamation

Pornography can have debilitating effects on communities, marriages, families, and children. During Protection From Pornography Week, we commit to take steps to confront the dangers of pornography.

The effects of pornography are particularly pernicious with respect to children. The recent enactment of the PROTECT Act of 2003 strengthens child pornography laws, establishes the Federal Government's role in the AMBER Alert System, increases punishment for Federal crimes against children, and authorizes judges to require extended supervision of sex offenders who are released from prison.

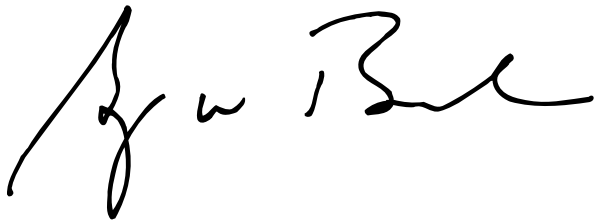
We have committed significant resources to the Department of Justice to intensify investigative and prosecutorial efforts to combat obscenity, child pornography, and child sexual exploitation on the Internet. We are vigorously prosecuting and severely punishing those who would harm our children. Last July, the Department of Homeland Security launched Operation Predator, an initiative to help identify child predators, rescue children depicted in child pornography, and prosecute those responsible for making and distributing child pornography.

Last year, I signed legislation creating the Dot Kids domain, a child-friendly zone on the Internet. The sites on this domain are monitored for content and safety, offering parents assurances that their children are learning in a healthy environment. Working together with law enforcement officials, parents, and other caregivers, we are making progress in protecting our children from pornography.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 26 through November 1, 2003, as Protection From Pornography Week. I call upon public officials, law enforcement officers, parents, and all the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



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Presidential Documents

Proclamation 7726 of October 24, 2003

United Nations Day, 2003

By the President of the United States of America

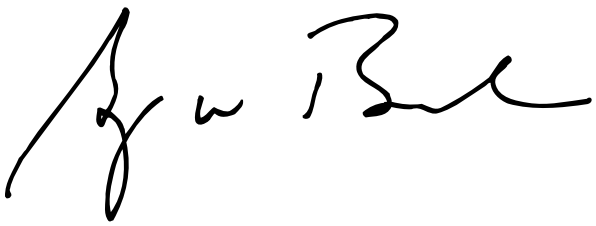
A Proclamation

The United Nations is a vital international arena for countries to cooperate in pursuit of political, economic, and social freedoms. Founded by 51 Member countries after World War II, the organization has grown through the years to include 191 Member States. On United Nations Day, we celebrate the organization's founding principles of freedom, democracy, and human rights, and we recognize the contributions of the United Nations to improving lives around the world.

As an original signatory of the United Nations Charter, the United States continues to advance the United Nations' founding principles. We are working with the United Nations to reduce conflicts around the world, fight terrorism, abolish trafficking in persons, and support those in need, including the people of Afghanistan and Iraq as they continue to build free and stable countries. As we commemorate the 58th anniversary of the United Nations, we honor the victims of the recent bombing of the United Nations headquarters in Baghdad who worked to advance peace and freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2003, as United Nations Day. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor the observance of United Nations Day with appropriate ceremonies and activities.

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



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

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