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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: USDA amends the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Civil Rights (ASCR), and from the ASCR to the Office of Civil Rights (CR), to no longer require prior approval by the Office of the General Counsel (OGC) of all final decisions related to complaints of discrimination in employment, federally assisted programs, and federally conducted programs, but rather to leave to the discretion of the ASCR and CR a judgment as to which such decisions should be reviewed by OGC prior to issuance. This document also reflects the transfer of authorities for the Office of Outreach and the Conflict Prevention and Resolution Center from the Assistant Secretary for Administration (ASA) to the ASCR, transfer of authority related to historic preservation from the ASA to the Under Secretary for Natural Resources and Environment, transfer of authority related to relationships with Native Americans from the ASA to the Assistant Secretary for Congressional Relations, delegations of authority to the Administrator of the Foreign Agricultural Service with respect to coordinating Department activities involving satellite imagery data, and revision of the order of succession in the event of the incapacity of the Secretary or Deputy Secretary.

DATES: This rule is effective June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Director, Office of Civil Rights (CR), USDA, Reporters Building, Room 541, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–5212 (for civil rights matters); Allen VanderGriff, Foreign Agricultural Service (FAS), United States Department of Agriculture, Room 6539–S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–0888 (for satellite imagery matters); or Arthur Goldman, Office of the Assistant Secretary for Administration (ASA), Room 209–A, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3291 (all other matters).

SUPPLEMENTARY INFORMATION:

Civil Rights Delegations

The Department of Agriculture (USDA) is one of the largest Federal agencies in the nation. Its programs affect millions of people, from farmers to residents of rural communities to school children. It operates one of the most complex and decentralized civil rights structures in the Federal Government. Numerous agencies and staff nationwide are involved in carrying out its civil rights program. One of the primary responsibilities of the USDA's Office of Civil Rights (CR) is to ensure compliance with civil rights laws, regulations, and policies.

Since 1971, CR has been responsible for providing leadership, guidance, coordination, and direction to all USDA agencies, offices, and staff engaged in civil rights enforcement and voluntary civil rights compliance. Through the years, CR has undergone reorganizations, name changes, and realignments in an effort to ensure compliance with all civil rights laws and regulations throughout USDA.

In an effort to further strengthen civil rights compliance and enforcement within USDA, Congress, in passing the Farm Security and Rural Investment Act of 2002, Public Law 107–171, authorized the position of the Assistant Secretary of Civil Rights (ASCR). The Secretary established that position on March 7, 2003.

The ASCR conducted a review of the Department's civil rights programs, including the Delegations of Authority for processing complaints of discrimination in employment, as well as, those for federally assisted and federally conducted programs. Current regulations require a legal sufficiency review by the Office of the General Counsel (OGC) of the following:

- Determinations that program complaint investigations performed under 7 CFR 15.6 establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate;
- Final determinations on both the merits and required corrective actions as to complaints filed under 7 CFR part 15d;
- Final Agency Decisions on Equal Employment Opportunity complaints by employees or applicants for employment;
- Final Agency Decisions on program discrimination complaints; and
- Final determinations or settlement agreements on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act.

It has been determined that the requirements for mandatory review by OGC of all decisions, corrective actions, and settlement agreements falling within these categories will be removed, and the ASCR and officials of CR will be permitted to seek legal review, whenever warranted, on a case-by-case basis.

Therefore, the Delegations of Authority from the Secretary to the ASCR, and from the ASCR to the Director of CR, are revised to remove the mandatory requirements of OGC's legal sufficiency reviews. The delegation from the ASCR to the Director of CR is further revised to clarify that the ASCR serves as the Department's Director of Equal Employment Opportunity and the Director of CR provides support to the ASCR in that capacity.

Outreach and Conflict Resolution

By Secretary's Memorandum 1020–53 issued on August 1, 2003, the Secretary transferred the Office of Outreach and the Conflict Prevention and Resolution Center, Office of Human Resources Management, from the Assistant Secretary for Administration (ASA) to the ASCR. This rule revises the published delegations of authority to reflect that transfer.

Satellite Imagery

The Foreign Agricultural Service (FAS) is responsible for conducting studies of worldwide agricultural production, trade, and other factors affecting exports and imports of U.S.

agricultural commodities. As part of this function, FAS acts as the Departmental liaison with U.S. space programs undertaking remote sensing activities, and coordinates all agency satellite imagery data needs. This rule will revise currently obsolete delegations from the Under Secretary for Farm and Foreign Agricultural Services pertaining to satellite imagery and place these functions within the FAS.

Relationships With Native American Tribes

Principal responsibility for the implementation of Executive Order 13175, including consultation and collaboration with tribal officials, and coordination of USDA programs involving assistance to American Indians and Alaska Natives is transferred from the Assistant Secretary for Administration to the Assistant Secretary for Congressional Relations, and further redelegated to the Director, Office of Intergovernmental Relations.

Historic Preservation

Responsibility for USDA implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, including the authority to name the Secretary's designee to the Advisory Council on Historic Preservation, is transferred from the ASA to the Under Secretary for Natural Resources and Environment.

Order of Succession

Finally, on December 18, 2001, President Bush signed Executive Order 13241 (66 FR 66258 (December 21, 2001)) which revised the order of succession of officials to act as Secretary of Agriculture during any period in which both the Secretary and Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the Office of the Secretary. The delegations of authority at 7 CFR 2.5 are revised to reflect the provisions of Executive Order 13241, as amended by Executive Order 13261 issued on March 19, 2002 (67 FR 13243 (March 21, 2002)).

Classification

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Administrative practice and procedure, Authority delegations (government agencies), Civil rights, Nondiscrimination.

■ Accordingly, title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart A—General

■ 2. Revise § 2.5 to read as follows:

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 13241 (66 FR 66258), as amended by Executive Order 13261 (67 FR 13243), during any period when both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of the Secretary, the officials designated in paragraphs (a)(1) through (a)(10) of this section shall act as Secretary in the order in which they are listed. Each official shall act only in the event of the death, resignation, or inability to perform the duties of Secretary of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Marketing and Regulatory Programs.

(3) The Under Secretary for Rural Development.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The Under Secretary for Food Safety.

(8) The General Counsel.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

(b) No official who is serving in an office listed in paragraphs (a)(1) through (a)(10) of this section in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this section.

(c) Notwithstanding the provisions of this section and Executive Orders 13241 and 13262, the President retains the discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from the order of succession in paragraph (a) of this section in designating an acting Secretary.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 3. Add § 2.20(a)(9) to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(9) *Related to historic preservation.* Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

* * * * *

■ 4. Add § 2.23(a)(2)(v) to read as follows:

§ 2.23 Assistant Secretary for Congressional Relations

(a) * * *

(2) * * *

(v) Serve as the official with the principal responsibility for the implementation of Executive Order 13175, including consultation and collaboration with tribal officials, and coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

* * * * *

§ 2.24 [Amended]

■ 5. Amend § 2.24 as follows:

■ a. Remove and reserve paragraphs (a)(4) and (a)(12),

■ b. Remove paragraphs (a)(18), and (a)(19),

■ c. Redesignate paragraph (a)(20) as (a)(18).

■ 6. Revise § 2.25 to read as follows:

§ 2.25 Assistant Secretary for Civil Rights.

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery,

compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department.

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(vii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(viii) Actions to develop and implement the Department's Federal Women's Program.

(ix) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Investigate (or make determinations that program complaint investigations establish a proper basis for final determinations), make final determinations on both the merits and required corrective action, and, where applicable, make recommendations to the Secretary that relief be granted under 7 U.S.C. 6998(d) notwithstanding the finality of National Appeals Division decisions, as to complaints filed under parts 15a, 15b, and 15d of this title, except in those cases where the Assistant Secretary for Civil Rights has participated in the events that gave rise to the matter.

(14) Conduct civil rights investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(17) *Related to Equal Employment Opportunity (EEO).* Is designated as the Department's Director of Equal Employment Opportunity with authority:

(i) To perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority:

(A) To make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program.

(B) To provide EEO services for managers and employees.

(C) To make final agency decisions on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(ii) Administer the Department's EEO program.

(iii) Oversee and manage the EEO counseling function for the Department.

(iv) Process formal EEO complaints by employees or applicants for employment.

(v) Investigate Department EEO complaints and make final decisions on EEO complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(vi) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(vii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(viii) Coordinate the Department's affirmative employment program, special emphasis programs, Federal

Equal Opportunity Recruitment Program, EEO evaluations, and development of policy.

(ix) Provide liaison on EEO programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(18) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(19) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(20) Make final determinations, or enter into settlement agreements, on discrimination complaints in federally conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(21) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(22) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

(23) *Related to outreach.*

(i) Develop policy guidelines and implement a Departmental outreach program which delivers services to traditionally under-served customers.

(ii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iii) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(iv) Serve as the Department's official outreach spokesperson.

(v) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vi) Develop a system to monitor the delivery of outreach grants and funding.

(vii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(24) *Related to conflict management.*

(i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities.

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, Departmental program disputes, and contract and procurement disputes.

(iii) Provide ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other officer or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department.

(v) Coordinate ADR activities throughout the Department.

(vi) Monitor agency ADR programs and report at least annually to the Secretary on the Department's ADR activities.

(25) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.42 [Amended]

■ 7. Remove § 2.42(a)(3)(ix) and redesignate § 2.42(a)(3)(x) as § 2.42(a)(3)(ix).

■ 8. Add § 2.43(a)(45) to read as follows:

§ 2.43 Administrator, Foreign Agricultural Service.

(a) * * *

(45) Support remote sensing activities of the Department and research with satellite imagery including:

(i) Providing liaison with U.S. space programs;

(ii) Providing administrative management of the USDA Remote Sensing Archive and the transfer of satellite imagery to all USDA agencies;

(iii) Coordinating all agency satellite imagery data needs; and

(iv) Arranging for acquisition, and preparation of imagery for use to the extent of existing capabilities.

* * * * *

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

■ 9. Revise § 2.85(a) to read as follows:

§ 2.85 Director, Office of Intergovernmental Affairs.

(a) Delegations. Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Intergovernmental Affairs:

(1) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;

(viii) International City Managers Association;

(ix) U.S. Conference of Mayors; and

(x) Such other State and Federal agencies, departments, and organizations as are necessary in carrying out the responsibilities of this office.

(2) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(3) Serve as the USDA contact with the Advisory Commission on

Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to State and local governments of proposed changes in Department programs that affect such governments.

(4) Act as the Department representative for Federal executive board matters.

(5) Serve as the official with the principal responsibility for the implementation of Executive Order 13175, including consultation and collaboration with tribal officials, and coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

* * * * *

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.92 [Amended]

■ 10. Remove § 2.92(a)(24) and redesignate §§ 2.92(a)(25) and (26) as §§ 2.92(a)(24) and (25).

§ 2.90 [Removed]

■ 11. Remove and reserve § 2.90.

Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

■ 12. Revise § 2.300 to read as follows:

§ 2.300 Director, Office of Civil Rights.

(a) Pursuant to § 2.25, the following delegations of authority are made by the Assistant Secretary for Civil Rights to the Director, Office of Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department.

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(vii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(viii) Actions to develop and implement the Department's Federal Women's Program.

(ix) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Investigate (or make determinations that program complaint investigations establish a proper basis for final determinations), make final determinations on both the merits and required corrective action, and, where applicable, make recommendations to the Secretary that relief be granted under 7 U.S.C. 6998(d) notwithstanding the finality of National Appeals Division decisions, as to complaints filed under parts 15a, 15b, and 15d of this title, except in those cases where the Director, Office of Civil Rights, has participated in the events that gave rise to the matter.

(14) Conduct civil rights investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(17) *Related to Equal Employment Opportunity (EEO).* Provide support to the Assistant Secretary for Civil Rights who serves as the Department's Director of Equal Employment Opportunity, with authority to:

(i) Perform the functions and responsibilities of that position under

29 CFR part 1614, including the authority:

(A) To make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program.

(B) To provide EEO services for managers and employees.

(C) To make final agency decisions on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice

(ii) Administer the Department's EEO program.

(iii) Oversee and manage the EEO counseling function for the Department.

(iv) Process formal EEO complaints by employees or applicants for employment.

(v) Investigate Department EEO complaints and make final decisions on EEO complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(vi) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(vii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(viii) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, EEO evaluations, and development of policy.

(ix) Provide liaison on EEO programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(18) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(19) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(20) Make final determinations, or enter into settlement agreements, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(21) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

(22) *Related to outreach.*

(i) Develop policy guidelines and implement a Departmental outreach program which delivers services to traditionally under-served customers.

(ii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iii) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(iv) Serve as the Department's official outreach spokesperson.

(v) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vi) Develop a system to monitor the delivery of outreach grants and funding.

(vii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(24) *Related to conflict management.*

(i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities.

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, Departmental program disputes, and contract and procurement disputes.

(iii) Provide ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other officer or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department.

(v) Coordinate ADR activities throughout the Department.

(vi) Monitor Agency ADR programs and report at least annually to the Secretary on the Department's ADR activities.

(25) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

(b) [Reserved]

For Part 2, Subparts A, C, and P:

Dated: May 14, 2004.

Ann M. Veneman,

Secretary of Agriculture.

For Part 2, Subpart F:

Dated: May 18, 2004.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

For Part 2, Subpart O:

Dated: May 18, 2004.

Mary K. Waters,

Assistant Secretary for Congressional Relations.

For Part 2, Subpart R:

Dated: June 10, 2004.

Vernon B. Parker,

Assistant Secretary for Civil Rights.

[FR Doc. 04–13746 Filed 6–18–04; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–76–AD; Amendment 39–13677; AD 2004–12–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F series airplanes, that currently requires repetitive inspections to verify operation of the remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. This amendment requires the existing actions per a later service bulletin revision. The actions specified by this AD are intended to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to one or more inoperable RCCBs of the AC cabin bus switch during smoke and fume isolation procedures. This action is intended to address the identified unsafe condition.

DATES: Effective July 26, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 2004.

The incorporation by reference of Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as August 23, 2000 (65 FR 48362, August 8, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–15–14, amendment 39–11846 (65 FR 48362, August 23, 2000), which is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published in the **Federal Register** on April 1, 2004 (69 FR 17082). The action proposed to require repetitive inspections to verify operation of the remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 197 airplanes of the affected design in the worldwide fleet. The FAA estimates that 81 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–15–14 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $5,265, or $65 per airplane, per inspection cycle.

The new actions that are required in this AD action will take approximately 1 or 2 work hours per airplane (depending on airplane configuration) to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $65 or $130 per airplane (depending on airplane configuration), per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11846 (65 FR 48362, August 23, 2000), and by adding a new airworthiness directive (AD), amendment 39–13677, to read as follows:

2004–12–16 McDonnell Douglas: Amendment 39–13677. Docket 2003–NM–76–AD. Supersedes AD 2000–15–14, Amendment 39–11846.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent propagation of smoke and fumes in the cockpit and passenger cabin due to one or more inoperable remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch during smoke and fume isolation procedures, accomplish the following:

Requirements of AD 2000–15–14, Amendment 39–11846

Inspection

(a) Within 45 days after August 23, 2000 (the effective date of AD 2000–15–14), perform an inspection to verify operation of the RCCBs of the AC cabin bus switch in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000.

Condition 1 (Proper Operation): Repetitive Inspections

(1) If all RCCBs are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Condition 2 (Improper Operation): Replacement and Repetitive Inspections

(2) If any RCCB is not operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

New Actions Required by This AD

Inspection

(b) Within 45 days after the effective date of this AD, perform an inspection to verify operation of the RCCBs of the AC cabin bus switch in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003. Accomplishment of this inspection ends the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD.

Condition 1 (No Circuit Breaker Failure): Repetitive Inspections

(1) If all RCCBs are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Condition 2 (Circuit Breaker Failure): Replacement and Repetitive Inspections

(2) If any RCCB is not operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Difference Between AD and Referenced Service Bulletin

(c) Although the service bulletin referenced in this AD specifies to submit certain information to the airplane and circuit breaker manufacturers, this AD does not include such a requirement.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 2000–15–14, amendment 39–11846, are approved as alternative methods of compliance with this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000; and Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000, was approved previously by the Director of the Federal Register as of August 23, 2000 (65 FR 48362, August 8, 2000).

(3) Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on July 26, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13565 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–35–AD; Amendment 39–13676; AD 2003–19–14 R1]

RIN 2120–AA64

Airworthiness Directives; BURKHART GROB LUFT—UND RAUMFAHRT GmbH & CO KG Models G103 TWIN ASTIR, G103A TWIN II ACRO, and G103C TWIN III ACRO Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA revises Airworthiness Directive (AD) 2003–19–14 which applies to all BURKHART GROB LUFT—UND RAUMFAHRT GmbH & CO KG (GROB) Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes. AD 2003–19–14 currently requires you to modify the airspeed indicators, install flight speed reduction and aerobatic maneuver restrictions placards (as applicable), and revise the flight and maintenance manual. This AD retains all the actions in AD 2003–19–14 for all Model G103 TWIN ASTIR sailplanes, removes Model G103 TWIN II from the applicability, and retains the aerobatic maneuver restriction for Model G103C TWIN III ACRO sailplanes. This AD also requires you to revise the modification to airspeed indicators, install a revised flight speed reduction placard, and revise the flight and maintenance manual for certain Models G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes. Simple Aerobatic maneuvers are also re-approved for Model G103A TWIN II ACRO sailplanes. An option for modifying the rear fuselage for Models G103A TWIN II ACRO and G103C TWIN III ACRO sailplanes that terminates the flight limitation restrictions for aerobatic maneuvers is also included in this AD.

DATES: This AD becomes effective on August 12, 2004.

As of August 12, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; e-mail: *productsupport@grob-aerospace.de.*

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–35–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: Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports from the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, that the safety margins established into the design of the fuselage may not have been sufficient to sustain limit loads during certain maneuvers and during flight at certain speeds caused us to issue AD 2003–19–14, Amendment 39–13317 (68 FR 56152, September 30, 2003). AD 2003–19–14 requires the following:

—Modifying the airspeed indicators;
—Installing placards restricting flight speeds, prohibiting aerobatic maneuvers, and restricting load limits; and
—Incorporating revisions to the flight and maintenance manuals.

AD 2003–19–14 was issued as an interim action until the manufacturer completed further investigations into the effects of certain flight conditions on the fuselage structure and the development of corrective procedures.

What has happened since AD 2003–19–14 to initiate this AD action? The manufacturer conducted further static strength tests to verify the safety margin of the fuselage on the affected sailplanes. The results of these tests verified the following:

For Model G103 TWIN ASTIR sailplanes:

—Retain all flight limitation restrictions in AD 2003–19–14.

For Model G103 TWIN II sailplanes:

—Reinstate the original flight speed limitations and maneuver operations.

For Model G103A TWIN II ACRO (utility category) sailplanes:

—Reinstate the original flight speed limitations and maneuver operations; and
—Allow only basic aerobatic maneuvers (spins, lazy eights, chandelles, stall turns, steep turns, and positive loops).

For Model G103A TWIN II ACRO (aerobatic category) sailplanes:

—Reinstate the original flight speed limitations except for rough air (V_B) and maneuvering speeds (V_A); and
—Allow only basic aerobatic maneuvers (spins, lazy eights, chandelles, stall turns, steep turns, and positive loops).

For Model G103C TWIN III ACRO sailplanes:

—Increase airspeed limits specified in AD 2003–19–14 but maintain a reduction from the original limitations; and
—Retain restrictions in AD 2003–19–14 on all aerobatic flights, including simple maneuvers, and cloud flying.

The manufacturer has also developed a modification for Models G103A TWIN II ACRO (aerobatic category) and G103C TWIN III ACRO sailplanes (aerobatic category). When this modification is incorporated, full acrobatic status is restored to these sailplanes.

What is the potential impact if FAA took no action? If not prevented, damage to the fuselage during limit load flight could result in reduced structural integrity. This condition could lead to loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain GROB Models G103 TWIN ASTIR, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 5, 2004 (69 FR 11111). The NPRM proposed to retain all the actions in AD 2003–19–14 for all Model G103 TWIN ASTIR sailplanes, remove Model G103 TWIN II from the applicability, and retain the aerobatic maneuver restriction for Model G103C TWIN III ACRO sailplanes. The NPRM also proposed to require you to revise the modification to airspeed indicators, install a revised flight speed reduction placard, and revise the flight and maintenance manual for certain Models G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes. Simple Aerobatic maneuvers were also proposed to be re-approved for Model G103A TWIN II ACRO sailplanes. An option for modifying the rear fuselage for Models G103A TWIN II ACRO and G103C TWIN III ACRO sailplanes that terminates the flight limitation restrictions for aerobatic maneuvers was also included in the NPRM.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the 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.

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 94 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the modifications to the airspeed indicators, flight limitations placards, and revising the flight and maintenance manual:

Labor cost	Parts cost	Total cost per Sailplane	Total Cost on U.S. operators
1 workhour × $65 = $65	Not applicable.	$65	$65 × 94 =$6,110

We estimate the following costs to accomplish the fuselage modification on 35 of the affected sailplanes in the aerobatic category:

Labor cost	Parts cost	Total cost per sailplane
30 workhours × $65 = $1,950	$5,307	$7,257

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–35–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 removing Airworthiness Directive (AD) 2003–19–14, Amendment 39–13317 (68 FR 56152, September 30, 2003), and by adding the following new airworthiness directive (AD):

2003–19–14 R1 BURKHART GROB LUFT– UND RAUMFAHRT GmbH & CO KG: Amendment 39–13676; Docket No. 2003–CE–35–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on August 12, 2004.

What Other ADs Are Affected by This Action?

(b) This AD revises AD 2003–19–14.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category:

Model	Serial numbers
G103 TWIN ASTIR	All serial numbers.
G103A TWIN II ACRO (aerobatic category).	3544 through 34078 with suffix "K".
G103C TWIN III ACRO (aerobatic category).	34101 through 34203.

What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent the possibility of damage to the fuselage during limit load flight. Such a condition could result in reduced structural integrity of the fuselage and lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *For G103 TWIN ASTIR sailplanes:* (i) modify the airspeed indicators; (ii) install flight speed, aerobatic maneuver, and load limit restriction placards; and (iii) revise the flight and maintenance manual (2) *For G103A TWIN II ACRO (utility and acrobatic category) and G103C TWIN III ACRO (acrobatic category) sailplanes:* (i) re-set the airspeed indicator to the new placard limitations; and (ii) install the following 2 placards on Model G103A TWIN II ACRO (aerobatic category) sailplanes:	Within the next 10 hours time-in-service (TIS) after October 20, 2003 (the effective date of AD 2003–19–14).	Following GROB Alert Service Bulletin No. ASB315–64/2, dated August 13, 2003.

"Simple Aerobatic" maneuvers (spins, lazy eight, chandelles, stall turns, steep turns, and positive loops) are permitted.

Maximum flying weight		580 kg / 1280 lbs		
Maximum airspeeds:		**km/h**	**kts**	**mph**
In calm air:	V_{NE}	250	135	155
In rough air:	V_B	170	92	105.5
Aerotow:	V_T	170	92	105.5
Winch or auto tow:	V_W	120	65	74.5
Airbrakes extended:	V_{FE}	250	135	155
Maneuvering speed:	V_A	170	92	105.5

(iii) install the following 2 placards on Model G103C TWIN III ACRO (aerobatic category) sailplanes:	Within the next 25 hours time-in-service (TIS) after August 12, 2004 (the effective date of this AD).	Follow GROB Service Bulletin No. MSB315–65, dated September 15, 2003.

All aerobatic maneuvers and cloud flying are prohibited

Maximum flying weight		600 kg / 1323 lbs		
Maximum airspeeds:		**km/h**	**kts**	**mph**
In calm air:	V_{NE}	250	135	155
In rough air:	$V_{B/A}$	170	92	105.5
Aerotow:	V_T	170	92	105.5
Winch or auto tow	V_W	120	65	74.5
Airbrakes extended	V_{FE}	250	135	155
Maneuvering speed	V_A	170	92	105.5

(3) *For G103A TWIN II ACRO (acrobatic category) and G103 TWIN III ACRO (ascrobatic Category) sailplanes:* as an alternative to the flight restrictions in paragraph (e)(2) of this AD, you may install additional stringers in the rear fuselage section. Installing additional stringers terminates the flight restrictions in paragraph (e)(2) of this AD.	At any time after August 12, 2004 (the effective date of this AD).	Follow GROB Service Bulletin No. OSB 315–66, dated October 16, 2003, and Work Instruction for OSB 315–66, dated October 16, 2003.
(4) *For G103A TWIN II ACRO (acrobatic category) and G103C TWIN III ACRO (acrobatic category) sailplanes:* only if you installed the additional stringers specified in paragraph (e)(3) of this AD, do the following: (i) remove the placard prohibiting all aerobatic maneuvers; (ii) install the following flight limitation placard on Model G103A TWIN II ACRO (aerobatic category) sailplanes:		

Maximum flying weight		580 kp / 1280 lbs		
Maximum airspeeds:		km/h	kts	mph
In calm air:	V_{NL}	250	135	155
In rough air:	V_{RA}	180	97	115
Aerotow:	V_T	170	92	105.5
Winch or auto tow:	V_W	120	65	74.5
Airbrakes extended:	V_{FL}	250	135	155
Maneuvering speed:	V_A	180	97	115

(iii) install the following flight limitation placard on Model G103C TWIN II ACRO (aerobatic category) sailplanes:	Prior to further flight after doing the actions in paragraph (e)(3) of this AD.	Follow GROB Service Bulletin No. OSB 315–66, dated October 16, 2003.

Maximum flying weight		600 kp / 1323 lbs		
Maximum airspeeds:		km/h	kts	mph
In calm air:	V_{NL}	280	151	174
In rough air:	V_B	200	108	124
Aerotow:	V_T	185	100	115
Winch or auto tow:	V_W	140	76	87
Airbrakes extended:	V_{FL}	280	151	174
Maneuvering speed:	V_A	185	100	115

May I Request an Alternative Method 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 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You must do the actions required by this AD following the instructions in GROB Alert Service Bulletin No. ASB315–64/2, dated August 13, 2003; GROB Service Bulletin No. MSB315–65, dated September 15, 2003; GROB Service Bulletin No. OSB 315–66, dated October 16, 2003; and GROB Work Instruction for OSB 315–66, dated October 16, 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 GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; e-mail: *productsupport@grob-aerospace.de*. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) German AD Number D–2004–002, dated January 23, 2004, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on June 9, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13566 Filed 6–18–04; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 35, 200, 291, 598, 891, 982 and 983

[Docket No. FR–3482–C–10]

RIN 2501–AB57

Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold, Conforming Amendments and Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; conforming amendments and corrections.

SUMMARY: This final rule makes conforming amendments to HUD's lead-based paint regulations, and certain technical corrections and clarifying changes. Among other things, this rule clarifies HUD's definitions and standards for dust-lead and soil-lead hazards to make them consistent with the final rule of the U.S. Environmental Protection Agency (EPA) on

Identification of Dangerous Levels of Lead, as required by Title X of the Housing and Community Development Act of 1992.

DATES: *Effective Date:* July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Warren Friedman, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW., Room P–3206, Washington, DC 20410–3000; telephone (202) 755–1785, extension 104 (this is not a toll-free number); e-mail: *lead_regulations@hud.gov*. For legal questions, contact John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, Room 9262; telephone (202) 708–0614, extension 5190 (this is not a toll-free number). Persons with hearing or speech impediments may access the above telephone numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

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On September 15, 1999, HUD published a final rule (64 FR 50140) that revised and consolidated the Department's lead-based paint regulations. The revisions implemented sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The September 15, 1999, rule became effective on September 15, 2000, and is found at 24 CFR part 35. Other parts of title 24 were amended to conform to and cite the consolidated regulations in part 35. The purpose of 24 CFR part 35 is to ensure to the extent practicable that housing receiving Federal assistance or being sold by the Federal Government does not have lead-based paint hazards that could cause lead poisoning in young children residing in such housing. As a result of HUD's experience with the rule since its issuance, and to conform HUD's regulations to EPA's rule on Identification of Dangerous Levels of Lead (66 FR 1205, January 5, 2001) under section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), this rule makes several clarifications to 24 CFR part 35 and related provisions at 24 CFR parts 200, 291, 598, 891, 982, and 983. The clarifications of this final rule are as follows:

A. Clarification of the Title of Subpart H of 24 CFR Part 35

The existing title of subpart H of 24 CFR part 35 is "Project-Based Rental Assistance." The existing title is misleading, because some housing assistance programs covered by this subpart provide only an interest rate subsidy and do not provide financial assistance to pay rent. Therefore, this rule removes the word "Rental" from the title of subpart H in the list of subparts and sections at the beginning of part 35 as well as in the text of the rule.

B. Deletion of References to the Comprehensive Improvement Loan Program

The regulations at 24 CFR part 35 have several references to the Comprehensive Improvement Loan Program (CILP). This program is no longer funded, so no new rehabilitation projects will begin. All funding of CILP projects ceased before September 15, 2000, the effective date of the final rule (*see* 64 FR 50140). Therefore, this final rule removes all references to this program, including those in §§ 35.110,

35.910, 35.915, 35.920, 35.930, and 35.935.

C. Conformance With EPA Regulations

HUD's final rule established temporary standards for dust-lead and soil-lead hazards pending promulgation of EPA's related standards pursuant to section 403 of the Toxic Substances Control Act (15 U.S.C. 2683). Federal law requires that EPA set the legal standards for dust-lead and soil-lead hazards (*see* 15 U.S.C. 2683). On January 5, 2001, the EPA published the standards in its final rule, Identification of Dangerous Levels of Lead (66 FR 1206), creating subpart D of 40 CFR part 745 and amending subparts L and O. These EPA standards, effective March 6, 2001, are available from the Internet at *http://www.epa.gov/lead/leadhaz.htm.* Therefore, this rule incorporates the new EPA standards at 24 CFR part 35, which are HUD's final dust-lead and soil-lead standards. The clarifications are in the definitions as well as in the standards. These refinements were made to maximize the consistency of language used in the HUD and EPA regulations and to comply with 15 U.S.C. 2683.

1. *Clarification of definition of "dust-lead hazard" in § 35.110.* This rule replaces the general reference in § 35.110 to "section 403 of the Toxic Substances Control Act" with a more direct citation of the EPA regulation at "40 CFR 745.65." This rule also replaces the word "at" with "equal to" to use language identical to the EPA regulation and makes other minor editorial clarifications.

2. *Clarification of definition of "soil-lead hazard" in § 35.110.* This rule replaces the general reference in § 35.110 to "section 403 of the Toxic Substances Control Act" with a more direct citation of the EPA regulation at "40 CFR 745.65." This rule also removes the actual numerical levels from this definition and makes other minor editorial clarifications. Numerical standards are provided at § 35.1320.

3. *Clarification of § 35.1320 to include reference to the new EPA provision on determinations.* The EPA added a new paragraph to its regulations that restates the standards and conditions under which a lead-based paint inspector or risk assessor determines the presence of lead-based paint or a paint-lead hazard, dust-lead hazard, or soil-lead hazard. (40 CFR 745.227(h)). Therefore, this final rule adds references to the new paragraph (h) of 40 CFR 745.227 in § 35.1320(a) and (b).

4. *Clarification of standards for dust-lead hazards in § 35.1320(b)(2).* The EPA rule at 40 CFR 745.227(h) sets the standards for dust-lead and soil-lead hazards. The HUD standards listed in 24 CFR part 35 differ from EPA's final rule. This rule clarifies and conforms the HUD standards at § 35.1320(b) to the EPA standards, as required by both the HUD regulation and Title X of the 1992 Housing and Community Development Act (42 U.S.C. 4851 *et seq.*). The differences reflected in clarifications of this rule are (i) the new EPA standard for dust-lead in window troughs at the time of clearance examinations is 400 micrograms per square feet ($\mu g/ft^2$), whereas the previous HUD standard was 800 $\mu g/ft^2$; (ii) for composite dust samples during clearance examinations, the new EPA rule requires that the relevant single-sample standard (*i.e.*, for floors, interior window sills, or window troughs) must be divided by one-half the number of subsamples, allowing from two to four subsamples, whereas the previous HUD standards had no such requirement; and (iii) the new EPA rule at 40 CFR 745.227(h)(3)(i) states that a dust-lead hazard is present "when the weighted arithmetic mean lead loading for all single surface or composite samples" is equal to or greater than the standard for floors or interior window sills, whereas the previous HUD standards did not have a similar provision.

5. *Clarification of soil-lead standards for non-play areas in § 35.1320(b)(2)(ii)(B).* The new EPA hazard standard for bare soil in non-play areas is 1,200 parts per million (ppm) (40 CFR 745.65(c)). The previous HUD standard was 2,000 ppm. In HUD's definitions of "soil-lead hazard" and "dust-lead hazard", the regulation states that the HUD standard is "* * * equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency, or if such levels are not in effect, the following * * *." Because the new EPA standards became effective in 2001, this final rule conforms the HUD standards to the new EPA standard, as required by Title X of the 1992 Housing and Community Development Act. Therefore, HUD's regulation at 24 CFR 35.1320(b)(2)(ii)(B) is refined as follows: "For the rest of the yard, a soil-lead hazard is bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding 1,200 parts per million (micrograms per gram)."

6. *Clarification regarding teeth marks as evidence of chewable surface.* The new EPA regulation located at 40 CFR 745.65(a)(3) states that a paint-lead hazard includes "any chewable lead-painted surface on which there is evidence of teeth marks." The previous HUD rule did not use the particular term "teeth marks" as evidence of chewing, but currently states at 24 CFR 35.1330(d)(1) that "chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, * * *." Therefore, to maximize consistency between EPA and HUD regulations, this final rule inserts "of teeth marks, indicating" after "evidence" in the immediately preceding quoted text.

7. *Clarification of standard for replacement soil.* The new EPA regulation of January 5, 2001 (66 FR 1205), states at 40 CFR 745.227(e)(7)(i)(A) that if soil is removed to abate a soil-lead hazard "the soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm." The previous HUD regulation at 24 CFR 35.1330(f), which pertained to interim control treatments of soil-lead hazards, set a standard of 200 $\mu g/g$ for impermanent surface covering material. To maximize consistency between EPA and HUD regulations, this final rule substitutes "400 $\mu g/g$" for "400 ppm" in 24 CFR 35.1330(f)(3)(i)(C). HUD recommends, but does not require, that replacement soil have a lead content no more than 200 ppm to incorporate a reasonable margin of safety.

8. *Clarification of effective date of the EPA certification rule in § 35.165.* The EPA rule of August 6, 1999 (64 FR 42849), extended the effective dates under section 402 of the Toxic Substances Control Act for certification of individuals and firms and use of work practice standards (see 15 U.S.C. 2682). To avoid possible confusion HUD amended its rule on January 21, 2000 (65 FR 3386), citing, "the date specified in 40 CFR 745.239(b)," rather than list a specific date which had not yet arrived. The EPA regulation has since gone into effect and thus, the specific effective date, March 1, 2000, is inserted into the HUD rule to give it greater clarity. (§§ 35.165(a)(1),(2); (b)(2)(3); and (d)(1)(2)).

D. Clarification of §§ 35.110, 35.125(a), 35.615(a), 35.710(a), 35.810(a), 35.910(a), 35.1110(a), and 35.1210(a) Explaining That a Visual Assessment Is Not Considered an Evaluation and Does Not, by Itself, Require a Notice to Occupants of the Results of an Evaluation

Several parties asked HUD whether after a visual assessment for deteriorated paint, when such a visual assessment is the only evaluative activity that is required and conducted, a notice of evaluation must be provided to

occupants in accordance with § 35.125. HUD's regulations require that a visual assessment to identify deteriorated paint be conducted in housing receiving certain types of assistance. HUD requires that either occupants be notified of the results of an evaluation conducted in housing in which they live, or if a landlord or property owner elects to assume that lead exists and the regulation requires an evaluation, the occupants be notified that a presumption of the existence of lead-based paint hazards was made in place of testing.

HUD does not require that a notice of evaluation or presumption be provided after conducting only a visual assessment for deteriorated paint, because a visual assessment only produces information that most people could obtain by themselves by simply looking at painted surfaces.

Section 35.1010(a) states that, "A visual assessment is not considered an evaluation for purposes of this part," and § 35.1210(a) states that, "A visual assessment is not an evaluation." The term "evaluation" means only procedures that include the measurement of the amount of lead in paint, dust, or soil. Also, the definition of "evaluation" in § 35.110 does not include mention of a visual assessment. Nevertheless, because HUD has received numerous questions as to whether a notice of evaluation or presumption is required after a visual assessment, this rule inserts additional statements of the meaning in several appropriate places in the rule—the definition of "visual assessment" in §§ 35.110, 35.125(a), 35.615(a), 35.710(a), 35.810(a), 35.910(a), and 35.1110(a). Also, the relevant statement at § 35.1210(a) is edited to be identical to such statements in other subparts. The statement repeated in the sections listed in the prior two sentences is, "A visual assessment alone is not considered an evaluation for the purposes of this part." In addition, at § 35.125(a), this document adds the following statement: "If only a visual assessment alone is required by this part, and no evaluation is performed, a notice of evaluation or presumption is not required."

E. Clarification of § 35.125(a)(1)(i) Requiring Inclusion of Dates of Evaluation in Notices of Evaluation

Section 35.125(a) describes, among other things, the required content of notices to occupants of the results of evaluations. The list of information to be included in notices of evaluation does not include the date of the evaluation, an obvious omission. The date of a risk assessment is important to occupants because risk assessments go out of date, typically in 12 months (*see* § 35.165(b)(1)). Requiring inclusion of the date of the evaluation in notices to occupants is not a burden to owners because it is readily available information—it must be on the evaluation report—in accordance with EPA regulations at 40 CFR 745.227(b), (c), and (d). This rule corrects this omission by adding "dates" to § 35.125(a)(1)(i) so that it reads, "A summary of the nature, dates, scope, and results of the evaluation." This rule does not make a similar correction to the list of information that must be in a notice of presumption because the owner made the presumption, and the date the owner did so, as distinguished from the date of the notice, is not necessarily a matter of record.

F. Clarification of § 35.125(b) Requiring Inclusion of the Dates of the Hazard Reduction Activity and the Date of the Notice in a Notice of Hazard Reduction Activity

Similarly, the list of information to be included in a notice of hazard reduction activity, which is provided at § 35.125(b)(1)(i), does not include the dates associated with the performance of the hazard reduction activity. These dates also are readily available to the owner because they must be on an abatement report, in accordance with EPA regulations at 40 CFR 745.227(e)(10)(i). Further, the dates must be on a report of hazard reduction activities other than abatement, in accordance with HUD regulations at § 35.1340(c)(2)(i), which require the date or dates of the clearance examination. This rule corrects the omission by adding "dates," to § 35.125(a)(1)(i) so that it reads, "A summary of the nature, dates, scope, and results (including clearance) of the hazard reduction activities."

The list of information to be included in a notice of evaluation or presumption is provided at §§ 35.125(a)(1) and (2) and includes, among other things, the date of the notice itself. However, the list of information to be included in a notice of hazard reduction activity, which is provided at § 35.125(b)(1), does not include the date of the notice. This rule corrects this obvious omission by adding a new paragraph (b)(1)(iv) to § 35.125 that reads, "The date of the notice."

G. Clarification of § 35.125(b) Explaining That a Notice of Hazard Reduction Activity Is Not Required if a Clearance Examination Is Not Required

HUD's regulation states, at § 35.1340(g), that "Clearance is not required if maintenance or hazard reduction activities in the worksite do not disturb painted surfaces of a total area more than that set forth in § 35.1350(d)." The surface areas stated at § 35.1350(d) are known as the "de minimis" areas, which are small areas of paint, which, if disturbed, are not expected to generate enough dust to create a significant risk of human exposure to lead. It follows that a notice to occupants of the results of hazard reduction activity should not be required if a clearance examination is not required, because there is no information about the presence or absence of risk to transmit to occupants. This rule, therefore, incorporates such a statement in a new paragraph (3) of § 35.125(b) that reads, "Provision of a notice of hazard reduction is not required if a clearance examination is not required."

H. Clarification of § 35.915 and § 35.925, Regarding Calculation of the Amount of Federal Rehabilitation Assistance

This rule clarifies the instructions at 24 CFR 35.915 on the method of calculating the amount of Federal rehabilitation assistance, an amount used in subpart J. This calculation must be done correctly to determine which of three sets of lead-based paint requirements a rehabilitation project must comply with, *i.e.*, those for projects receiving no more than $5,000, $5,001 to $25,000, or more than $25,000 in Federal rehabilitation assistance.

HUD considers all the Federal funds that make a rehabilitation project possible to be Federal rehabilitation assistance, regardless of the use of such funds. For example, under the Community Development Block Grant program or the Home Investment Partnerships (HOME) program, if program funds are used to acquire a property for rehabilitation, those acquisition funds are considered to be rehabilitation assistance, as well as any Federal funds used for construction activities. However, the statute indicates that the stringency of the requirements should bear some relationship to whether the extent of improvements being provided to the property is "substantial." The concept of "substantial" rehabilitation implies a major amount of construction that is measured in part by so-called "hard" costs, *i.e.*, labor, materials, equipment and the like, as opposed to administrative or design costs.

Thus, there are two concepts of what constitutes Federal funds for rehabilitation projects for the purposes of implementing the statute: total

Federal funds flowing to the project and the hard costs of rehabilitation. The statute is not precise on which concept should apply. The statute calls for "reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than $25,000 per unit in Federal funds" or "abatement of lead-based paint hazards in the course of *substantial* rehabilitation projects receiving more than $25,000 per unit in Federal funds" (emphasis added). (*See* generally, 42 U.S.C. 4822.)

HUD, in writing its regulation, was aware of possible results of selecting one concept of "Federal funds" or the other. If HUD chose to count only Federal funds being used for the hard costs of rehabilitation, grantees might allocate as much of the Federal funds as possible to acquisition or some other non-construction purpose. On the other hand, if HUD chose to count all Federal assistance, regardless of the use of the funds, the result might be that many projects that would not reasonably be considered to be "substantial rehabilitation" would be classified in the "more than $25,000" category.

To resolve the issue, the Department decided to use a dual threshold method to determine the amount of Federal assistance. The grantee would calculate both the total Federal assistance per dwelling unit (regardless of the use of the funds) *and* the per unit hard costs of rehabilitation (regardless of the source of funds). The level of regulatory assistance for determining the lead-based paint hazard reduction requirements would be the lesser of the two numbers.

HUD provided, at § 35.925, examples of how grantees must consider both the total per unit amount of Federal assistance and the hard costs of rehabilitation in determining the applicable requirements. However, the dual threshold approach was not clearly reflected in the instructions in § 35.915 on the method of calculating the level of Federal rehabilitation assistance for a given project. This rule corrects this shortcoming in subpart J. The correction includes a change to the title of § 35.915 as well as changes to the text. The section title is also changed in the list of sections at the beginning of 24 CFR part 35. This rule also amends the example of the calculation at § 35.915(c)(2) and moves it to § 35.925, which is the section that provides examples of determinations of applicable requirements. These changes make the two sections of the rule clearer and more internally consistent.

I. Clarification of §§ 35.930(c) and (d) Explaining Requirements Pertaining to Reduction of Lead-Based Paint Hazards Created by Rehabilitation Work

HUD requires, at §§ 35.930(c) and (d), that there be hazard reduction of "all lead-based paint hazards identified by the paint testing or risk assessment" *and* of "any lead-based paint hazards created as a result of the rehabilitation work" in housing receiving Federal rehabilitation assistance of more than $5,000 per unit. Section 35.930(c) requires that hazards be reduced by interim controls, at a minimum, and § 35.930(d) requires that hazards be abated. After receiving many questions on the meaning and implications of the phrase, "any lead-based paint hazards created as a result of the rehabilitation work," HUD has concluded that this provision is unnecessarily confusing, and therefore is clarifying it.

It is clear how a grantee or other recipient of Federal rehabilitation assistance will determine what lead-based paint hazards are identified by the paint testing and the risk assessment, because the risk assessor must provide a report identifying the hazards and listing acceptable methods of controlling such hazards. The risk assessment is to be conducted before the rehabilitation work begins, so the grantee can program the hazard reduction work with the rehabilitation. It is not clear, however, how a grantee or other recipient is to determine whether additional lead-based paint hazards, not identified by the risk assessment, are being created during the course of the rehabilitation work and, if they are being created, what should be done to control or abate such hazards. The Department has provided guidance and training to state and local program managers and rehabilitation contractors and workers on the use of lead-safe work practices during rehabilitation, but it has not provided definitions or guidance on identifying lead-based paint hazards created by rehabilitation that must be abated. At what point, for example, does a cut in a wall that is painted with lead-based paint become a lead-based paint hazard that must be abated, and what exactly must be abated?

HUD's objective in including the questionable phrase in the regulation was to implement the statute and assure that rehabilitation be conducted using lead-safe work practices, which are required in association with both interim controls and abatement. However, the wording is ambiguous, and it is necessary to replace the phrase with a clear statement that lead-safe work practices must be used throughout rehabilitation work covered by the rule. Therefore, this rule removes from §§ 35.930(c) and (d) the requirement of reduction of lead-based paint hazards created by the rehabilitation work and inserts a statement requiring safe work practices. There is no change in the burden on owners, and the tenants are protected in the same manner as before, because clearance is performed.

J. Clarification of § 35.1015(c) Explaining That Ongoing Lead-Based Paint Maintenance Is Required in Subpart K

HUD's regulation at § 35.1015(c) requires that, for properties subject to subpart K, "The grantee or participating jurisdiction shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a)." This provision has generated two questions: (1) Under what conditions does this requirement apply? and (2) If the grantee or participating jurisdiction is not the owner or operator of the property, as is often the case, can the grantee or participating jurisdiction assign the responsibilities of ongoing lead-based maintenance to the owner or operator of the property?

With regard to the first question, the preamble to HUD's final rule (at 64 FR 50175) states that ongoing lead-based paint maintenance would be required in subpart K "where there is a continuing and active financial relationship with the property," but this policy is not stated in the regulation. Affected parties have asked whether mortgage insurance is a continuing and active financial relationship. On that question, the rule states at § 35.1000(a), that programs covered by this subpart "do not include mortgage insurance, sale of federally owned housing, project-based or tenant-based rental assistance, rehabilitation assistance, or assistance to public housing. For requirements pertaining to those activities or types of assistance, see the applicable subpart of this part." Since subpart K does not cover mortgage insurance, it is not covered by the requirements of § 35.1015(c). To clarify this issue, this rule inserts language at the end of § 35.1015(c) that provides if the dwelling unit or residential property has a continuing, active, financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this subpart.

With regard to the second question, the rule states at § 35.1000(b) that, for properties subject to subpart K, "The

grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart." Therefore, no change is necessary to clarify the policy regarding whether the grantee or participating jurisdiction can make another party responsible for ongoing lead-based paint maintenance.

K. Clarification of § 35.1215(b) Explaining That Paint Stabilization of Deteriorated Painted Surfaces Is Required for Housing Receiving Tenant-Based Rental Assistance To Meet Housing Quality Standards

HUD's regulation states at § 35.1215(b) that owners of housing receiving tenant-based rental assistance covered by this section must complete paint stabilization of any deteriorated paint found by the visual assessment conducted by the administering agency (usually a local public housing agency (PHA)) within a specified period of being notified of the results of the visual assessment. The completion of the paint stabilization is required for the unit to meet Housing Quality Standards (HQS) (*see* 24 CFR part 982, Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, especially §§ 982.401(a)(3) and (j)). The unit remains in non-compliance with the HQS until the paint stabilization is completed or this unit is no longer covered by this subpart because the unit is no longer under a housing assistance payment (HAP) contract with the housing agency. Once the unit leaves the program, the process starts anew if and when another family is requesting the unit.

While this is explicitly noted in the case of a child with an environmental intervention blood lead level (§§ 35.1225(a) and (c)), it was omitted from § 35.1215(b). Therefore, this rule adds a new sentence to the end of § 35.1215(b): "If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of HQS until the hazard reduction is completed or the unit is no longer covered by this subpart because the unit is no longer under a HAP contract with the housing agency."

L. Clarification of § 35.1215 Explaining That Time Extensions May Be Provided To Complete Paint Stabilization in Housing Receiving Tenant-Based Rental Assistance

HUD's regulation at § 35.1215(b) states that owners of housing receiving tenant-based rental assistance must complete paint stabilization of any deteriorated paint found by the visual assessment conducted by the administering agency (usually a local PHA) within 30 days of being notified of the results of the visual assessment. No provision is made for an extension of this 30-day period by the agency administering the program (except for the delay when weather conditions are unsuitable for conventional construction activities for exterior surfaces, § 35.115(a)(12)). PHAs have authority to grant reasonable time extensions to owners for corrections of other violations of the housing quality standards for the Housing Choice Voucher Program. It is reasonable that such authority be available for the correction of deteriorated paint. Accordingly, this document adds a new § 35.1215(d): "The designated party may grant the owner an extension of time to complete paint stabilization and clearance for reasonable cause, but such an extension shall not extend beyond 90 days after the date of notification of the owner of the results of the visual assessment."

M. Clarification of § 35.1220 Explaining the Role of Owner in Incorporating Ongoing Lead-Based Paint Maintenance Activities

HUD's regulation at § 35.1220 requires the owner of a property receiving tenant-based rental assistance to incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a). HUD was asked whether the PHA is responsible for this ongoing activity when the Federal housing program is the Section 8 Housing Choice Voucher Program. The question is based on the identification in § 35.1200(b)(2)(ii) of the PHA as the designated party for purposes of that program, and the general requirement of § 35.1355(a)(7) that the designated party "shall * * * stabilize the deteriorated paint or repair the encapsulation or enclosure * * *."

HUD's rationale for stating in § 35.1220 that the owner must comply with ongoing lead-based maintenance requirements is that in all HUD tenant-based rental assistance programs, it is the owner who is responsible for keeping the assisted property in compliance with HQS or other similar standards. While the role of the designated party is to be "responsible for complying with applicable requirements" (*see* definition of designated party in § 35.110), HUD views that responsibility to be broad. In subpart L, as in subparts J and K, the rule specifically authorizes the designated party to "assign to a subrecipient or other entity the responsibilities of the designated party in this subpart," and the assignee can be the owner (*see* § 35.1200(b)(7)). Nevertheless, HUD is clarifying this identification to remove potential uncertainty by adding the phrase, "Notwithstanding the designation of the PHA, grantee, participating jurisdiction or IHBG recipient as the designated party for this subpart," to the beginning of § 35.1220.

N. Clarification of § 35.1320(a) Explaining the Qualification for Performance of Paint Testing

HUD's regulation at § 35.110 defines "paint testing" as "the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced." HUD has received several questions as to whether paint testing can be done by someone other than a certified lead-based paint inspector or risk assessor. This rule adds "paint testing" to the title of § 35.1320(a) and adds a statement in the same paragraph that "paint testing to determine the presence or absence of lead-based paint on deteriorated paint surfaces or surfaces to be disturbed or replaced shall be performed by a certified lead-based paint inspector or risk assessor."

O. Clarification of § 35.1320(b) To Include Lead Hazard Screens

The HUD standards include dust-lead standards for lead-hazard screens at § 35.1320(b)(2), but there is no mention of this in the title of § 35.1320(b) or in the introductory text of § 35.1320(b)(1). Therefore, to clarify the rule, this rule adds "lead hazard screens" to the title of § 35.1320(b) and inserts "and lead hazard screens" after "Risk assessments" in § 35.1320(b)(1) to make the terminology in the title and introductory section consistent.

P. Editing of § 35.1320(c) To Include a Recommendation That Sampling Technicians Provide a Plain-Language Summary for Occupants

Section 35.1320(c) of HUD's regulations recommends, but does not require, "that lead-based paint inspectors and risk assessors provide a summary of the results suitable for posting or distribution to occupants * * *." The purpose of this recommendation is to assist property owners in complying with the requirement to provide notices to occupants regarding the results of hazard evaluations or the clearance examination following hazard reductions (*see* §§ 35.125(b) and (c)). For consistency among the several lead-

hazard evaluation disciplines, this rule adds "sampling technicians" to the list of individuals who could prepare the summary recommended by paragraph (c) of § 35.1320. The function of the summary is being clarified to indicate that it is to be written in plain language suitable for comprehension by lay people. (Additional information may be attached to the plain-language summary.) As a result, in paragraph (c) of § 35.1320, this rule adds the phrase "plain-language" before "summary of the results" to describe the summary.

Q. Clarification of § 35.1330(a)(4) Explaining That Qualification Requirements for Interim Controls Workers Do Not Apply if De Minimis Amounts of Painted Surfaces Are Being Disturbed

Safe work practices and clearance are not required if the area of paint being disturbed is within the de minimis amounts specified at § 35.1350(d). It follows, but it is not stated in the regulation, that persons performing interim controls should not be required to be trained in safe work practices if they are disturbing paint areas less than the de minimis levels. To correct this omission, this rule inserts the following prior to the colon in the first sentence of § 35.1330(a)(4): "except that this supervision or lead-safe work practices training requirement does not apply if the interim controls do not disturb painted surfaces more than the de minimis limits of § 35.1350(d)."

R. Clarification of § 35.1330(a)(4) Explaining the Reference to OSHA Regulations

HUD's regulation at § 35.1330(a)(4) states the qualifications required of persons performing interim controls. The provision begins by stating, "A person performing interim controls must be trained in accordance with 29 CFR 1926.59 and * * *." This is a reference to the hazard communication standard of the Occupational Safety and Health Administration (OSHA). Some training providers have interpreted the reference as a call for training on the entire OSHA lead-in-construction standard, which is not HUD's intent. Therefore, this rule inserts a clarifying phrase before the citation of 29 CFR 1926.59 to reference the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor.

S. Clarification of § 35.1330(a)(4) Regarding Approved Courses for Interim Controls Workers

HUD's regulation at § 35.1330(a)(4) lists certain training courses that satisfy the lead-safe work practices training requirements for interim controls workers and also states that other courses may be approved by HUD after consultation with EPA. HUD's requirement for lead-safe work practices training is separate from OSHA's hazard communication requirement. The list of lead-safe work practices courses in the rule is out of date, because, in accordance with § 35.1330(a)(4)(v), HUD has approved several courses since the publication of the rule. Rather than attempt to keep the list of courses in the rule up to date by continual amendments, this rule removes references to the two named courses from the list in the rule—the ones prepared by the National Environmental Training Association (NETA) and by HUD and the National Association of the Remodeling Industry (HUD/NARI)—and adds the following statement to the end of paragraph (v): "A current list of approved courses is available on the Internet at *http://www.hud.gov/offices/lead* or from the HUD Office of Healthy Homes and Lead Hazard Control by calling (202) 755–1785, extension 104 (this is not a toll-free number)." The list as of today includes both the NETA and the HUD/NARI courses mentioned above.

T. Clarification of § 35.1340(b)(1) Regarding Terminology for Sampling Technicians

The regulations use terminology for persons who are trained to perform clearance examinations under specified conditions and controls, which is outdated. Such persons are identified as "clearance technicians" in the regulations, but the term now being used is "sampling technician" (see, for example, the House Appropriations Committee Report for H.R. 106–286, in regard to the HUD Office of Lead Hazard Control). Therefore, §§ 35.1340(b)(1)(iii) and (iv) are revised to replace, in two instances in each paragraph, the term "clearance technician" with "sampling technician."

U. Clarification of § 35.1340(b)(2)(i) Regarding Exterior Clearance

HUD has received questions about the protocol for clearance examinations in exterior areas. One common question is whether soil sampling is necessary. The answer is no, in conformance with EPA regulations at 40 CFR 745.227(e)(8)(v)(C); for clearance following exterior abatement, § 35.1340(a) applies; and for exterior activities other than abatement, § 35.1340(b) applies. Another common question is whether interior clearance is required if only exterior work has been conducted. The answer is no, if all building openings (windows, doors, vents) in the vicinity of the worksite were sealed during the work to keep dust from the worksite from traveling into interior spaces. In such a case, a visual assessment is required only for visible dust and debris at the work site and on the outdoor living area closet to the treated surface, and for paint chips on the dripline or next to the foundation below any exterior surface where work was performed. This rule amends § 35.1340(b)(2)(i) by adding a new sentence, which reads, "Soil sampling is not required." (**Note** that replacement surface covering material used for interim controls under § 35.1330(f)(3)(i)(C), which must contain no more than 400 parts per million of lead, is typically sampled or otherwise evaluated before installation.) Another new sentence is added to read, "If clearance is being performed after lead-based paint hazard reduction, paint stabilization, maintenance, or rehabilitation that affected exterior surfaces but did not disturb interior painted surfaces or involve elimination of an interior dust-lead hazard, interior clearance is not required if affected window, door, ventilation and other openings are sealed during the exterior work."

V. Clarification of § 35.1340(g) Regarding the Required Extent of Clearance

HUD has received questions as to whether the clearance examination must extend to the entire dwelling unit or common area if the hazard reduction work was conducted in only a part of the unit or area. Generally, unit-wide or common-area-wide clearance is the best practice. However, in conformance with the EPA regulation at 40 CFR 745.227(e)(8)(v)(A), pertaining to clearance after abatement with containment between abated and unabated areas, HUD allows clearance of only the worksite or the containment area following interim controls and other non-abatement activities, provided dust generated during the work has been contained to the area being cleared. This policy is implied in HUD's regulation at § 35.1340(g), but is not explicit because that provision could be interpreted as applying only to rehabilitation with no more than $5,000 of Federal assistance per unit or ongoing lead-based paint maintenance. Therefore, this rule adds

the following two new sentences to the beginning of § 35.1340(g) to address rehabilitation, interim controls, standard treatments, and ongoing maintenance, respectively: "Clearance of only the worksite is permitted after work covered by §§ 35.930, 35.1330, 35.1335, or 35.1355, when containment is used to ensure that dust and debris generated by the work is kept within the worksite. Otherwise, clearance must be of the entire dwelling unit, common area or outbuilding, as applicable."

The procedure for worksite clearance after non-abatement work is modeled after the abatement clearance procedure. The procedure is never more stringent because non-abatement work is no more capable of generating dust and debris than abatement. When non-abatement work is uncontained, clearance includes taking floor and window dust wipe samples in four room equivalents. When the work is contained, clearance includes taking floor and window dust wipe samples in at least four contained room equivalents, and a dust wipe from a nearby floor outside the containment area, preferably along the path where most dust and debris were removed from the contained area. When fewer than four room equivalents are present, all are sampled. Therefore, this rule revises § 35.1340(g) to include a sentence that reads: "When clearance is of an interior worksite which is not an entire dwelling unit, common area, or outbuilding, dust samples shall be taken for paragraph (b) of this section as follows: (1) Sample, from each of at least four rooms, hallways, stairwells, or common areas within the dust containment area: (i) The floor (one sample); and (ii) windows (one interior sill sample and one trough sample, if present); and (2) sample the floor in a room, hallway, stairwell, or common area connected to the dust containment area, within five feet outside the area (one sample)."

Finally, this rule moves the last sentence of § 35.1340(g) to the end of paragraph (b) of § 35.1340, to clarify that clearance is not required after any *de minimis* level work.

W. Clarification of § 35.1350(b) Regarding Training Requirement To Ensure Occupant Protection, Worksite Preparation, and Specialized Cleaning for Work Requiring Safe Work Practices

HUD has received questions about how workers are to know how to perform occupant protection, worksite preparation, and specialized cleaning in cases where the workers have not received training in safe work practices. Such training is required for workers performing interim controls, paint stabilization, ongoing lead-based paint maintenance, or abatement. (For the occupant protection and worksite preparation, supervision by a lead-based paint abatement supervisor can replace training, as provided in § 35.1330(a)(4).) This inconsistency regarding the lack of lead-safe work practices training (or qualified supervision) arises only for rehabilitation under $5,000 of Federal assistance per unit (see § 35.930(b)(2)), when work of the same scope does require training (or qualified supervision) under the other subparts of the rule. Therefore, this rule adds the following sentence to the end of § 35.1350(b), "A person performing this work shall be trained on hazards and either be supervised or have successfully completed one of the specified courses, in accordance with § 35.1330(a)(4)."

X. Clarification of § 35.1355 Regarding Exemption From Maintenance Requirements

This rule clarifies the statement in § 35.1355(a)(1) regarding properties that are exempt from the requirements of ongoing lead-based paint maintenance. Section 35.1355(a)(1) states that the lead-based paint maintenance activities required by § 35.1355(a) need not be conducted if both of the following conditions exist: (1) The property is lead-based paint free, as determined by a lead-based paint inspection, or as a result of removal of all lead-based paint; and (2) if a risk assessment is required by the applicable subpart of the rule, and a current risk assessment indicates that there are no dust-lead or soil-lead hazards present. This two-part standard for an exemption from ongoing lead-based paint maintenance is not consistent with the general exemptions, stated in §§ 35.115(a)(4) and (5), that the regulation does not apply to a property found by a lead-based paint inspection to be free of lead-based paint or in which all lead-based paint has been removed, as determined by a lead-based paint inspector or risk assessor. A property that meets the exemption provisions of § 35.115(a)(4) or (5) is exempt from all requirements of the rule. No additional provisions can be established. Therefore, this rule revises § 35.1355(a)(1) and removes §§ 35.1355(a)(1)(i) and (ii) pertaining to a risk assessment and lead-based paint hazards.

Y. Correction of § 35.1355(b)(1)(iii) Regarding Typographical Error

The third word from the end of § 35.1355(b)(1)(iii) is misspelled. The word should be spelled "enclosures" instead of "inclosures." This rule corrects the spelling to read "enclosures."

Z. Deletion of § 200.810(a)(2) To Correct an Error Pertaining to Indian Housing Activities

This rule corrects an error pertaining to Indian housing activities contained in the September 15, 1999, final rule. The September 15, 1999, final rule revised HUD's mortgage insurance regulations at 24 CFR part 200, subpart O (see 64 FR 50224, amendatory instruction number 14). In so doing, HUD included a provision at § 200.810(a)(2), stating that the section "is also applicable to single family mortgage insurance on Indian reservations (12 U.S.C. 1715z–13) and loan guarantees for Indian housing (25 U.S.C. 4191)." That statement was in error. If HUD guarantees notes or other obligations of an Indian Tribe and the proceeds are used to buy housing, such housing would be subject to 24 CFR part 35, subpart K, not part 200, subpart O. Therefore, this rule removes § 200.810(a)(2) in its entirety.

AA. Correction of § 291.430 Regarding a Typographical Error

Between the fifth and sixth words from the end of § 291.430, the word "to" was omitted. This rule corrects the omission so that the last phrase of the section reads, "apply to activities covered by this subpart."

BB. Correction of Subpart E of 24 CFR Part 598 Regarding Urban Empowerment Zones

This rule corrects an error regarding the Urban Empowerment Zones (EZ) program. HUD has received questions regarding the lead hazard control requirements for that program's rehabilitation, acquisition, leasing, support services, or operation activities. For rehabilitation, subpart J applies (as do supporting subparts A, B, and R); for acquisition, leasing, support services, or operation activities, subpart K applies (as do subparts A, B, and R). In the preamble to the final rule, the Department noted that it had "launched a major restructuring to meet the changing housing and development needs of communities across the country" (64 FR 50142). The EZ program was within the scope of that restructuring, having had at that time recent rulemaking for its Round II (63 FR 19155, April 16, 1998, and 63 FR 53262, October 2, 1998). The September 15, 1999, final Lead-Safe Housing rule did not, however, explicitly describe the EZ program coverage. Under the EZ program for both Rounds II and III,

which are governed by regulations at 24 CFR part 598, the community describes its goals and identifies its methods and commitments to achieve them in its strategic plan. HUD funds have been made available to be used in conjunction with economic development activities consistent with the strategic plan for each EZ in Round II. The implementation of the strategic plan for an EZ in Round II may include rehabilitation of pre-1978 target housing; for such housing, the Lead-Safe Housing rule applies to the rehabilitation. The Lead-Safe Housing rule also applies to any other EZ that receives HUD funding under this program. This rule requires that an implementation plan that includes rehabilitation of pre-1978 target housing incorporate the applicable portions of the September 15, 1999, Lead-Safe Housing final rule. Therefore, this rule corrects part 598, subpart E, Post-Designation Requirements, by adding § 598.408, "Lead-based paint requirements. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title apply to the activities funded by HUD under this program."

CC. Corrections to § 891.155 and § 891.325 To Cite Subpart J of 24 CFR Part 35 as an Applicable Subpart

Part 891 of HUD's regulations (24 CFR part 891) pertains to Supportive Housing for the Elderly and Persons With Disabilities under Section 202 of the Housing Act of 1959 (12 U.S.C. 1708) and Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013). These programs provide a Federal capital advance and project-based rental assistance. The capital advance can be used for rehabilitation. Therefore, subpart J, which provides the requirements for housing receiving Federal rehabilitation assistance, should apply to these programs. (**Note**, however, that § 35.115(a)(3) exempts housing designated for the elderly, or a residential property designated exclusively for persons with disabilities, except where a child less than 6 years of age resides or is expected to reside in the dwelling unit.) Sections 891.155 and 891.325 list the lead-based paint regulations that apply to these programs, but do not list subpart J as being applicable. Therefore, this rule adds subpart J of 24 CFR part 35 to the list of applicable lead-based paint regulations in 24 CFR 891.155 and 24 CFR 891.325.

DD. Correction of § 982.305(b)(1)(ii) Regarding Regulatory Reference Numbering

The September 15, 1999, final rule (at 64 FR 50229) at amendatory instruction 88, revised the Housing Choice Voucher (HCV) Program rule on PHA approval of assisted tenancy at § 982.305(b)(3) to require disclosure of information on lead-based paint to the tenant before the lease term, in accordance with the Lead Disclosure rule, 24 CFR part 35, subpart A. The current HCV rule places this regulatory reference at § 982.305(b)(1)(ii). The numbering of the Lead Disclosure rule paragraph cited, § 35.92(b)(2), was changed in the 1999 final rule (at 64 FR 50201, at amendatory instruction 2) to § 35.13(b)(2), and restored to its original numbering on January 21, 2000 (at 65 FR 3386, at amendatory instruction 2). The HCV rule uses the Lead Disclosure rule numbering as changed in 1999, rather than the current numbering. Therefore, this rule corrects § 982.305(b)(1)(ii) to use the current Lead Disclosure rule paragraph numbering, namely, § 35.92(b)(2).

EE. Correction of § 983.203(d) Regarding Responsibility for Provision of Lead Information Pamphlet

The September 15, 1999, final rule (at 64 FR 50230) at amendatory instruction 94, stated incorrectly at 24 CFR 983.203(d) that PHAs, in administering the Section 8 Project-Based Certificate program, must provide families with "a copy of the lead hazard information pamphlet, as required by part 35, subpart A of this title." Under subpart A, the lead disclosure rule (24 CFR part 35), it is the responsibility of the lessor of the housing (typically the owner), not the PHA, to provide the pamphlet. This rule revises the requirement so that the public housing agency must provide the pamphlet unless it can demonstrate that the pamphlet has already been provided, using the same conditions as in § 35.130 regarding previous provision of the pamphlet. Therefore, this rule replaces "the PHA must provide * * * a copy of the lead hazard information pamphlet as required by part 35, subpart A of this title" with "the PHA must provide * * * a copy of the lead hazard information pamphlet described in § 35.130 of this title, except that the PHA need not provide the pamphlet if the PHA can demonstrate that the pamphlet has already been provided in accordance with § 35.130 of this title."

Findings and Certifications

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR part 10).

HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. The reason for HUD's determination is that this rule merely makes conforming and clarifying amendments to certain regulations in 24 CFR parts 35, 200, 291, 598, 891, 982 and 983. No substantive changes to the regulations are made by this rule. This rule merely gives clarity and facilitates understanding and, therefore, public comment is unnecessary.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no

anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.157, 14.244, 14.311, 14.871, and 14.900.

List of Subjects in 24 CFR

Part 35

Grant programs-housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Part 291

Community facilities, Homeless, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus Government property.

Part 598

Community development, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban areas.

Part 891

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Part 983

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, the Department amends 24 CFR parts 35, 200, 291, 598, 891, 982, and 983 as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

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

Authority: 42 U.S.C. 3535(d), 4821, and 4851.

■ 2. Section 35.110 is amended by removing the definition of "CILP recipient," and by revising the definitions of "designated party," "dust-lead hazard," "grantee," "soil-lead hazard" and "visual assessment" to read as follows:

§ 35.110 Definitions.

* * * * *

Designated party means a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, Indian Tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.

* * * * *

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) equal to or exceeding the levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for dust-lead hazards in § 35.1320.

* * * * *

Grantee means any state or local government, Indian Tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program.

* * * * *

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in § 35.1320.

* * * * *

A *visual assessment* alone is not considered an evaluation for the purposes of this part. Visual assessment means looking for, as applicable:

Visual assessment means looking for, as applicable.

(1) Deteriorated paint;

(2) Visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or

(3) The completion or failure of a hazard reduction measure.

* * * * *

■ 3. Section 35.125 is amended by revising paragraphs (a), (a)(1)(i), (b)(1), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and by adding new paragraphs (b)(1)(iv) and (b)(3) to read as follows:

§ 35.125 Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

* * * * *

(a) *Notice of evaluation or presumption.* When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in § 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption. A visual assessment alone is not considered an evaluation for the purposes of this part. If only a visual assessment alone is required by this part, and no evaluation is performed, a notice of evaluation or presumption is not required.

(1) * * *

(i) A summary of the nature, dates, scope, and results of the evaluation;

* * * * *

(b) * * *

(1) Provide a notice to occupants not more than 15 calendar days after the hazard reduction activities (including paint stabilization) have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, dates, scope, and results (including clearance) of the hazard reduction activities;

(ii) A contact name, address, and telephone number for more information;

(iii) Available information on the location of any remaining lead-based paint in the rooms, spaces, or areas where hazard reduction activities were

conducted, on a surface-by-surface basis; and

(iv) The date of the notice.

* * * * *

(3) Provision of a notice of hazard reduction is not required if a clearance examination is not required.

* * * * *

■ 4. Section 35.165 is amended by revising paragraphs (a)(1) introductory text, (a)(2), (b)(2), (b)(3), (d)(1) introductory text, and (d)(2) to read as follows:

§ 35.165 Prior evaluation or hazard reduction.

* * * * *

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before March 1, 2000, meets the requirements of this part if:

* * * * *

(2) A lead-based paint inspection conducted on or after March 1, 2000, must have been conducted by a certified lead-based paint inspector.

(b) * * *

(2) A risk assessment conducted before March 1, 2000, meets the requirements of this part if, at the time of the risk assessment, the risk assessor was approved by a state or Indian Tribe to perform risk assessments. It is not necessary that the state or tribal approval program had EPA authorization at the time of the risk assessment.

(3) A risk assessment conducted on or after March 1, 2000, must have been conducted by a certified risk assessor.

* * * * *

(c) * * *

(d) *Abatement.* (1) An abatement conducted before March 1, 2000, meets the requirements of this part if:

* * * * *

(2) An abatement conducted on or after March 1, 2000, must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

■ 5. Section 35.615 is amended by revising paragraph (a) to read as follows:

§ 35.615 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, the sponsor shall provide a notice to occupants in accordance with § 35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

* * * * *

Subpart H—Project-Based Assistance

■ 6. Part 35 is amended to correct the title of subpart H to read as shown above.

■ 7. Section 35.710 is amended by revising paragraph (a) to read as follows:

§ 35.710 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

* * * * *

■ 8. Section 35.810 is amended by revising paragraph (a) to read as follows:

§ 35.810 Notices and pamphlet.

(a) *Notices.* When evaluation or hazard reduction is undertaken, the Department shall provide a notice to occupants in accordance with § 35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

* * * * *

■ 9. Section 35.910 is revised to read as follows:

§ 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee or participating jurisdiction shall provide a notice to occupants in accordance with § 35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with § 35.130.

■ 10. Section 35.915 is revised to read as follows:

§ 35.915 Calculating Federal rehabilitation assistance.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories that depend on the amount of Federal rehabilitation assistance provided. The three categories are:

(i) Assistance of up to and including $5,000 per unit;

(ii) Assistance of more than $5,000 per unit up to and including $25,000 per unit; and

(iii) Assistance of more than $25,000 per unit.

(2) For purposes of implementing §§ 35.930 and 35.935, the amount of rehabilitation assistance is the lesser of two amounts: the average Federal assistance per assisted dwelling unit and the average per unit hard costs of rehabilitation. Federal assistance includes all Federal funds assisting the project, regardless of the use of the funds. Federal funds being used for acquisition of the property are to be included as well as funds for construction, permits, fees, and other project costs. The hard costs of rehabilitation include all hard costs, regardless of source, except that the costs of lead-based paint hazard evaluation and hazard reduction activities are not to be included. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to compliance with the requirements of this part are not to be included in the hard costs of rehabilitation. All other hard costs are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

(c) *Calculating rehabilitation assistance in properties with both assisted and unassisted dwelling units.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs and Federal assistance associated with non-assisted units are not included in the calculations of the average per unit hard costs of rehabilitation and the average Federal assistance per unit.

(1) The average per unit hard costs of rehabilitation for the assisted units is calculated using the following formula:

Per Unit Hard Costs of Rehabilitation $ = (a/c) + (b/d)

Where:

a = Rehabilitation hard costs for all assisted units (not including common areas and exterior surfaces)

b = Rehabilitation hard costs for common areas and exterior painted surfaces

c = Number of federally assisted units

d = Total number of units

(2) The average Federal assistance per assisted dwelling unit is calculated using the following formula:

Per unit Federal assistance = e/c

Where:

e = Total Federal assistance for the project

c = Number of federally assisted units

§ 35.920 [Removed and reserved.]

■ 11. Section 35.920 is removed and reserved.

■ 12. Section 35.925 is amended by adding a new paragraph (d) to read as follows:

§ 35.925 Examples of determining applicable requirements.

* * * * *

(d) If eight dwelling units in a residential property receive Federal rehabilitation assistance [symbol c in § 35.915(c)(2)] out of a total of 10 dwelling units [d], the total Federal assistance for the rehabilitation project

is $300,000 [e], the total hard costs of rehabilitation for the dwelling units are $160,000 [a], and the total hard costs of rehabilitation for the common areas and exterior surfaces are $20,000 [b], then the lead-based paint requirements would be those described in § 35.930(c), because the level of Federal rehabilitation assistance is $22,000, which is not greater than $25,000. This is calculated as follows: The total Federal assistance per assisted unit is $37,500 (e/c = $300,000/8), the per unit hard costs of rehabilitation is $22,000 (a/c + b/d = $160,000/8 + $20,000/10), and the level of Federal rehabilitation assistance is the lesser of $37,500 and $22,000.

■ 13. Section 35.930 is amended by revising paragraphs (a), (b) introductory text, (c) introductory text, (c)(3), (d) introductory text, (d)(3) and by adding new paragraphs (c)(4) and (d)(4) to read as follows:

§ 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee or participating jurisdiction shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including $5,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

* * * * *

(c) *Residential property receiving an average of more than $5,000 and up to and including $25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

* * * * *

(3) Perform interim controls in accordance with § 35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section.

(4) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

(d) *Residential property receiving an average of more than $25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

* * * * *

(3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, in accordance with § 35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation and on paint-lead hazards that have an area smaller than the *de minimis* limits of § 35.1350(d). If abatement of a paint-lead hazard is required, it is necessary to abate only the surface area with hazardous conditions.

(4) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

■ 14. Section 35.935 is revised to read as follows:

§ 35.935 Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program, the grantee or participating jurisdiction shall require the property owner to incorporate ongoing lead-based paint maintenance activities in regular building operations, in accordance with § 35.1355(a).

■ 15. Section 35.1015 is amended by revising paragraph (c) to read as follows:

§ 35.1015 Visual assessment, paint stabilization, and maintenance.

* * * * *

(c) The grantee or participating jurisdiction shall require the incorporation of ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), if the dwelling unit has a continuing, active financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this part.

* * * * *

■ 16. Section 35.1110 is amended by revising paragraph (a) to read as follows:

§ 35.1110 Notices and pamphlets.

(a) *Notice.* In cases where evaluation or hazard reduction is undertaken, each public housing agency (PHA) shall provide a notice to residents in accordance with § 35.125. A visual assessment alone is not considered an evaluation for purposes of this part.

* * * * *

■ 17. Section 35.1210 is amended by revising paragraph (a) to read as follows:

§ 35.1210 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or paint stabilization is undertaken, the owner shall provide a notice to residents in accordance with § 35.125. A visual assessment alone is not considered an evaluation for purposes of this part.

* * * * *

■ 18. Section 35.1215 is amended by revising paragraph (b) and by adding new paragraph (d) to read as follows:

§ 35.1215 Activities at initial and periodic inspection.

* * * * *

(b) The owner shall stabilize each deteriorated paint surface in accordance with §§ 35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS) until the hazard reduction is completed or the unit is no longer covered by this subpart because the unit is no longer under a housing assistance payment (HAP) contract with the housing agency.

* * * * *

(d) The designated party may grant the owner an extension of time to complete paint stabilization and clearance for reasonable cause, but such an extension shall not extend beyond 90 days after the date of notification to the owner of the results of the visual assessment.

■ 19. Section 35.1220 is revised to read as follows:

§ 35.1220 Ongoing lead-based paint maintenance activities.

Notwithstanding the designation of the PHA, grantee, participating jurisdiction, or Indian Housing Block Grant (IHBG) recipient as the designated party for this subpart, the owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a).

■ 20. Section 35.1320 is revised to read as follows:

§ 35.1320 Lead-based paint inspections, paint testing, risk assessments, lead-hazard screens, and reevaluations.

(a) *Lead-based paint inspections and paint testing.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Tribal program authorized by the EPA under 40 CFR 745.324, or by the EPA at 40 CFR 745.227(b) and (h). Paint testing to

determine the presence or absence of lead-based paint on deteriorated paint surfaces or surfaces to be disturbed or replaced shall be performed by a certified lead-based paint inspector or risk assessor.

(b) Risk assessments, lead-hazard screens and reevaluations. (1) Risk assessments and lead-hazard screens shall be performed in accordance with methods and standards established either by a state or tribal program authorized by the EPA, or by the EPA at 40 CFR 745.227(c), (d), and (h) and paragraph (b)(2) of this section. Reevaluations shall be performed by a certified risk assessor in accordance with § 35.1355(b) and paragraph (b)(2) of this section.

(2) Risk assessors shall use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h) or, if such standards are not in effect, the following levels for dust or soil:

(i) *Dust.* A dust-lead hazard is surface dust that contains a mass-per-area concentration (loading) of lead, based on wipe samples, equal to or exceeding the applicable level in the following table:

DUST LEAD STANDARDS

Evaluation method	Surface		
	Floors, µg/ft² (mg/m²)	Interior window sills, µg/ft² (mg/m²)	Window troughs, µg/ft² (mg/m²)
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	400 (4.3).

Note 1: "Floors" includes carpeted and uncarpeted interior floors.

Note 2: A dust-lead hazard is present or clearance fails when the weighted arithmetic mean lead loading for all single-surface or composite samples is equal to or greater than the applicable standard. For composite samples of two to four subsamples, the standard is determined by dividing the standard in the table by one half the number of subsamples. See EPA regulations at 40 CFR 745.63 and 745.227(h)(3)(i).

(ii) Soil. (A) A soil-lead hazard for play areas frequented by children under six years of age is bare soil with lead equal to or exceeding 400 parts per million (micrograms per gram).

(B) For the rest of the yard, a soil-lead hazard is bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding an average of 1,200 parts per million (micrograms per gram).

(3) Lead-hazard screens shall be performed in accordance with the methods and standards established either by a state or Tribal program authorized by the EPA, or by the EPA at 40 CFR 745.227(c), and paragraphs (b)(1) and (b)(2) of this section. If the lead-hazard screen indicates the need for a follow-up risk assessment (*e.g.*, if dust-lead measurements exceed the levels established for lead-hazard screens in paragraph (b)(2)(i) of this section), a risk assessment shall be conducted in accordance with paragraphs (b)(1) and (b)(2) of this section. Dust, soil, and paint samples collected for the lead-hazard screen may be used in the risk assessment. If the lead hazard screen does not indicate the need for a follow-up risk assessment, no further risk assessment is required.

(c) It is strongly recommended, but not required, that lead-based paint inspectors, risk assessors, and sampling technicians provide a plain-language summary of the results suitable for posting or distribution to occupants in compliance with § 35.125.

■ 21. Section 35.1330 is amended by revising paragraphs (a)(4), (a)(4)(ii) and (iii), (d)(1), and (f)(3)(i)(C) to read as follows:

§ 35.1330 Interim controls.

* * * * *

(a) * * *

(4) A person performing interim controls must be trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and either be supervised by an individual certified as a lead-based paint abatement supervisor or have completed successfully one of the following lead-safe work practices courses, except that this supervision or lead-safe work practices training requirement does not apply to work that disturbs painted surfaces less than the *de minimis* limits of § 35.1350(d):

* * * * *

(ii) A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225; or

(iii) Another course approved by HUD for this purpose after consultation with the EPA. A current list of approved courses is available on the Internet at *http://www.hud.gov/offices/lead*, or by mail or fax from the HUD Office of Healthy Homes and Lead Hazard Control at (202) 755–1785, extension 104 (this is not a toll-free number). Persons with hearing or speech impediments may access the above telephone number via phone or TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

* * * * *

(d) Chewable surfaces. (1) Chewable surfaces are required to be treated only if there is evidence of teeth marks, indicating that a child of less than six years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) The impermanent surface covering material shall not contain more than 400 µg/g of lead.

* * * * *

■ 22. Section 35.1340 is amended by revising paragraphs (b) introductory text, (b)(1)(iii), (b)(1)(iv), (b)(2)(i), and (g) to read as follows:

§ 35.1340 Clearance.

* * * * *

(b) Clearance following activities other than abatement. Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements of this paragraph (b) and paragraphs (c) through (g) of this section. Clearance is not required if the work being cleared does not disturb painted surfaces of a total area more than that set forth in § 35.1350(d).

(1) * * *

* * * * *

(iii) A person who has successfully completed a training course for sampling technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State or Indian Tribe for training in lead-based paint inspection or risk assessment, provided a certified risk assessor or a certified lead-based paint inspector approves the work of the sampling technician and signs the report of the clearance examination; or

(iv) A technician licensed or certified by EPA or a State or Indian Tribe to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector, provided that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by such a licensed or certified sampling technician shall not be performed using random sampling of dwelling units or common areas in multifamily properties, except that a clearance examination performed by such a licensed or certified sampling technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) *Required activities.* (i) Clearance examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead in dust, interpretation of sampling results, and preparation of a report. Soil sampling is not required. Clearance examinations shall be performed in dwelling units, common areas, and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If clearance is being performed after lead-based paint hazard reduction, paint stabilization, maintenance, or rehabilitation that affected exterior surfaces but did not disturb interior painted surfaces or involve elimination of an interior dust-lead hazard, interior clearance is not required if window, door, ventilation, and other openings are sealed during the exterior work. If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purpose of clearance may be conducted in accordance with 40 CFR 745.227(e)(9).

* * * * *

(g) *Worksite clearance.* Clearance of only the worksite is permitted after work covered by §§ 35.930, 35.1330, 35.1335, or 35.1355, when containment is used to ensure that dust and debris generated by the work is kept within the worksite. Otherwise, clearance must be of the entire dwelling unit, common area, or outbuilding, as applicable. When clearance is of an interior worksite that is not an entire dwelling unit, common area, or outbuilding, dust samples shall be taken for paragraph (b) of this section as follows:

(1) Sample, from each of at least four rooms, hallways, stairwells, or common areas within the dust containment area:

(i) The floor (one sample); and

(ii) Windows (one interior sill sample and one trough sample, if present); and

(2) Sample the floor in a room, hallway, stairwell, or common area connected to the dust containment area, within five feet outside the area (one sample).

■ 23. Section 35.1350 is amended by revising paragraph (b) to read as follows:

§ 35.1350 Safe work practices.

* * * * *

(b) *Occupant protection and worksite preparation.* Occupants and their belongings shall be protected, and the worksite prepared, in accordance with § 35.1345. A person performing this work shall be trained on hazards and either be supervised or have completed successfully one of the specified courses, in accordance with § 35.1330(a)(4).

* * * * *

■ 24. Section 35.1355 is amended by revising paragraph (a)(1), removing paragraphs (a)(1)(i) and (a)(1)(ii), and by correcting in paragraph (b)(1)(iii) the misspelling of the word "inclosures" to "enclosures," to read as follows:

§ 35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

(a) * * *

(1) Maintenance activities need not be conducted in accordance with this section if a lead-based paint inspection indicates that no lead-based paint is present in the dwelling units, common areas, and on exterior surfaces, or a clearance report prepared in accordance with § 35.1340(a) indicates that all lead-based paint has been removed.

* * * * *

(b) * * *

(1) * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 25. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

§ 200.810 [Amended]

■ 26. Section 200.810 is amended by removing and reserving paragraph (a)(2).

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

■ 27. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

§ 291.430 [Amended]

■ 28. Section 291.430 is amended by adding the word "to" between "apply" and "activities".

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

■ 29. The authority citation for part 598 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

■ 30. Part 598, subpart E is amended by adding new § 598.408 to read as follows:

§ 598.408 Lead-based paint requirements.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title apply to the activities funded by HUD under this program.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 31. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 32. Section 891.155 is amended by revising paragraph (g) to read as follows:

§ 891.155 Other Federal requirements.

* * * * *

(g) Lead-based paint. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing

regulations at part 35, subparts A, B, H, J, and R of this title apply to these programs.

■ 33. Section 891.325 is revised to read as follows:

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to the section 811 program and to projects funded under §§ 891.655 through 891.790.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 34. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 35. Section 982.305 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(1) * * *

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in § 35.92(b) of this title); and

* * * * *

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

■ 36. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 37. Section 983.203 is amended by revising paragraph (d) introductory text to read as follows:

§ 983.203 Family participation.

* * * * *

(d) Briefing of families. When a family is selected to occupy a project-based unit, the PHA must provide the family with information concerning the tenant rent and any applicable utility allowance, and a copy of the lead hazard information pamphlet described in § 35.130 of this title, except that the PHA need not provide the pamphlet if the PHA can demonstrate that the pamphlet has already been provided in accordance with § 35.130 of this title. The family also must be provided with a full explanation of the following, either in group or individual sessions:

* * * * *

Dated: June 9, 2004.

Alphonso Jackson,

Secretary.

[FR Doc. 04–13873 Filed 6–18–04; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–024]

RIN 1625–AA00

Safety Zone; Detroit, Detroit River, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Marshall Field's Target fireworks display on June 23, 2004. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Detroit River.

DATES: This temporary final rule is effective from 10 p.m. until 10:45 p.m. on June 23, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–04–024) and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard 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. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the Detroit River within a 300-yard radius of the fireworks launch platform in approximate position 42°19′35″ N, 083°02′25″ W (off of the Renaissance Center). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10 p.m. until 10:45 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Detroit River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), small entities may be assisted in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction or if you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES.**)

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132 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. The Coast Guard analyzed this rule under that Order and has determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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

The Coast Guard has 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has analyzed this rule under Commandant Instruction M16475.1D, which guides their compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and has concluded that there are no factors in this rule that 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" are available in the docket where indicated under **ADDRESSES.**

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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use and has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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. A new temporary § 165.T09–024 is added to read as follows:

§ 165.T09–024 Safety Zone; Detroit River, Detroit, MI.

(a) *Location.* The safety zone encompasses all waters of the Detroit River within a 300-yard radius of the fireworks launch platform in approximate position 42°19′35″ N, 083°02′25″ W (off of the Renaissance Center) (NAD 83).

(b) *Effective period.* This rule is effective from 10 p.m. until 10:45 p.m. (local time) on June 23, 2004.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9th, 2004.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 04–13978 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–025]

RIN 1625–AA00

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for the Bay City Fireworks Festival in Bay City, MI. These safety zones are necessary to control vessel traffic within the immediate location of the fireworks launch sites and to ensure the safety of life and property during the event. These safety zones are intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective from 10:05 p.m. on July 1, 2004, until 10:55 p.m. on July 4, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–04–025] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard 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, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the launch platforms will help ensure the safety of persons and property at the events and help minimize the associated risks.

The safety zones will encompass all waters of the Saginaw River within a 300-yard radius of the fireworks barges, the first in approximate position 43°35′55″ N, 083°53′40″ W (off Veterans Park) and the second in approximate position 43°35′55″ N, 083°53′30″ W (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of these zones were determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory

Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will only be enforced from 10:05 p.m. until 10:55 p.m. on the days of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), small entities may be assisted in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction or if you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132 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. The Coast Guard analyzed this rule under that Order and has determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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

The Coast Guard has 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.

Environment

The Coast Guard has analyzed this rule under Commandant Instruction M16475.1D, which guides their compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and has concluded that there are no factors in this rule 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" are available in the docket where indicated under **ADDRESSES**.

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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus.

Energy Effects

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

Statement of Energy Effects under Executive Order 13211.

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.

■ A new temporary § 165.T09–025 is added to read as follows:

§ 165.T09–025 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* The following are safety zones:

(1) All waters of the Saginaw River within a 300-yard radius of the fireworks launch platform in approximate position 43°35;'55" N, 083§ 53'40" W (off Veteran's Park)

(2) All waters of the Saginaw River within a 300-yard radius of the fireworks launch platform in approximate position 43°35'55" N, 083°53'30" W (off Wenonah Park) (NAD 83).

(b) *Effective period.* This regulation is effective from 10:05 p.m. on July 1, 2004 until 10:55 p.m. on July 4, 2004.

(c) *Enforcement period.* The safety zones in this section will be enforced from 10:05 p.m. until 10:55 p.m., each day of the effective period.

(d) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9, 2004.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 04–13977 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–009]

RIN 1625–AA00

Security Zones; San Francisco Bay, San Francisco, CA and Oakland CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing fixed security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This rule is effective August 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP 03–009 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 21, 2001, we issued a temporary final rule under docket COTP San Francisco Bay 01–009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). That rule (codified as 33 CFR 165.T11–095) established a security zone extending 1800 yards seaward from the Oakland airport shoreline and a security zone extending 2000 yards seaward from the San Francisco airport shoreline. Upon further reflection, and after discussion with airport officials and members of the public, we issued a new temporary rule in Title 33 of the Code of Federal Regulations. That rule (67 FR 5482, Feb. 6, 2002, codified as 33 CFR 165.T11–097) reduced the size of the security zones to 1000 yards seaward from both the Oakland and San Francisco airport shorelines.

We received several written comments about the 1000-yard security zones established by that rule (33 CFR 165.T11–097). Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. As a result, we issued a new temporary rule (67 FR 44566, July 3, 2002) that further reduced the size of the security zones to 200 yards seaward from both the Oakland and San Francisco airport shorelines. That rule (codified as 33 CFR 165.T11–086) expired on December 21, 2002.

Since the time that the security zones were allowed to expire, there were several security incursions involving personnel gaining access to the airports from boats. In addition, the Department of Homeland Security in consultation with the Homeland Security Council, raised the national threat level on December 21, 2003, and since then, from an Elevated to High risk of terrorist attack based on intelligence indicating that Al-Qaeda was poised to launch terrorist attacks against U.S. interests. To address these security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against one of these airports would have on the public interest, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA" in the **Federal Register** (69 FR 2320, January 15, 2004) proposing to establish permanent security zones extending approximately 200 yards seaward around the Oakland and San Francisco airports. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Penalties for Violating Security Zone

Vessels or persons violating this security zone will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up

to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against these airports would have on the public, the Coast Guard is establishing two fixed security zones within the navigable waters of San Francisco Bay extending approximately 200 yards seaward from the shorelines of the Oakland International Airport and the San Francisco International Airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay. Two hundred yards from the shoreline is estimated to be an adequate zone size to provide increased security for each airport by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel. Buoys will be installed by the respective airports to indicate the perimeter of each of the security zones.

This rule, for security reasons, will prohibit entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns, and the catastrophic impact a terrorist attack on one of these airports would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these airports.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. The only change made in this final rule is a minor correction to the last geographical coordinate used to describe the security zone around the San Francisco International Airport. A more accurate charting program than was originally used revealed that the latitude and longitude used in the NPRM indicates a position slightly offshore from the intended on-shore position. This change is not considered significant, and the general description of the security zones is not effected.

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).

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. Although this regulation restricts access to the zones, the effect of this regulation is not significant because: (i) These security zones are established in an area of the San Francisco Bay that is seldom used, (ii) the zones encompass only a small portion of the waterway; (iii) vessels are able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the security zones is the minimum necessary to provide adequate protection for the San Francisco International Airport and the Oakland International Airport. The entities most likely to be affected are small recreational vessel traffic engaged in fishing or sightseeing activities.

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 for several reasons: these security zones do not occupy an area of the San Francisco Bay that is frequently transited, small vessel traffic is able to pass safely around the area, and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Buoys are being installed to mark the perimeter of the security zone at each airport and small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Cast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 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. 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 because we are establishing a security zone. An "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) will be available in the docket where located under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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 § 165.1192 to read as follows:

§ 165.1192 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations.* The following areas are security zones:

(1) *San Francisco International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°36′19″ N	122°22′36″ W
37°36′45″ N	122°122′18″ W
37°36′26″ N	122°21′30″ W
37°36′31″ N	122°21′21″ W
37°36′17″ N	122°20′45″ W
37°36′37″ N	122°20′40″ W
37°36′50″ N	122°21′08″ W
37°37′00″ N	122°21′12″ W
37°37′21″ N	122°21′53″ W
37°37′39″ N	122°21′44″ W
37°37′56″ N	122°21′51″ W
37°37′50″ N	122°22′20″ W
37°38′25″ N	122°22′54″ W
37°38′23″ N	122°23′01″ W

and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°43′35″ N	122°15′00″ W
37°43′40″ N	122°15′05″ W
37°43′34″ N	122°15′12″ W
37°43′24″ N	122°15′11″ W
37°41′54″ N	122°13′05″ W
37°41′51″ N	122°12′48″ W
37°41′53″ N	122°12′44″ W
37°41′35″ N	122°12′18″ W
37°41′46″ N	122°12′08″ W
37°42′03″ N	122°12′34″ W
37°42′08″ N	122°12′32″ W
37°42′35″ N	122°12′30″ W
37°42′40″ N	122°12′06″ W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entering, transiting through, or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 3, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–13974 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 2004–P–036]

Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interpretation.

SUMMARY: The United States Patent and Trademark Office (Office) recently published a final rule revising the patent term extension and patent term adjustment provisions of the rules of practice. This document further explains the Office's policy since 2000 concerning one of the patent term adjustment provisions of the rules of practice.

DATES: *Applicability:* The patent term adjustment provisions of the rules of practice apply to all original (non-reissue) applications, other than for a design patent, filed on or after May 29, 2000, and to patents issued on such applications.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 305–1383, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3240, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION: The Office recently published a final rule revising the patent term extension and patent term adjustment provisions of the rules of practice in title 37 of the Code of Federal Regulations (CFR). *See Revision of Patent Term Extension and Patent Term Adjustment Provisions*, 69 FR 21704 (Apr. 22, 2004), 1282 *Off. Gaz. Pat. Office* 100 (May 18, 2004) (final rule). The primary purpose of this final rule was to revise the rules of practice in patent cases to indicate that under certain circumstances a panel remand by the Board of Patent Appeals and Interferences shall be considered "a decision in the review reversing an adverse determination of patentability" for purposes of patent term extension or patent term adjustment. *See* 69 FR at 21704, 1282 *Off. Gaz. Pat. Office* at 100.

This final rule, however, also adopted other miscellaneous changes to the patent term adjustment regulations. *See* 69 FR at 21704, 1282 *Off. Gaz. Pat. Office* at 100. One such miscellaneous change was a slight revision to 37 CFR 1.703(f) so that its language would more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The explanatory text concerning 37 CFR 1.703(f) indicated that:

> The language of former § 1.703(f) misled applicants into believing that delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) were overlapping only if the period of delay under 35 U.S.C. 154(b)(1)(A) occurred more than three years after the actual filing date of the application.[1] If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

[1] Another way of explaining this is: Based upon the contentions presented in a number of patent term adjustment petitions under 37 CFR 1.705, it has become apparent to the Office that some applicants did not fully appreciate that delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) may still be overlapping delays under 35 U.S.C. 154(b)(2)(A), even if the period of delay under 35 U.S.C. 154(b)(1)(A) did not occur more than three years after the actual filing date of the application.

See 69 FR at 21706, 1282 *Off. Gaz. Pat. Office* at 101. The Office has subsequently determined that there is a need for further explanation of the meaning of this statement.

35 U.S.C. 154(b)(2)(A) provides that: "[t]o the extent that periods of delay attributable to grounds specified in paragraph (1) [*i.e.*, 35 U.S.C. 154(b)(1)] overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed." *See* 35 U.S.C. 154(b)(2)(A). The Office revised 37 CFR 1.703(f) in this final rule to read "[t]o the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed." *See* 69 FR at 21711, 1282 *Off. Gaz. Pat. Office* at 106. Therefore, the change to 37 CFR 1.703(f) in this final rule makes its language track the language of 35 U.S.C. 154(b)(2)(A).

The change to 37 CFR 1.703(f) in this final rule and the accompanying explanatory text in the supplementary information section of this final rule was not a substantive change to 37 CFR 1.703(f) or a change to the Office's interpretation of 35 U.S.C. 154(b)(2)(A). This change was simply a restatement of the position taken by the Office when implementing the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA)[2] in 2000. Specifically, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

The position set forth in the supplementary information section of this final rule is also consistent with the section-by-section analysis[3] of 35 U.S.C.

[2] Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999).

[3] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted into law as part of Pub. L. 106–113. The Conference Report for H.R. 3194, 106th Cong., 1st. Sess. (1999), which resulted in Pub. L. 106–113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the

Continued

154(b)(2)(A)). The section-by-section analysis of 35 U.S.C. 154(b)(2)(A) indicates that periods of delay overlap where there are multiple grounds for extending the term of a patent that exist simultaneously.[4]

The position set forth in the supplementary information section of this final rule has been the Office's position since the implementation of the AIPA, as shown (for example) by the numerous Office presentations on the AIPA in 2001 which included an example[5] illustrating this position. Specifically, this example demonstrates that a two-month delay in issuing a first Office action (35 U.S.C. 154(b)(1)(A)(i)) and a two-month delay in issuing the patent (35 U.S.C. 154(b)(1)(B)) were considered overlapping delays, even though the two-month delay in issuing the first Office action occurred prior to three years (thirty-six months) after the application's filing date. This is because if the Office does not issue a patent until three years and two months (thirty-eight months) after its filing date, the relevant period in determining the Office delay in issuing the patent is not just the period between three years (thirty-six months) after the application's filing date and the date the patent issues (at thirty-eight months after the application's filing date), but is the entire period between the application's filing date and the date the patent issues.

Furthermore, delays resulting in the Office's failure to meet the time frames specified in 35 U.S.C. 154(b)(1)(A) (the "fourteen-four-four-four-" provisions) are not always overlapping with a delay resulting in the Office's failure to issue a patent within the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) because not all application pendency time is counted toward this three-year period. *See* 35 U.S.C. 154(b)(1)(B)(i)–(iii). This situation is illustrated by an example in which: (1) The Office meets the "fourteen-four-four-four" time frames specified in 35 U.S.C. 154(b)(1)(A) but does not mail a final rejection until thirty-seven months after the application's filing date[6]; (2) a RCE[7] (with a reply to the final rejection) is filed at forty months after the application's filing date; (3) the Office issues a notice of allowance under 35 U.S.C. 151 at forty-four months after the application's filing date; (4) the issue fee is paid at forty-seven months after the application's filing date; and (5) the Office issues the patent at fifty-three months after the application's filing date.[8] In this example, the applicant would be entitled to a patent term adjustment of four months due to the Office's failure to issue a patent within three years,[9] plus a patent term adjustment of two months due to the Office's failure to issue a patent within four months after the issue fee has been paid and all outstanding requirements have been met, for a total patent term adjustment of six months. The delay due to the Office's failure to issue a patent after the issue fee has been paid and all outstanding requirements have been met within the four-month time frame specified in 35 U.S.C. 154(b)(1)(A)(iv) does not "overlap" with the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) because the period subsequent to the filing of the RCE is not included in the three-year time frame specified in 35 U.S.C. 154(b)(1)(B). *See* 35 U.S.C. 154(b)(1)(B)(i). Thus, the Office does not interpret 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)–(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)–(iv) and 154(b)(1)(B).

This document involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0020. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because this document does not affect the information collection requirements associated with the information collection under OMB control number 0651–0020.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Authority: 35 U.S.C. 154(b).

Dated: June 14, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–13765 Filed 6–18–04; 8:45 am]

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Congressional Record at the request of Senator Lott. *See* 145 Cong. Rec. S14,708–26 (1999) (daily ed. Nov. 17, 1999).

[4] The section-by-section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)–(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (*e.g.*, delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; *See* 145 Cong. Rec. S14,718.

[5] The PBG (Patent Business Goals) and AIPA Rulemaking and Patent Examination Guidelines Training and Implementation Guide (August 2001 Supplement) contains a slide presentation (this slide presentation can be found on the Office's Internet Web site at: *http://www.uspto.gov/web/patents/pbgaipaguide/aipa.htm)*, in which slide 19 provides an example that indicates this interpretation of the provisions of 35 U.S.C. 154(b)(2)(A). In the example shown in slide 19, the Office did not issue a first action until sixteen months after the application's filing date, thus missing the fourteen-month time frame in 35 U.S.C. 154(b)(1)(A)(i) by two months (shown in red), and the Office did not issue the patent until thirty-eight months after the application's filing date, thus missing the three-year (thirty-six-month) time frame in 35 U.S.C. 154(b)(1)(B) by two months. The slide is used to demonstrate that for an application entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the Office considers the entire period during which the application was pending before the Office (shown in green), and not just the period beginning three years after the actual filing date of the application, to be the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A)). In this situation, the relevant periods under 35 U.S.C. 154(b)(1)(A)(i) and 35 U.S.C. 154(b)(1)(B) "overlap" under 35 U.S.C. 154(b)(2)(A), resulting in the applicant being entitled to a patent term adjustment of only two months.

[6] Meeting the "fourteen-four-four-four" time frames specified in 35 U.S.C. 154(b)(1)(A) but not meeting the three-year time frame in 35 U.S.C. 154(b)(1)(B) may occur if there are numerous non-final Office actions.

[7] A request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114.

[8] Thereby missing one of the "fourteen-four-four-four-" month time frames specified in 35 U.S.C. 154(b)(1)(A) by two months: specifically, the four-month time frame in 35 U.S.C. 154(b)(1)(A)(iv) for issuing a patent after the issue fee has been paid and all outstanding requirements have been met.

[9] For purposes of determining patent term adjustment under 35 U.S.C. 154(b)(1)(B), the application will be treated as having been issued at forty months after its filing date because the period subsequent to the filing of the RCE is not included in the three-year time frame specified in 35 U.S.C. 154(b)(1)(B).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE101–1037; FRL–7668–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Delaware that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC and the Regional Office.

EFFECTIVE DATE: This action is effective June 21, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. From time to time, therefore, EPA must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for Delaware. In this action, EPA is doing the following:

1. Announcing the first update to the IBR material.

2. Adding § 52.420(e) which summarizes the non-regulatory actions that EPA has taken on the Delaware SIP.

3. Making corrections to the charts listed in § 52.420(c), as described below:

a. Regulation 1 (Definitions and Administrative Principles), Section 2—Definitions (second entry)—The entry in the "EPA Approval Date" column is revised by adding the **Federal Register** page citation (64 FR 48961) after the publication date (9/9/99).

b. Regulation 4 (Particulate Emissions from Fuel Burning Equipment), Section 1 (General Provisions) and Section 2 (Emission Limits)—The entries in the "EPA Approval Date" column are revised by adding the publication date (3/23/76) after the **Federal Register** page citation (41 FR 12010).

c. Regulation 5 (Particulate Emissions from Industrial Process Operations), Section 5 (Restrictions on Petroleum Refining Operations)—The text in the "Comments" column is removed.

d. Regulation 9 (Emissions of Sulfur Compounds from Industrial Operations) Section 2 (Restrictions on Sulfuric Acid Manufacturing Operations)—The text in the "Comments" column is revised.

e. Regulation 11 (Carbon Monoxide Emissions from Industrial Process Operations—New Castle County)—The text in the "Comments" column ("Citation revised 3/23/76, 41 FR 12010") is moved from the Section 1 entry (General Provisions) to the Section 2 entry (Restrictions on Petroleum Refining Operations).

f. Regulation 17 (Source Monitoring, Recordkeeping and Reporting)—The existing text in the "Comments" column is removed and replaced with the following text: "Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453."

g. Regulation 17, Section 4 (Performance Specifications) and Section 6 (Data Reduction)—The entry in the "EPA Approval Date" column is revised by adding the **Federal Register** page citation (64 FR 48961) after the publication date (9/9/99).

h. Regulation 24 (Control of Volatile Organic Compound Emissions), Section 2 (Definitions)—The text in the "Comments" column is removed.

i. Regulation 31 (Low Enhanced Inspection and Maintenance Program), Sections 4, 10, 11, 12, and Appendices 1(d), 3(a)(7), 3(c)(2), 4(a), 5(a), 6(a)(5), 7(a) and 8(a)—The entry in the "EPA Approval Date" column is revised by adding the **Federal Register** page citation (64 FR 52657) after the publication date (9/30/99).

j. Regulation 39 (Nitrogen Oxides (NO_X) Budget Trading Program)—The text in the "Comments" column is removed. The **Federal Register** publication date and citation (5/17/01, 66 FR 27462) are added in the "EPA approval date" column to each entry, beginning with Section 2, listed under Regulation 39.

k. Regulation 40 (National Low Emission Vehicle Program)—EPA approved this regulation as a revision to the Delaware SIP on December 28, 1999 (64 FR 72564), and therefore added an entry to the table in § 52.420(c) to read as follows:

State citation	Title/subject	State effective date	EPA approval date	Comments
Regulation—National Low Emission Vehicle Program				
Section 1	Applicability	10/11/99	12/28/99 64 FR 72564	Issued on September 1, 1999 by Secretary's Order No. 99–A–0046.
Section 2	Definitions	10/11/99	12/28/99 64 FR 72564	

State citation	Title/subject	State effective date	EPA approval date	Comments
Section 3	Program Participation	10/11/99	12/28/99 64 FR 72564	

However, in a subsequent revision to the chart in § 52.420(c), EPA provided an erroneous amendatory instruction which resulted in the inadvertent removal of the Regulation 40 entries from the chart. In today's action, EPA is restoring these entries to § 52.420(c).

4. In the tables found in §§ 52.420(c) and 52.420(d), renaming the column heading entitled "Comments" to "Additional Explanation."

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation; and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Delaware SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization update actions for Delaware.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 20, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. Section 52.420 is amended by revising paragraphs (b), (c), and (d), and adding paragraph (e) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after June 1, 2004 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the Delaware State implementation plan as of June 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Regulation 1—Definitions and Administrative Principles				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010	
Section 2	Definitions	10/11/98	3/11/99 64 FR 12085	
Section 2	Definitions	2/8/95	9/9/99 64 FR 48961 *—New Installation, Equipment, Source, or Operation.	**New Definitions:** (Effective date: 1/7/77) —Capacity factor. —Continuous monitoring system. —Emission standard. —Equipment shutdown. —Excess Emissions. (Effective Date: 9/26/78). —Sulfuric Acid Plant. **Revised Definitions:** (Effective date: 1/7/77). —Existing Installation, Equipment, Source, or Operation.
Section 3	Administrative Principles	1/7/72	05/31/72 37 FR 10842	
Section 4	Abbreviations	2/1/81	3/15/82 48 FR 11013	Abbreviation of "CAA" only.
Regulation 2—Permits				
Section 1	General Provisions	6/1/97	1/13/00 65 FR 2048	
Section 2	Applicability	6/1/97	1/13/00 65 FR 2048	
Section 3	Applications Prepared by Interested Parties.	6/1/97	1/13/00 65 FR 2048	
Section 4	Cancellation of Construction Permits	6/1/97	1/13/00 65 FR 2048	
Section 5	Action on Applications	6/1/97	1/13/00 65 FR 2048	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 6	Denial, Suspension or Revocation of Operating Permits.	6/1/97	1/13/00 65 FR 2048	
Section 7	Transfer of Permit/Registration Prohibited.	6/1/97	1/13/00 65 FR 2048	
Section 8	Availability of Permit/Registration	6/1/97	1/13/00 65 FR 2048	
Section 9	Registration Submittal	6/1/97	1/13/00 65 FR 2048	
Section 10	Source Category Permit Application	6/1/97	1/13/00 65 FR 2048	
Section 11	Permit Application	6/1/97	1/13/00 65 FR 2048	
Section 12	Public Participation	6/1/97	1/13/00 65 FR 2048	Limited approval.
Section 13	Department Records	6/1/97	1/13/00 65 FR 2048	
Regulation 3—Ambient Air Quality Standards				
Section 1	General Provisions	03/29/88	4/6/94 48 FR 46986	
Section 2	General Restrictions	3/11/80	10/30/81 46 FR 53663	
Section 3	Suspended Particulates	3/11/80	10/30/81 46 FR 53663	
Section 4	Sulfur Dioxide	3/11/80	10/30/81 46 FR 53663	
Section 5	Carbon Monoxide	3/11/80	10/30/81 46 FR 53663	
Section 6	Ozone	3/11/80	10/30/81 46 FR 53663	
Section 8	Nitrogen Dioxide	3/11/80	10/30/81 46 FR 53663	
Section 10	Lead	3/11/80	3/11/82 48 FR 10535	
Section 11	PM_{10} Particulates	12/7/88	4/6/94 48 FR 46986	
Regulation 4—Particulate Emissions From Fuel Burning Equipment				
Section 1	General Provisions	5/28/74	3/23/76 41 FR 12010	
Section 2	Emission Limits	5/28/74	3/23/76 41 FR 12010	
Regulation 5—Particulate Emissions From Industrial Process Operations				
Section 1	General Provisions	5/28/74	3/23/76 41 FR 12010	
Section 2	General Restrictions	5/28/74	3/23/76 41 FR 12010	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 3	Restrictions on Hot Mix Asphalt Batching Operations.	5/28/74	3/23/76 41 FR 12010	
Section 4	Restrictions on Secondary Metal Operations.	12/2/77	07/30/79 44 FR 44497	
Section 5	Restrictions on Petroleum Refining Operations.	9/26/78	9/9/99 64 FR 48961	
Section 6	Restrictions on Prill Tower Operations ...	9/26/78	08/01/80 45 FR 51198	
Section 7	Control of Potentially Hazardous Particulate Matter.	1/7/72	5/31/72 37 FR 10842	
Regulation 6—Particulate Emissions From Construction and Materials Handling				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	
Section 2	Demolition	5/28/74	03/23/76 41 FR 12010	
Section 3	Grading, Land Clearing, Excavation and Use of Non-Paved Roads.	5/28/74	03/23/76 41 FR 12010	
Section 4	Material Movement	5/28/74	03/23/76 41 FR 12010	
Section 5	Sandblasting	5/28/74	03/23/76 41 FR 12010	
Section 6	Material Storage	5/28/74	03/23/76 41 FR 12010	
Regulation 7—Particulate Emissions From Incineration				
Section 1	General Provisions	05/28/74	03/23/76 41 FR 12010	
Section 2	Restrictions	12/8/83	10/3/84 49 FR 39061	Provisions were revised 10/13/89 by State, but not submitted to EPA as SIP revisions.
Regulation 8—Sulfur Dioxide Emissions From Fuel Burning Equipment				
Section 1	General Provisions	12/8/83	10/3/84 49 FR 39061	
Section 2	Limit on Sulfur Content of Fuel	5/9/85	12/08/86 51 FR 44068	
Section 3	Emissions Control in Lieu of Sulfur Content Limits of Section 2.	5/9/85	12/08/86 51 FR 44068	
Regulation 9—Emissions of Sulfur Compounds From Industrial Operations				
Section 1	General Provisions	5/9/85	12/08/86 51 FR 44068	
Section 2	Restrictions on Sulfuric Acid Manufacturing Operations.	9/26/78	9/9/99 64 FR 48961	1. On 3/11/1982 (47 FR 10535), EPA approved revisions to Section 2 with a State effective date of 12/29/1980. 2. Section 2.2 (State effective date: 9/26/1980) is federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 3	Restriction on Sulfur Recovery Operations.	5/28/74	03/23/76 41 FR 12010	
Section 4	Stack Height Requirements	4/18/83	09/21/83 48 FR 42979	
Regulation 10—Control of Sulfur Dioxide Emissions—Kent and Sussex Counties				
Section 1	Requirements for Existing Sources of Sulfur Dioxide.	1/7/72	05/31/72 37 FR 10842	
Section 2	Requirements for New Sources of Sulfur Dioxide.	5/28/74	03/23/76 41 FR 12010	
Regulation 11—Carbon Monoxide Emissions from Industrial Process Operations—New Castle County				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010	
Section 2	Restrictions on Petroleum Refining Operations.	1/7/72	05/31/72 37 FR 10842	Citation revised 3/23/76, 41 FR 12010.
Regulation 12—Control of Nitrogen Oxide Emissions				
Section 1	Applicability	11/24/93	6/14/01 66 FR 32234	
Section 2	Definitions	11/24/93	6/14/01 66 FR 32234	
Section 3	Standards	11/24/93	6/14/01 66 FR 32234	
Section 4	Exemptions	11/24/93	6/14/01 66 FR 32234	
Section 5	Alternative and Equivalent RACT Determinations.	11/24/93	6/14/01 66 FR 32234	
Section 6	RACT Proposals	11/24/93	6/14/01 66 FR 32234	
Section 7	Compliance, Certification, Recordkeeping, and Reporting Requirements.	11/24/93	6/14/01 66 FR 32234	
Regulation 13—Open Burning				
Section 1	Prohibitions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 2	Prohibitions-Specific Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 3	General Restrictions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 4	Exemptions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Regulation 14—Visible Emissions				
Section 1	General Provisions	7/17/84	07/02/85 50 FR 27244	
Section 2	Requirements	7/17/84	07/02/85 50 FR 27244	
Section 3	Alternate Opacity Requirements	7/17/84	07/02/85 50 FR 27244	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 4	Compliance with Opacity Standards	7/17/84	07/02/85 50 FR 27244	
Regulation 15—Air Pollution Alert and Emergency Plan				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	
Section 2	Stages and Criteria	3/29/88	04/06/94 59 FR 16140	
Section 3	Required Actions	1/7/72	5/31/72 37 FR 10842	Delaware removed the word "standby" from Table III, section 3B effective 5/28/74, but did not submit as a SIP revision.
Section 4	Standby Plans	1/7/72	05/31/72 37 FR 10842	
Regulation 16—Sources Having an Interstate Air Pollution Potential				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	Delaware revised provision effective 5/28/74, but did not submit as a SIP revision.
Section 2	Limitations	1/7/72	05/31/72 37 FR 10842	
Section 3	Requirements	1/7/72	05/31/72 37 FR 10842	
Regulation 17—Source Monitoring, Record-keeping and Reporting				
Section 1	Definitions and Administrative Principles	1/11/93	02/28/96 61 FR 7453	
Section 2	Sampling and Monitoring	7/17/84	07/02/85 50 FR 27244	Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453.
Section 3	Minimum Emission Monitoring Requirements for Existing Sources.	1/10/77	8/25/81 46 FR 43150	
Section 4	Performance Specifications	1/11/93	9/9/99 64 FR 48961	
Section 5	Minimum Data Requirements	1/10/77	8/25/81 46 FR 43150	
Section 6	Data Reduction	1/11/93	9/9/99 64 FR 48961	
Section 7	Emission Statement	1/11/93	02/28/96 61 FR 7453	
Regulation 23—Standards of Performance for Steel Plants: Electric Arc Furnaces				
Section 1	Applicability	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Section 2	Definitions	04/18/83	09/21/83 49 FR 39061	
Section 3	Standard for Particulate Matter	04/18/83	09/21/83 49 FR 39061	
Section 4	Monitoring of Operations	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 5	Test Methods and Procedures	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Regulation 24—Control of Volatile Organic Compound Emissions				
Section 1	General Provisions	1/11/93	5/3/95 60 FR 21707	
Section 2	Definitions	1/11/02	11/14/03 68 FR 64540	
Section 3	Applicability	1/11/93	5/3/95 60 FR 21707	
Section 4	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources.	11/29/94	01/26/96 61 FR 2419	
Section 5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	1/11/93	5/3/95 60 FR 21707	
Section 6	General Recordkeeping	1/11/93	5/3/95 60 FR 21707	
Section 7	Circumvention	1/11/93	5/3/95 60 FR 21707	
Section 8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	11/29/94	01/26/96 61 FR 2419	
Section 9	Compliance, Permits, Enforceability	1/11/93	5/3/95 60 FR 21707	
Section 10	Aerospace Coatings	2/11/03	3/24/04 69 FR 13737	SIP effective date is 5/24/04.
Section 11	Mobile Equipment Repair and Refinishing.	11/11/01	11/22/02 67 FR 70315	
Section 12	Surface Coating of Plastic Parts	11/29/94	01/26/96 61 FR 2419	
Section 13	Automobile and Light-Duty Truck Coating Operations.	1/11/93	5/3/95 60 FR 21707	
Section 14	Can Coating	1/11/93	5/3/95 60 21707	
Section 15	Coil Coating	1/11/93	5/3/95 60 21707	
Section 16	Paper Coating	1/11/93	5/3/95 60 21707	
Section 17	Fabric Coating	1/11/93	5/3/95 60 FR 21707	
Section 18	Vinyl Coating	1/11/93	5/3/95 60 FR 21707	
Section 19	Coating of Metal Furniture	1/11/93	5/3/95 60 FR 21707	
Section 20	Coating of Large Appliances	1/11/93	5/3/95 60 FR 21707	
Section 21	Coating of Magnet Wire	11/29/94	01/26/96 60 FR 2419	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 22	Coating of Miscellaneous Metal Parts	1/11/93	5/3/95 60 FR 21707	
Section 23	Coating of Flat Wood Panelling	1/11/93	5/3/95 60 FR 21707	
Section 24	Bulk Gasoline Plants	1/11/93	5/3/95 60 FR 21707	
Section 25	Bulk Gasoline Terminals	11/29/94	01/26/96 61 FR 2419	
Section 26	Gasoline Dispensing Facility-Stage I Vapor Recovery.	1/11/02	11/14/03 68 FR 64540	
Section 27	Gasoline Tank Trucks	1/11/93	5/3/95 60 FR 21707	
Section 28	Petroleum Refinery Sources	1/11/93	5/3/95 60 FR 21707	
Section 29	Leaks from Petroleum Refinery Equipment.	11/29/94	01/26/96 61 FR 2419	
Section 30	Petroleum Liquid Storage in External Floating Roof Tanks.	11/29/94	01/26/96 61 FR 2419	
Section 31	Petroleum Liquid Storage Fixed Roof Tanks.	11/29/94	01/26/96 61 FR 2419	
Section 32	Leaks from Natural Gas/Gasoline Processing Equipment.	11/29/94	01/26/96 61 FR 2419	
Section 33	Solvent Metal Cleaning and Drying	11/11/01	11/22/02 67 FR 70315	
Section 34	Cutback and Emulsified Asphalt	1/11/93	5/3/95 60 FR 21707	
Section 35	Manufacture of Synthesized Pharmaceutical Products.	11/29/94	01/26/96 61 FR 2419	
Section 36	Stage II Vapor Recovery	1/11/93	6/10/94 59 FR 29956	
Section 37	Graphic Arts Systems	11/29/94	01/26/96 61 FR 2419	
Section 38	Petroleum Solvent Dry Cleaners	1/11/93	5/3/95 60 FR 21707	
Section 39	Perchloroethylene Dry Cleaning	1/11/93	5/3/95 60 FR 21707	
Section 40	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	1/11/93	5/3/95 60 FR 21707	
Section 41	Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins.	1/11/93	5/3/95 60 FR 21707	
Section 42	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	1/11/93	5/3/95 60 FR 21707	
Section 43	Bulk Gasoline Marine Tank Vessel Loading Facilities.	11/29/94	01/26/96 61 FR 2419	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 44	Batch Processing Operations	11/29/94	01/26/96 61 FR 2419	
Section 45	Industrial Cleaning Solvents	11/29/94	01/26/96 61 FR 2419	
Section 47	Offset Lithographic Printing	11/29/94	05/14/97 62 FR 26399	
Section 48	Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	11/29/94	01/26/96 61 FR 2419	
Section 49	Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels.	11/29/94	01/26/96 61 FR 2419	
Section 50	Other Facilities that Emit Volatile Organic Compounds (VOCs).	11/29/94	03/12/97 62 FR 11329	EPA effective date for Sections 50(a)(5) and 50(b)(3) is 5/1/98
Appendix "A"	Test Methods and Compliance Procedures: General Provisions.	11/29/94	01/26/96 61 FR 2419	
Appendix "B"	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	1/11/93	5/3/95 60 FR 21707	
Appendix "C"	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	1/11/93	5/3/95 60 FR 21707	
Appendix "D"	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	11/29/94	01/26/96 61 FR 2419	
Appendix "E"	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	1/11/93	5/3/95 60 FR 21707	
Appendix "F"	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	1/11/93	5/3/95 60 FR 21707	
Appendix "G"	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	1/11/93	5/3/95 60 FR 21707	
Appendix "H"	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	1/11/93	5/3/95 60 FR 21707	
Appendix "I"	Method to Determine Length of Rolling Period for Liquid-Liquid Material Balance Method.	11/29/94	01/26/96 61 FR 2419	
Appendix "J"	Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities.	1/11/93	6/10/94 59 FR 29956	
Appendix "J1"	Certified Stage II Vapor Recovery Systems.	1/11/93	6/10/94 59 FR 29956	
Appendix "J2"	Pressure Decay/Leak Test Procedure for Verification of Proper Functioning of Stage I & Stage II Vapor Recovery Equipment.	1/11/93	6/10/94 59 FR 29956	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Appendix "J3"	Dynamic Backpressure (Dry) Test and Liquid Blockage (Wet) Test Procedure for Verification of Proper Functioning of Stage II Vapor Balance Recovery Systems.	1/11/93	6/10/94 59 FR 29956	
Appendix "K"	Emission Estimation Methodologies	11/29/94	01/26/96 61 FR 2419	
Appendix "L"	Method to Determine Total Organic Carbon for Offset Lithographic Solutions.	11/29/94	01/26/96 61 FR 2419	
Appendix "M"	Test Method for Determining the Performance of Alternative Cleaning Fluids.	11/29/94	01/26/96 61 FR 2419	
Regulation 25—Requirements for Preconstruction Review				
Section 1	General Provisions	1/1/93 (As Revised 5/1/99)	2/7/01 66 FR 9211	Excluding §§1.2, 1.6, 1.9(L), 1.9(M), 1.9(N), 1.9(O), which relate to Prevention of Significant Deterioration.
Section 2	Emission Offset Provisions (EOP)	1/1/93 (As Revised 5/1/99)	2/7/01 66 FR 9211	
Section 3	Prevention of Significant Deterioration of Air Quality.	5/15/90	01/27/93 58 FR 26689	
Regulation 26—Motor Vehicle Emissions Inspection Program				
Section 1	Applicability and Definitions	2/12/01	11/27/03 68 FR 66343	Regulation 26 provisions apply to Sussex County only, effective November 1, 1999.
Section 2	General Provisions	2/12/01	11/27/03 68 FR 66343	
Section 3	Registration Requirement	5/9/85	12/08/86 51 FR 44068	
Section 4	Exemptions	2/12/01	11/27/03 68 FR 66343	
Section 5	Enforcement	7/6/82	10/17/83 48 FR 46986	
Section 6	Compliance, Waivers, Extensions of Time.	2/12/01	11/27/03 68 FR 66343	
Section 7	Inspection Facility Requirements	7/6/82	10/17/83 48 FR 46986	
Section 8	Certification of Motor Vehicle Officers	7/6/82	10/17/83 48 FR 46986	
Section 9	Calibration and Test Procedures and Approved Equipment.	2/12/01	11/27/03 68 FR 66343	
Technical Memorandum 1	Delaware Division of Motor Vehicles Vehicle Exhaust Emissions Test.	2/12/01	11/27/03 68 FR 66343	
Regulation 27—Stack Heights				
Section 1	General Provisions	4/18/83	09/21/83 48 FR 42979	
Section 2	Definitions Specific to this Regulation	12/7/88	06/29/90 55 FR 26689	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 3	Requirements for Existing and New Sources.	2/18/87	06/29/90 55 FR 26689	
Section 4	Public Notification	2/18/87	06/29/90 55 FR 26689	
Regulation 31—Low Enhanced Inspection and Maintenance Program				
Section 1	Applicability	10/11/01	11/27/03 68 FR 66343	
Section 2	Low Enhancement I/M performance standard.	10/11/01	1/27/03 68 FR 66343	
Section 3	Network Type and program evaluation ..	10/11/01	11/27/03 68 FR 66343	
Section 4	Test Frequency and Convenience	6/11/99	9/30/99 64 FR 52657	
Section 5	Vehicle Coverage	10/11/01	11/27/03 68 FR 66343	
Section 6	Test Procedures and Standards	10/11/01	11/27/03 68 FR 66343	
Section 7	Waivers and Compliance via Diagnostic Inspection.	10/11/01	11/27/03 68 FR 66343	
Section 8	Motorist Compliance Enforcement	10/11/01	11/27/03 68 FR 66343	
Section 9	Enforcement Against Operators and Motor Vehicle Techniques.	10/11/01	11/27/03 68 FR 66343	
Section 10	Improving Repair Effectiveness	8/13/98	9/30/99 64 FR 52657	
Section 11	Compliance with Recall Notices	8/13/98	9/30/99 64 FR 52657	
Section 12	On-Road Testing	8/13/98	9/30/99 64 FR 52657	
Section 13	Implementation Deadlines	10/11/01	11/27/03 68 FR 66343	
Appendix 1(d)	Commitment to Extend the I/M Program to the Attainment Date From Secretary Tulou to EPA Administrator W. Michael McCabe.	8/13/98	9/30/99 64 FR 52657	
Appendix 3(a)(7)	Exhaust Emission Limits According to Model Year.	8/13/98	9/30/99 64 FR 52657	
Appendix 3(c)(2)	VMASTM Test Procedure	6/11/99	9/30/99 64 FR 52657	
Appendix 4(a)	Sections from Delaware Criminal and Traffic Law Manual.	8/13/98	9/30/99 64 FR 52657	
Appendix 5(a)	Division of Motor Vehicles Policy on Out of State Renewals.	8/13/98	9/30/99 64 FR 52657	
Appendix 5(f)	New Model Year Clean Screen	10/11/01	11/27/03 68 FR 66343	
Appendix 6(a)	Idle Test Procedure	10/11/01	11/27/03 68 FR 66343	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Appendix 6(a)(5)	Vehicle Emission Repair Report Form ...	8/13/98	9/30/99 64 FR 52657	
Appendix 6(a)(8)	Evaporative System Integrity (Pressure) Test.	10/11/01	11/27/03 68 FR 66343	
Appendix 6(a)(9)	Onboard Diagnostic Test Procedure OBD II Test Procedure.	10/11/01	11/27/03 68 FR 66343	
Appendix 7(a)	Emission Repair Technician Certification Process.	8/13/98	9/30/99 64 FR 52657	
Appendix 8(a)	Registration Denial System Requirements Definition.	8/13/98	9/30/99 64 FR 52657	
Appendix 9(a)	Enforcement Against Operators and Inspectors.	10/11/01	11/27/03 68 FR 66343	
Regulation 35—Conformity of General Federal Actions to the State Implementation Plans				
Section 1	Purpose	8/14/96	7/15/97 62 FR 37722	
Section 2	Definitions	8/14/96	07/15/97 62 FR 37722	
Section 3	Applicability	8/14/96	07/15/97 62 FR 37722	
Section 4	Conformity Analysis	8/14/96	07/15/97 62 FR 37722	
Section 5	Reporting Requirements	8/14/96	07/15/97 62 FR 37722	
Section 6	Public Participation and Consultation	8/14/96	07/15/97 62 FR 37722	
Section 7	Frequency of Conformity Determinations	8/14/96	07/15/97 62 FR 37722	
Section 8	Criteria for Determining Conformity of General Federal Actions.	8/14/96	07/15/97 62 FR 37722	
Section 9	Procedures for Conformity Determinations of General Federal Actions.	8/14/96	07/15/97 62 FR 37722	
Section 10	Mitigation of Air Quality Impacts	8/14/96	07/15/97 62 FR 37722	
Section 11	Savings Provision	8/14/96	07/15/97 62 FR 37722	
Regulation 37—NO_X Budget Program				
Section 1	General Provisions	12/11/99	3/9/00 65 FR 12481	
Section 2	Applicability	12/11/99	3/9/00 65 FR 12481	
Section 3	Definitions	12/11/99	3/9/00 65 FR 12481	
Section 4	Allowance Allocation	12/11/99	3/9/00 65 FR 12481	
Section 5	Permits	12/11/99	3/9/00 65 FR 12481	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 6	Establishment of Compliance Accounts	12/11/99	3/9/00 65 FR 12481	
Section 7	Establishment of General Accounts	12/11/99	3/9/00 65 FR 12481	
Section 8	Opt In Provisions	12/11/99	3/9/00 65 FR 12481	
Section 9	New Budget Source Provisions	12/11/99	3/9/00 65 FR 12481	
Section 10	NO_x Allowance Tracking System (NATS).	12/11/99	3/9/00 65 FR 12481	
Section 11	Allowance Transfer	12/11/99	3/9/00 65 FR 12481	
Section 12	Allowance Banking	12/11/99	3/9/00 65 FR 12481	
Section 13	Emission Monitoring	12/11/99	3/9/00 65 FR 12481	
Section 14	Recordkeeping	12/11/99	3/9/00 65 FR 12481	
Section 15	Emissions Reporting	12/11/99	3/9/00 65 FR 12481	
Section 16	End-of-Season Reconciliation	12/11/99	3/9/00 65 FR 12481	
Section 17	Compliance Certification	12/11/99	3/9/00 65 FR 12481	
Section 18	Failure to Meet Compliance Requirements.	12/11/99	3/9/00 65 FR 12481	
Section 19	Program Audit	12/11/99	3/9/00 65 FR 12481	
Section 20	Program Fees	12/11/99	3/9/00 65 FR 12481	
Appendix "A"	NO_x Budget Program	12/11/99	3/9/00 65 FR 12481	
Regulation 39—Nitrogen Oxides (NO_x) Budget Trading Program				
Section 1	Purpose	12/11/00	5/17/01 66 FR 27459	
Section 2	Emission Limitation	12/11/00	5/17/01 66 FR 27459	
Section 3	Applicability	12/11/00	5/17/01 66 FR 27459	
Section 4	Definitions	12/11/00	5/17/01 66 FR 27459	
Section 5	General Provisions	12/11/00	5/17/01 66 FR 27459	
Section 6	NO_x Authorized Account Representative for NO_x Budget Sources.	12/11/00	5/17/01 66 FR 27459	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 7	Permits	12/11/00	5/17/01 66 FR 27459	
Section 8	Monitoring and Reporting	12/11/00	5/17/01 66 FR 27459	
Section 9	NATS	12/11/00	5/17/01 66 FR 27459	
Section 10	NO_x Allowance Transfers	12/11/00	5/17/01 66 FR 27459	
Section 11	Compliance Certification	12/11/00	5/17/01 66 FR 27459	
Section12	End-of-Season Reconciliation	12/11/00	5/17/01 66 FR 27459	
Section 13	Failure to Meet Compliance Requirements.	12/11/00	5/17/01 66 FR 27459	
Section 14	Individual Unit Opt-Ins	12/11/00	5/17/01 66 FR 27459	
Section 15	General Accounts	12/11/00	5/17/01 66 FR 27459	
Appendix A	Allowance Allocations to NO_x Budget Units Under Section 3(a)(1)(i) and 3(a)(1)(ii) of sRegulation No. 39.	12/11/00	5/17/01 66 FR 27459	
Appendix B	Regulation No. 37—Regulation No. 39 Program Transition.	12/11/00	5/17/01 66 FR 27459	
Regulation 40—Delaware's National Low Emission Vehicle (NLEV) Regulation				
Section 1	Applicability	10/11/99	12/28/99 64 FR 72564	Issued on September 1, 1999 by Secretary's Order No. 99–A–0046.
Section 2	Definitions	10/11/99	12/28/99 64 FR 72564	
Section 3	Program Participation	10/11/99	12/28/99 64 FR 72564	
Regulation 41—Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products				
Section 1	Architectural and Industrial Maintenance Coatings.	03/11/02	11/22/02 67 FR 70315	
Section 2	Commercial Products	01/11/02	11/22/02 67 FR 70315	
Section 3	Portable Fuel Containers	11/11/01	11/22/02 67 FR 70315	
Regulation 42—Specific Emission Control Requirements				
Section 1	Control of (NO_x) Emissions from Nitrogen Industrial Boilers.	12/11/01	11/22/02 67 FR 70315	

(d) *EPA approved State source specific requirements.*

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Getty Oil Co	75–A–4	8/5/75	3/7/79 44 FR 12423	52.420(c)(11).
Phoenix Steel Co.—Electric Arc Furnaces Charging & Tapping #2.	77–Ac–8	12/2/77	7/30/79 44 FR 25223	52.420(c)(12).
Delmarva Power & Light—Indian River.	89–A–7/ APC 89/197	2/15/89	1/22/90 55 FR 2067	52.420(c)(38).
SPI Polyols, Inc.	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01 66 FR 32231	Polyhydrate Alcohol's Catalyst Regenerative Process—Approved NO_X RACT Determination.
Citisteel	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01 66 FR 32231	Electric Arc Furnace—Approved NO_X RACT Determination.
General Chemical Corp	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01 66 FR 32231	(1) Sulfuric Acid Process & Interstage Absorption System. (2) Metallic Nitrite Process—Approved NO_X RACT Determinations.

(e) *EPA-approved non-regulatory and quasi-regulatory material.*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Commitment to adopt a clean fuel fleet program.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	2/26/93	9/29/93 58 FR 50846	52.422 (b).
1990 Base Year Emissions Inventory	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	5/27/94	1/24/96 61 FR 1838	52.423 VOC, CO, NO_X.
15% Rate of Progress Plan	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	2/17/95	10/12/99 64 FR 55139	52.426(a).
Post-1996 Rate of Progress Plan & contingency measures.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	12/29/97 6/17/99 2/3/00 12/20/00	10/29/01 66 FR 54598	52.426(b).
Ozone Attainment Plan Demonstration & enforceable commitments.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	5/22/98 10/8/98 1/24/00 12/20/00 10/9/01 9/2/03	10/29/01 66 FR 54598 12/5/03 68 FR 6794	52.426(c).
Mobile budgets	Kent & New Castle Counties	*1/5/98 *5/28/98 2/3/00 12/20/00 9/2/03	10/29/01 66 FR 54598 12/5/03 68 FR 67948	52.426(d), (e).
Photochemical Assessment Monitoring Stations (PAMS) Program.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area.	3/24/94	9/11/95 60 FR 47081	52.430.
Small Business stationary source technical and environmental compliance assistance program.	Statewide	5/16/95	5/17/94 59 FR 25771	52.460.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Commitment to establish an ambient air quality monitoring network.	Statewide	3/19/80	5/15/81 46 FR 26767	52.465(c)(15).
Commitment to use available grants and funds to provide for basic transportation needs...	New Castle County	8/15/79	9/30/81 46 FR 47777	52.465(c)(19).
Executive order pertaining to financial disclosures by State officials [CAA Section 128].	Statewide	8/7/78	9/29/81 46 FR 47544	52.465(c)(22).
Lead (Pb) SIP	Statewide	12/23/80	9/10/81 46 FR 45160	52.465(c)(24).
Procedures to notify EPA of PSD sources locating within 100 km of a Class I PSD area.	Statewide	2/27/81	3/15/82 47 FR 11014	52.465(c)(29).

* (rec'd).

[FR Doc. 04–13850 Filed 6–18–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Regional Docket Nos. II–2002–03, –04, –12; FRL –7776–3]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Sirmos Division of Bromante; the New York City Transit Authority's East New York Bus Depot; and the New York Organic Fertilizer Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to three State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to three citizen petitions asking EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Sirmos Division of Bromante Corp. (Sirmos) in Long Island City, NY; New York City Transit Authority's (NYCTA) East NY Bus Depot in Brooklyn, NY; and New York Organic Fertilizer Company's (NYOFCO) sludge pelletization facility in the Bronx, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for Sirmos, the NYCTA, and NYFCO are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm*.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Sirmos

On April 11, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Sirmos. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit was issued without adequate opportunity for public comment through a public hearing; (2) the permit is based on an inadequate permit application; (3) the permit lacks an adequate statement of basis; (4) the permit distorts the annual certification requirements; (5) the permit does not require prompt reporting of all deviations; (6) the permit's startup/shutdown, malfunction, maintenance, and upset provision violates part 70; (7) the emergency defense provision is in violation of 40 CFR 70.6(g); (8) the permit lacks federally enforceable conditions that govern the procedures for permit renewal; and (9) the permit lacks monitoring that is sufficient to assure the facility's compliance with all applicable requirements and many individual permit conditions are not practicably enforceable. On May 24, 2004, the Administrator issued an order partially granting and partially denying the petition on Sirmos. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Include adequate monitoring to assure

compliance with the facility's opacity limits; (2) include periodic monitoring to assure compliance with the VOC handling, storage and disposal requirements of 6 NYCRR section 228.10; and (3) indicate the environmental rating for each air contaminant from each emission source as required under 6 NYCRR section 212.2. The order also explains the reasons for denying NYPIRG's remaining claims.

II. NYCTA

On May 16, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the NYCTA's East New York Bus Depot facility. NYPIRG raises 8 of the 9 issues raised in the Sirmos petition (all except for issue 7, above). On May 24, 2004, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) hold permittee responsible for complying with the sulfur-in-fuel limit; (2) require daily inspection of solvent storage containers to ensure compliance with 6 NYCRR section 226; (3) require periodic monitoring for opacity during operation of the spray paint booths to assure compliance with 6 NYCRR section 228; (4) require periodic testing for VOC content of surface coating materials to assure compliance with 6 NYCRR section 228; and (5) address an old PM emission limit that applies to any oil fired stationary combustion installation. The order also explains the reasons for denying NYPIRG's remaining claims.

III. NYOFCO

On October 4, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the NYOFCO's sludge pelletization facility. NYPIRG raises 7 of the 9 issues raised in the Sirmos petition (issues 2 through 6, 8, and 9, above). In addition, NYPIRG raises four additional issues in the petition for NYOFCO: (1) NYSDEC violated the public participation and record requirements; (2) the permit incorrectly states that the facility is not subject to new source review; (3) the permit fails to include an adequate compliance schedule; and (4) the final permit contains errors that were noted in a document presented by NYPIRG and local community groups to NYSDEC Region 2. On May 24, 2004, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) add to the "federal-side" of the permit the SIP-approved "excuse" provision of 6 NYCRR section 201.5(e); (2) add opacity requirements pursuant to 6 NYCRR section 212.6 or explain why NYOFCO is not subject to this requirement; (3) add particulate matter requirements pursuant to 6 NYCRR section 212.4(b) or explain why NYOFCO is not subject to this requirement; (4) for the sulfur-in-fuel provision, correct the citation to the SIP-approved requirement, explain that certain requirements came from the previously issued State permit to construct and certificate to operate, and add monitoring based on fuel supplier reports; and (5) revise the mercury provision to specify the emission limitation and the required periodic monitoring. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: June 8, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–13933 Filed 6–18–04; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–37, 300–3, 301–10, 301–70

FTR Amendment 2004–02; FTR Case 2003–307

RIN 3090–AH90

Federal Travel Regulation; Use of Government Aircraft

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage related to travel on Government aircraft that has been in 41 CFR part 101–37 into the Federal Travel Regulation (FTR). A cross reference is added to the FPMR to direct readers to the coverage in the FTR. This final rule amends the Federal Travel Regulation (FTR) to provide policy for the use of Government aircraft for travel when necessary for the accomplishment of agency business.

DATES: *Effective Date:* This final rule is effective September 20, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–0483 or email at *jim.harte@gsa.gov*. Please cite FTR case 2003–307, FTR Amendment 2004–02.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is in the process of revising the Federal Property Management Regulations (FPMR) and transferring most of the content into a new, streamlined Federal Management Regulation (FMR). Part 101–37 of the FPMR (41 CFR part 101–37) contained rules for both the management of Government aircraft and the management of travel on Government aircraft.

The rules in 41 CFR part 101–37 that pertained to Government aircraft management were transferred to the Federal Management Regulation (FMR) as part 102–33 (41 CFR part 102–33) on November 6, 2002 (67 FR 67742) and a cross-reference was added to 41 CFR part 101–37.

This final rule moves the remaining rules in 41 CFR part 101–37, those pertaining to management of travel on Government aircraft, to the Federal Travel Regulation (FTR)(41 CFR chapters 300–304). It also amends part 101–37 by providing a cross-reference to both the FMR and the FTR.

The rules pertaining to Government aircraft are based on direction contained in Office of Management and Budget (OMB) Circular A–126, "Improving the Management and Use of Government Aircraft,"revised May 1992. OMB Circular A–126 directs the Department of Defense (DoD) (and the military services) and the Department of State to publish rules regulating travel on Government aircraft by uniformed military members and by members of the foreign service, respectively. OMB Circular A–126 also directs GSA to publish in the FTR the rules for civilian employees who travel on Government aircraft. In compliance with this direction, GSA has developed these new provisions of the FTR in plain language, question-and-answer format to clarify and simplify the content.

In correspondence dated January 13, 2002, OMB states that they expect "agencies to treat their contractors like employees with regard to being passengers on Federal aircraft..." even though OMB Circular A–126 does not state this policy explicitly. In line with OMB's intent, the rules and definitions

in revised FTR parts 300–3, 301–10, and 301–70 treat employees and Government contractors similarly.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–37, 300–3, 301–10, 301–70

Government employees, Travel and transportation expenses.

Dated: June 1, 2004.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5710, GSA amends 41 CFR parts 101–37, 300–3, 301–10, 301–70 as set forth below:

CHAPTER 101—[AMENDED]

■ 1. Revise part 101–37 to read as follows:

PART 101–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

Authority: 40 U.S.C. 121(c); the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541; OMB Bulletin No. 93–11 (April 19, 1993) and OMB Circular No. A–126 (Revised May 22, 1992).

§ 101–37.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, part 102–33 and the Federal Travel Regulation (FTR) (41 CFR chapters 300–304, parts 300–3, 301–10, and 301–70)).

(a) For information on Government aviation administration and coordination, previously contained in subparts 101–37.1, 101–37.2, 101–37.3, and 101–37.5 through 101–37.14, see FMR part 102–33, Management of Government Aircraft (41 CFR part 102–33).

(b) For information on travel on Government aircraft previously contained in subparts 101–37.1 and 101–37.4, see 41 CFR parts 300–3, 301–10, and 301–70 of the Federal Travel Regulation (FTR).

CHAPTER 300–GENERAL

PART 300–3—GLOSSARY OF TERMS

■ 2. The authority citation for part 300–3 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609; 36 FR 13747; 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992

■ 3. Amend § 300–3.1 by adding in alphabetical order, the terms and definitions "Aircraft management office," "Commercial Aviation Services," "Crewmember," "Executive agency," "Federal traveler," "Full coach fare," "Non-Federal traveler," "Passenger," "Qualified non-crewmember," "Required use travel," "Senior Federal official," "Space available travel," and revising the definition of "Government aircraft" to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Aircraft management office—An agency component that has management control of Federal aircraft used by the agency or of aircraft hired as commercial aviation services (CAS).

* * * * *

Commercial Aviation Services (CAS)—Commercial aviation services (CAS) include, for the exclusive use of an executive agency—

(1) Leased aircraft;

(2) Chartered or rented aircraft;

(3) Commercial contracts for full aviation services (*i.e.*, aircraft plus related aviation services) or acquisition of full services through inter-service support agreements (ISSA) with other agencies; or

(4) Related services (*i.e.*, services but not aircraft) obtained by commercial contract or ISSA, except those services acquired to support Federal aircraft.

* * * * *

Crewmember—A person assigned to operate or assist in operating an aircraft. Performs duties directly related to the operation of the aircraft (e.g., as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (e.g., as flight directors, crew chiefs, electronics technicians, mechanics). If a crewmember is onboard for the purpose of travel, (i.e., being transported from point to point) he/she must be authorized to travel in accordance with rules in 41 CFR 301–10.260 through 301–10.266 and 41 CFR 301–70.800 through 301–70.903.

* * * * *

Executive agency—An entity of the executive branch that is an "executive agency" as defined in section 105 of title 5 U.S.C.

* * * * *

Federal traveler—For the purposes of 41 CFR 301–10.260–266 and 301–70.800–910, a person who travels on a Government aircraft and who is either—

(1) A civilian employee in the Government service;

(2) A member of the uniformed or foreign services of the United States Government; or

(3) A contractor working under a contract with an executive agency.

* * * * *

Full coach fare—The price of a coach fare available to the general public on a scheduled air carrier between the day that the travel was planned and the day the travel occurred.

* * * * *

Government aircraft—An aircraft that is operated for the exclusive use of an executive agency and is a—

(a) Federal aircraft, which an executive agency owns (i.e., holds title to) or borrows for any length of time under a bailment or equivalent loan agreement. See 41 CFR 102–33.20 for definition of all terms related to Federal aircraft, or

(b) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(1) Leases or lease-purchases with the intent to take title,

(2) Charters or rents, or

(3) Hires as part of a full-service contract or inter-service support agreement (ISSA).

* * * * *

Non-Federal traveler—For the purposes of 41 CFR 301–10.260 through 301–10.266 and 41 CFR 301–70.800

through 301–70.910, an individual who travels on a Government aircraft, but is not a Federal traveler. Dependents and other family members of Federal travelers who travel on Government aircraft are considered to be non-Federal travelers within this regulation.

* * * * *

Passenger—In relation to use of Government aircraft, a passenger is any person who flies onboard a Government aircraft, but who is not a crewmember or qualified non-crewmember.

* * * * *

Qualified non-crewmember—A person flying onboard a Government aircraft whose skills or expertise are required to perform or are associated with performing the non-travel related Governmental function for which the aircraft is being operated (qualified non-crewmembers may be researchers, law enforcement agents, firefighters, agricultural engineers, biologists, etc.). If a qualified non-crewmember is onboard for the purpose of travel (i.e., being transported from point to point) in addition to performing his/her duties related to the non-travel related Governmental function for which the aircraft is being operated (e.g., when a scientist conducts an experiment at the same time he/she is also on the aircraft for the purpose of traveling from point to point), he/she must be authorized to travel in accordance with rules in 41 CFR parts 301–10 and 301–70.

Required use travel—Travel by Federal travelers that requires use of a Government aircraft to meet bona fide communications needs (e.g., 24–hour secure communications), security requirements (e.g., highly unusual circumstances that present a clear and present danger), or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations) of an executive agency. Required use travel must be approved according to § 301–10.262(a) and § 301–70.803(a) of this title.

Senior Federal official—An individual who is paid according to the Executive Schedule established by 5 U.S.C. 53, Subchapter II, including Presidential appointees who are confirmed by the Senate; employed in the U.S. Government's Senior Executive Service or an equivalent "senior" service; who is a civilian employee of the Executive Office of the President; who is appointed by the President to a position under section 105(a)(2)(A), (B), or (C) of title 3 U.S.C. or by the Vice President to a position under section 106(a)(1)(A), (B), or (C) of title 3 U.S.C; or who is a contractor working under a contract with an executive agency, is paid at a rate equal to or more than the minimum rate for the Senior Executive Service, and has senior executive responsibilities. The term senior Federal official, as used in the Federal Travel Regulation does not mean an active duty military officer.

Space available travel—Travel in space available on a Government aircraft that is already scheduled for an official purpose.

* * * * *

CHAPTER 301–TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

PART 301–10—TRANSPORTATION EXPENSES

■ 4. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No.A–126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992

■ 5. Revise the center heading above § 301–10.260 that reads "Government Aircraft" to read "Travel on Government Aircraft."

■ 6. Revise §§ 301–10.260 through 301–10.262 and add new §§ 301–10.263 through 301–10.266 to read as follows:

§ 301–10.260 May I use a Government aircraft for travel?

You may use Government aircraft for travel only if you have authorization from an executive agency under the rules specified in this part (except with regard to travel under § 301–70.808 and § 301–70.910). Because the taxpayers should pay no more than necessary for your transportation, generally you may travel on Government aircraft only when a Government aircraft is the most cost-effective mode of travel.

§ 301–10.261 When may I use a Government aircraft for travel?

You may use Government aircraft—

(a) For official travel only when—

(1) No scheduled commercial airline service is reasonably available (i.e., able to meet your departure and/or arrival requirements within a 24–hour period, unless you demonstrate that extraordinary circumstances require a shorter period) to fulfill your agency's travel requirement; or

(2) The cost of using a Government aircraft is less than the cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare if a city-pair fare is not available to you. The cost of non-productive or lost work time while in travel status and certain other costs should be considered when comparing the cost of using a Government aircraft in lieu of scheduled commercial airline service. Additional information on costs included in this cost comparison may be found in the "U.S. Government Aircraft Cost Accounting Guide," available from the General Services Administration, Office of Governmentwide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405.

(b) For required-use travel only when you are required to use Government aircraft for bona fide communications (e.g., 24–hour secure communications) or security reasons (e.g., highly unusual circumstances that present a clear and present danger) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations). Required use travel may include travel for official, personal, or political purposes, but must be approved in accordance with § 301–10.262(a) and § 301–70.803(a).

(c) For space available travel only when—

(1) The aircraft is already scheduled for use for an official purpose, and your use of the aircraft does not require a larger aircraft or result in more than minor additional cost to the Government; or

(2) You are a Federal traveler or a dependent of a Federal traveler stationed by the Government in a remote location not accessible to commercial airline service and authorized to use Government aircraft; or

(3) You are authorized to travel on a space available basis under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–10.262 How will my agency authorize travel on Government aircraft?

Your agency will authorize your travel on Government aircraft as follows:

(a) *Required use travelers.* Your agency's senior legal official or his/her principal deputy must authorize your required-use travel on a trip-by-trip basis, in advance, in writing, and in compliance with the agency's written policies describing the special circumstances under which the agency will require a traveler to use Government aircraft, unless—

(1) You are an agency head and the President has determined that all your travel (or your travel in specified categories) qualifies as required-use travel; or

(2) You are not an agency head, and your agency head has determined in writing that all of your travel, or your travel in specified categories, qualifies as required-use travel. Such written

explanation must state the specific basis for the determination.

Note to § 301–10.262(a): In an emergency situation, prior verbal approval for required-use travel with an after-the-fact written authorization is permitted.

(b) *Senior Federal officials.* If you are a senior Federal official, your agency's senior legal official or his/her principal deputy must authorize all your travel on Government aircraft in advance and in writing, except for required use travel authorized under paragraphs (a)(1) and (a)(2) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted. Senior Federal officials who are crewmembers or qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point to point) are considered travelers and must be authorized to travel on Government aircraft according to this paragraph.

(c) *Non-Federal travelers.* If you are a non-Federal traveler, the senior legal official or his/her principal deputy in the agency sponsoring your travel must authorize you to fly on Government aircraft in advance and in writing. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your sponsoring agency's senior legal official is permitted.

(d) *All other Federal travelers.* Your designated travel-approving official (or anyone to whom he/she delegates this authority), who must be at least one organizational level above you, must authorize your travel on Government aircraft, in advance and in writing. Prior verbal approval with an after-the-fact written authorization by your agency's designated travel approving official is permitted in an emergency situation. If you hold a blanket travel authorization for official travel that authorizes travel on Government aircraft, it must define the circumstances that must be met for using Government aircraft and must comply with this regulation and any additional agency policies. Travel on Government aircraft that does not meet the circumstances specified in the blanket travel authorization must be authorized on a trip-by-trip basis in accordance with this regulation and other applicable agency policies. Check with your designated travel approving official for information on your agency's policy.

§ 301–10.263 What travel authorization documents must I present to the aircraft management office that operates the Government aircraft?

You must present to the aircraft management office that operates the Government aircraft—

(a) A copy of your written travel authorization, including a blanket travel authorization, if applicable, approved in accordance with § 301–10.262; and

(b) Valid picture identification, such as a Government identification card or a state-issued driver's license.

§ 301–10.264 What amount must the Government be reimbursed for travel on Government aircraft?

(a) No reimbursement is required for official travel on a Government aircraft.

(b) For personal travel on Government aircraft, reimbursement depends upon which of the following special cases applies:

(1) For any required use travel, you must reimburse the Government for the excess of the full coach fare for all flights taken over the full coach fare for the flights that you would have taken had you not engaged in personal activities during the trip, i.e., for a wholly personal trip, you must pay the full coach fare for the entire trip;

(2) For travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, or when you or your dependents are stationed by the Government in a remote location with no access to regularly scheduled commercial airline service and are authorized to use Government aircraft, you do not have to reimburse the Government.

(c) For political travel on a Government aircraft (i.e., for any trip or part of a trip during which you engage in political activities), the Government must be reimbursed the excess of the full coach fare for all flights taken on the trip over the full coach fare for the flights that you would have taken had you not engaged in political activities, except if other law or regulation specifies a different amount (see, e.g., 11 CFR 106.3, "Allocation of Expenses between Campaign and Non-campaign Related Travel"), in which case the amount reimbursed is the amount required by such law or regulation.

Note to § 301–10.264: Except for required use travel, any use of Government aircraft for personal or political activities shall not cause an increase in the actual costs to the Government of operating the aircraft.

§ 301–10.265 Will my travel on Government aircraft be reported?

Your travel on Government aircraft will not be reported unless you are a senior Federal official, or a non-Federal traveler. (Travel under 10 U.S.C. 6744 is not reported.) If you are a senior Federal official or a non-Federal traveler, any use you make of Government aircraft, i.e., as a passenger, crewmember, or qualified non-crewmember, will be reported to the General Services Administration (GSA) by the agency that owns or hires the Government aircraft. (Agencies must maintain information on classified trips, but do not report classified trips to GSA.)

§ 301–10.266 Is information available to the public about travel on Government aircraft by senior Federal officials and non-Federal travelers?

Yes, an agency that authorizes travel on Government aircraft and an agency that owns or hires Government aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 7. The authority citation for 41 CFR part 301–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note), Office of Management and Budget Circular No. A–126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992

■ 8. Amend Part 301–70 by adding subparts I and J to read as follows:

* * * * *

Subpart I—Policies and Procedures for Agencies that Authorize Travel on Government Aircraft

Sec.

Subpart I—Policies and Procedures for Agencies that Authorize Travel on Government Aircraft

§ 301–70.800 Whom may we authorize to travel on Government aircraft?

You may authorize Federal travelers, non-Federal travelers, and any other passengers, as defined in part 300–3 of this subtitle, to travel on Government aircraft, subject to the rules in this subpart. Because the taxpayers generally should pay no more than necessary for transportation of travelers, except for required use travel, you may authorize travel on Government aircraft only when a Government aircraft is the most cost-effective mode of travel and the traveler is traveling for Governmental purposes.

§ 301–70.801 When may we authorize travel on Government aircraft?

You may authorize travel on Government aircraft only as follows:

(a) For official travel when—

(1) No scheduled commercial airline service is reasonably available to fulfill your agency's travel requirement (i.e., able to meet the traveler's departure and/or arrival requirements within a 24–hour period, unless you demonstrate that extraordinary circumstances require a shorter period); or

(2) The cost of using a Government aircraft is not more than the cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare if a city-pair fare is not available to the traveler.

(b) For required-use travel, i.e., when the traveler is authorized to use Government aircraft because of bona fide communications needs (e.g., 24–hour secure communications are required) or security reasons (e.g., highly unusual circumstances that present a clear and present danger to the traveler) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations). Required-use travel may include travel for official, personal, or political purposes, but must be approved in accordance with § 301–10.262(a) and § 301–70.803(a).

(c) For space available travel when—

(1) The aircraft is already scheduled for use for an official purpose and carrying an official traveler(s) on the aircraft does not cause the need for a larger aircraft or result in more than minor additional cost to the Government; or

(2) The Federal traveler or the dependent of a Federal traveler is stationed by the Government in a remote location not accessible to commercial airline service; or

(3) The traveler is authorized to travel space available under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–70.802 Must we ensure that travel on Government aircraft is the most cost-effective alternative?

(a) Yes, you must ensure that travel on a Government aircraft is the most cost-effective alternative that will meet the travel requirement. Your designated travel approving official must—

(1) Compare the cost of all travel alternatives, as applicable, that is—

(i) Travel on a scheduled commercial airline;

(ii) Travel on a Federal aircraft;

(iii) Travel on a Government aircraft hired as a commercial aviation service (CAS); and

(iv) Travel by other available modes of transportation; and

(2) Approve only the most cost-effective alternative that meets your agency's needs.

(3) Consider the cost of non-productive or lost work time while in travel status and certain other costs when comparing the costs of using Government aircraft in lieu of scheduled commercial airline service and other available modes of transportation. Additional information on costs included in the cost comparison may be found in the "U.S. Government Aircraft Cost Accounting Guide," available through the General Services Administration, Office of Governmentwide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405.

(b) The aircraft management office in the agency that owns or hires the Government aircraft must provide your designated travel-approving official with cost estimates for a Government aircraft trip (i.e., a Federal aircraft trip cost or a CAS aircraft trip cost).

(c) When an agency operates a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings.

§ 301–70.803 How must we authorize travel on a Government aircraft?

You must authorize travel on a Government aircraft as follows:

(a) *For required-use travel.* Your agency must first establish written standards for determining the special circumstances under which it will require travelers to use Government aircraft. Then, following those standards, your agency's senior legal official or his/her principal deputy must authorize required-use travel on a trip-by-trip basis in advance and in writing, unless—

(1) The traveler is an agency head, and the President has determined that all of his or her travel, or travel in specified categories, requires the use of Government aircraft; or

(2) Your agency head has determined in writing that all travel, or travel in specified categories, by another traveler requires the use of Government aircraft.

Note to § 301–70.803(a): In an emergency situation, prior verbal approval for required-use travel with an after-the-fact written authorization is permitted.

(b) *For travel by senior Federal officials.* Your agency's senior legal official or his/her principal deputy must authorize all travel on Government aircraft by senior Federal officials on a trip-by-trip basis, in advance and in writing, except for required use travel authorized under paragraphs (a)(1) or (a)(2) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted. Senior Federal officials who

are crewmembers or qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point-to-point) are considered travelers and must be authorized to travel on Government aircraft according to this paragraph.

(c) *For travel by non-Federal travelers.* If you are the sponsoring agency for a non-Federal traveler, your senior legal official or his/her deputy must authorize all travel on Government aircraft by that non-Federal traveler on a trip-by-trip basis, in advance and in writing. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted.

(d) *For all other travel.* (1) Your agency's designated travel approving official (or anyone to whom he/she delegates this authority and who is at least one organizational level above the traveler) must authorize, in advance and in writing, all other travel on Government aircraft (i.e., by passengers, crewmembers, or qualified non-crewmembers) that is not covered in paragraphs (a), (b), and (c) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's designated travel approving official is permitted. If your agency wishes to issue blanket travel authorizations that authorize travel on Government aircraft, such blanket authorizations must define the circumstances that must be met for using Government aircraft in compliance with this regulation and any additional agency policies. Travel on Government aircraft that does not meet the circumstances specified in the blanket travel authorization must be authorized on a trip-by-trip basis in accordance with this regulation and other applicable agency policies.

(2) When authorizing space available travel (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), you must ensure that the aircraft management office in the agency that owns or hires the aircraft has certified in writing before the flight that the aircraft is scheduled to be used for a bona fide governmental function. Bona fide governmental functions may include support for official travel. The aircraft management office must also certify that carrying a traveler(s) in space available does not cause the need for a larger aircraft or result in more than minor additional cost to the Government. The aircraft management office must retain this certification for two years. In an emergency situation, prior verbal confirmation of this information with an after-the-fact written certification is permitted.

§ 301–70.804 What amount must the Government be reimbursed for travel on a Government aircraft?

(a) No reimbursement is required for official travel on a Government aircraft.

(b) For personal travel on Government aircraft, reimbursement depends upon which of the following special cases applies:

(1) You must require a traveler on required-use travel to reimburse the Government for the excess of the full coach fare for all flights taken on a trip over the full coach fare for the flights that he/she would have taken had he/she not engaged in personal activities during the trip; and

(2) No reimbursement is required for travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, or when the traveler and his/her dependents are stationed by the Government in a remote location with no access to regularly scheduled commercial airline service.

(c) For political travel on a Government aircraft (i.e., for any trip or part of a trip during which the traveler engages in political activities), you must require that the Government be reimbursed the excess of the full coach fare for all flights taken on the trip over the full coach fare for the flights that the traveler would have taken had he/she not engaged in political activities, except if other law or regulation specifies a different amount (see, e.g., 11 CFR 106.3, "Allocation of Expenses between Campaign and Non-campaign Related Travel"), in which case the amount reimbursed is the amount required by such law or regulation.

§ 301–70.805 Must we include special information on a travel authorization for a senior Federal official or a non-Federal traveler who travels on Government aircraft?

Yes, you must include the following information on a travel authorization for a senior Federal official or a non-Federal traveler:

(a) Traveler's name with indication that the traveler is either a senior Federal official or a non-Federal traveler, whichever is appropriate.

(b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.

(c) Name of the authorizing agency.

(d) The official purpose of the trip.

(e) The destination(s).

(f) For personal or political travel, the amount that the traveler must reimburse the Government (i.e., the full coach fare or appropriate share of that fare).

(g) For official travel, the comparable city-pair fare (if available to the traveler) or full coach fare if a city-pair fare is not available.

§ 301–70.806 What documentation must we retain for travel on Government aircraft?

You must retain all travel authorizations and cost-comparisons for travel on Government aircraft for two years.

§ 301–70.807 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?

Yes, an agency that authorizes travel on Government aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

§ 301–70.808 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A–126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A–126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A–126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

Subpart J—Policies and Procedures for Agencies that Own or Hire Government Aircraft for Travel

§ 301–70.900 May we use our Government aircraft to carry passengers?

Yes. You may use Government aircraft, i.e., aircraft that you own, borrow, operate as a bailed aircraft, or hire as a commercial aviation service (CAS), to carry Federal and non-Federal travelers, but only in accordance with the rules in 41 CFR 102–33.215 and 102–33.220 and the regulations in this part.

§ 301–70.901 Who may approve use of our Government aircraft to carry passengers?

Your agency head or his/her designee must approve the use of your agency's Government aircraft for travel, i.e., for carrying passengers and any

crewmembers or qualified non-crewmembers who are also traveling. This approval must be in writing and may be for recurring travel.

§ 301–70.902 Do we have any special responsibilities related to space available travel on our Government aircraft?

Yes, except for travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, you must certify in writing before carrying passengers on a space available basis on your Government aircraft that the aircraft is scheduled to perform a bona fide governmental function. Bona fide governmental functions may include support for official travel. You must also certify that carrying a passenger in space available does not cause the need for a larger aircraft and does not result in more than minor additional cost to the Government. Your aircraft management office must retain this certification for two years. In an emergency situation, prior verbal approval with an after-the-fact written certification is permitted.

§ 301–70.903 What are our responsibilities for ensuring that Government aircraft are the most cost-effective alternative for travel?

To help ensure that Government aircraft are the most cost-effective alternative for travel, your aircraft management office must calculate the cost of a trip on your aircraft, whether Federal aircraft or CAS aircraft, and submit that information to the traveler's designated travel-approving official upon request. The designated travel-approving official must use that information to compare the cost of using Government aircraft with the cost of scheduled commercial airline service and the cost of using other available modes of transportation. When you operate a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings. For guidance on how and when to calculate the cost of a trip on Government aircraft, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

§ 301–70.904 Must travelers whom we carry on Government aircraft be authorized to travel?

Yes, every traveler on one of your aircraft must have a written travel authorization from an authorizing executive agency, and he/she must present that authorization, before the flight, to the aircraft management office or its representative in the organization that owns or hires the Government aircraft. In addition to all passengers, those crewmembers and qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point to point) are considered travelers and must also be authorized to travel on Government aircraft.

§ 301–70.905 What documentation must we retain for travel on our Government aircraft?

(a) You must retain for two years copies of travel authorizations for senior Federal officials and non-Federal travelers who travel on your Government aircraft.

(b) You must also retain for two years the following information for each flight:

(1) The tail number of the Government aircraft used.

(2) The dates used for travel.

(3) The name(s) of the pilot(s), other crewmembers, and qualified non-crewmembers.

(4) The purpose(s) of the flight.

(5) The route(s) flown.

(6) The names of all passengers.

§ 301–70.906 Must we report use of our Government aircraft to carry senior Federal officials and non-Federal travelers?

Yes, except when the trips are classified, you must report to the U.S. General Services Administration, Office of Governmentwide Policy (MTT), 1800 F Street, N.W., all uses of your aircraft for travel by any senior Federal official or non-Federal traveler, except travel authorized under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–70.907 What information must we report on the use of Government aircraft to carry senior Federal officials and non-Federal travelers and when must it be reported?

You must report on a semi-annual basis to the General Services Administration (GSA) information about Senior Federal officials and non-Federal travelers who fly aboard your aircraft. The reporting periods are October 1 through March 31 and April 1 through September 30 of each fiscal year. A report is due to GSA not later than 30 calendar days after the close of each reporting period and must contain the following information:

(a) The person's name with indication that he/she is either a senior Federal official or a non-Federal traveler, whichever is appropriate.

(b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.

(c) Name of the authorizing agency.

(d) The official purposes of the trip.

(e) The destination(s).

(f) For personal or political travel, the amount that the traveler must reimburse the Government (i.e., the full coach fare or appropriate share of that fare).

(g) For official travel, the comparable city-pair fare (if available to the traveler) or the full coach fare if the city-pair fare is not available.

(h) The cost to the Government to carry this person (i.e., the appropriate allocated share of the Federal or CAS aircraft trip costs).

Note to § 301–70.907: You are not required to report classified trips; however, you must maintain information on classified trips for two years. Most of the information required by paragraphs (a) through (g) of this section can be found on the traveler's travel authorization. Your aircraft management office must provide the information about crewmembers and qualified non-crewmembers required by paragraph (b) as well as the information required by paragraph (h). For more information on calculating costs, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

§ 301–70.908 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?

Yes, an agency that operates aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

§ 301–70.909 What disclosure information must we give to anyone who flies on our Government aircraft?

You must give each person aboard your aircraft a copy of the following disclosure statement:

DISCLOSURE FOR PERSONS FLYING ABOARD FEDERAL GOVERNMENT AIRCRAFT

NOTE: The disclosure contained herein is not all-inclusive. You should contact your sponsoring agency for further assistance.

Generally, an aircraft used exclusively for the U.S. Government may be considered a 'public aircraft' as defined in 49 U.S.C. 40102 and 40125, unless it is transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal aviation regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If a U.S. Government agency transports passengers on a Government aircraft, that agency must comply with all Federal aviation regulations applicable to civil aircraft. If you have questions about the status of a particular flight, you should contact the agency sponsoring the flight.

You and your family have certain rights and benefits in the unlikely event you are injured or killed while riding aboard a Government aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693–0044. (These rules also apply to travel on other Government-owned or operated conveyances such as cars, vans, or buses.)

State or foreign laws may provide for product liability or "third party" causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) is authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to state programs, as well as the U.S. Attorneys Office, for the benefit of victims of terrorist acts or mass violence.

If you are a Federal employee:

1. If you are injured or killed on the job during the performance of duty - including while traveling aboard a Government aircraft or other government-owned or operated conveyance for business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

2. You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

If you are a private citizen not employed by the Federal Government:

1. Even if you are not regularly employed by the Federal Government, if you are rendering personal service to the Federal Government on a voluntary basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you depart, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

2. If there is a determination that you are not a Federal employee, you and your family will not be eligible to receive workman's compensation benefits under FECA. If you are traveling for business purposes, you may be eligible for workman's compensation benefits under state law. If the accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

§ 301–70.910 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A–126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A–126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A–126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

[FR Doc. 04–13349 Filed 6–18–04; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 221, 315, and 355

[Docket No. MARAD 2004–18059]

RIN 2133–AB59

Shipping—Technical Amendments

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Final rule.

SUMMARY: This final rule makes minor technical changes to terms and definitions in title 46 of the Code of Federal Regulations (CFR). The minor technical changes update the title to conform to 46 App. U.S.C. 802, which was amended by the Coast Guard Authorization Act of 1998. This rulemaking will have no substantive effect on the regulated public.

EFFECTIVE DATE: This final rule is effective on June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Murray A. Bloom, Chief, Division of Maritime Programs, Office of Chief Counsel, Maritime Administration, 400 7th Street, SW., Room 7228, Washington, DC 20590; telephone: (202) 366–5164; fax: (202) 366–3511.

ADDRESSES: This final rule is available for inspection and copying between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays, at the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: MARAD is updating its regulations under 46 CFR parts 221, 315, and 355 to conform to 46 App. U.S.C. 802, which was amended by the Coast Guard Authorization Act of 1998, section 421 of Pub. L. 105–383. The changes eliminate references to company or entity presidents and instead include such individuals under the category of "chief executive officer, by whatever title."

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule will not result in an annual effect on the economy of $100 million

or more. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104–121. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking are so minimal that no further analysis is necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B), good cause exists for not providing notice and comment since this final rule only implements minor technical changes to the wording of existing regulations under 46 CFR parts 221, 315, and 355, which have no substantive effect on the regulated public. Under 5 U.S.C. 553(d)(3), MARAD finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Federalism

We analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulatory Flexibility

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only makes minor technical changes to terms and definitions in title 46 of the CFR, which have no substantive effect on the regulated public.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact is required for this rulemaking. This rulemaking has no environmental impact.

Paperwork Reduction Act

This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of U.S. policy.

List of Subjects

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trust and trustees.

46 CFR Part 315

Government contracts, National defense, Vessels.

46 CFR Part 355

Citizenship and naturalization, Maritime carriers, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, MARAD amends 46 CFR chapter II as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

■ 1. The authority citation for part 221 continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

■ 2. Amend § 221.3 by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 221.3 Definitions.

* * * * *

(c)* * *

(2) A corporation organized under the laws of the United States or of a State, the Controlling Interest of which is owned by and vested in Citizens of the United States and whose chief executive officer, by whatever title, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are Noncitizens;

* * * * *

(4) An association organized under the laws of the United States or of a State, whose chief executive officer, by whatever title, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Noncitizens, and a Controlling Interest in which is vested in Citizens of the United States;

* * * * *

PART 315—AGENCY AGREEMENTS AND APPOINTMENT OF AGENTS

■ 3. The authority citation for part 315 continues to read as follows:

Authority: 50 U.S.C. App. 1744; 49 CFR 1.66.

■ 4. Amend § 315.3 by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 315.3 Definitions.

* * * * *

(b)* * *

(2) A corporation organized under the laws of the United States or of a State, the controlling interest of which is owned by and vested in Citizens of the United States and whose chief executive officer, by whatever title, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens;

* * * * *

(4) An association organized under the laws of the United States or of a

State, whose chief executive officer, by whatever title, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are noncitizens, and a controlling interest in which is vested in Citizens of the United States;

* * * * *

PART 355—REQUIREMENTS FOR ESTABLISHING UNITED STATES CITIZENSHIP

■ 5. The authority citation for part 355 continues to read as follows:

Authority: Secs. 2, 204, 39 Stat. 729, as amended, 49 Stat. 1987, as amended, 73 Stat. 597; 46 U.S.C. 802, 803, 1114, 11.

■ 6. Amend § 355.1 by revising paragraph (a) to read as follows:

§ 355.1 General.

(a) Under section 2, Shipping Act, 1916, as amended and section 905(c), Merchant Marine Act, 1936, as amended, no corporation is deemed to be a citizen of the United States unless:

(1) It is organized under the laws of the United States or of a State, Territory, District, or possession thereof;

(2) Its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are non-citizens (except that in the case of corporations under title VI, Merchant Marine Act, 1936, as amended, all directors must be citizens of the United States) and

(3) The controlling interest therein is owned by citizens of the United States or, in the case of a corporation operating any vessel in the coastwise trade, on the Great Lakes, or inland lakes of the United States, 75 per centum of the interest in such corporation is owned by citizens of the United States.

* * * * *

■ 7. Amend § 355.2 by revising the introductory text of paragraph 3. of the sample Affidavit to read as follows:

§ 355.2 Requirements regarding evidence of U.S. citizenship; affidavit guide.

* * * * *

Affidavit of U.S. Citizenship

* * * * *

3. That the names of the Chief Executive Officer, by whatever title, Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, and the Directors of the Corporation are as follows:

* * * * *

By Order of the Maritime Administrator.

Dated: June 15, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13788 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register
Vol. 69, No. 118
Monday, June 21, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, that currently requires identifying the part numbers of discharge valves and cabin pressure controllers, and related investigative and corrective actions if necessary. This action would require identifying the part number of an additional cabin pressure controller, and related investigative and corrective actions if necessary. The actions specified by the proposed AD are intended to prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers, which could subject the airframe to excess stress and adversely affect the airframe fatigue life. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 21, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–90–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 25, 2001, the FAA issued AD 2001–15–23, amendment 39–12358 (66 FR 40864, August 6, 2001), applicable to certain BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, to require identifying the part numbers of discharge valves and cabin pressure controllers, and replacing them with new parts if necessary. That action was prompted by reports indicating that incorrect front and/or rear pressurization discharge valves were found installed on some affected airplanes. In addition, it is possible that some operators may have installed incorrect flight deck-mounted cabin pressure controllers. Because of pressurization problems associated with use of the incorrect discharge valves and cabin pressure controllers, the airframe may be subject to excess stress, which could adversely affect the airframe fatigue life. The requirements of that AD are intended to prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer discovered that a requirement to identify the part number of the cabin pressure controller that is calibrated in inches of mercury was omitted from BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001. (The part number specified in

that service bulletin was only for a cabin pressure controller that is calibrated in millibars.) That service bulletin was referenced as the appropriate source of service information in AD 2001–15–23.

Explanation of Relevant Service Information

BAe Systems (Operations) Limited has issued Inspection Service Bulletin ISB.21–155, dated February 15, 2002, which describes procedures for identifying the part numbers of the front and rear pressurization discharge valves and the cabin pressure controllers, and related investigative and corrective actions. The corrective actions include replacing any incorrect part with a new, correct part. The related investigative action includes a repetitive structural inspection after the replacement of an incorrect part. For airplanes equipped with certain auto-pressurization equipment (installed during BAe Systems Modification HCM50258A), the service bulletin recommends limiting the airplane ceiling until the incorrect parts can be replaced. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory and issued British airworthiness directive 004–02–2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has 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.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–15–23 to continue to require identifying the part numbers of discharge valves and cabin pressure controllers, and related investigative and corrective actions. This amendment also would require identifying the part number of the cabin pressure controller that is calibrated in inches of mercury and related investigative and corrective actions. The actions would be required to be accomplished in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155, dated February 15, 2002, described previously, except as discussed below.

Difference Between Proposed AD and Service Information

Although the service bulletins referenced in this proposed AD specify to submit certain information to the manufacturer, and to return certain parts to the part manufacturer, this proposed AD would not include such a requirement.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD; therefore, paragraph (d) and Note 1 of AD 2001–15–23 are not included in this proposed AD.

Cost Impact

There are approximately 20 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2001–15–23 and continued in this proposed AD take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,900, or $195 per airplane.

The new actions that are proposed in this AD would take approximately 3 work hours to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed requirements on U.S. operators is estimated to be $3,900, or $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12358 (66 FR 40864, August 6, 2001), and by adding a new airworthiness directive (AD), to read as follows:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–90–AD. Supersedes AD 2001–15–23, Amendment 39–12358.

Applicability: Model BAe 146 and Avro 146-RJ series airplanes, certificated in any category, as listed in BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155, dated February 15, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers, which could subject the airframe to excess stress and adversely affect the airframe fatigue life, accomplish the following:

Restatement of Certain Requirements of AD 2001–15–23

Part Identification

(a) As specified in paragraph (a)(1) or (a)(2) of this AD, as applicable: Identify the part numbers of the pressurization discharge valves and cabin pressure controllers to determine if any installed part is incorrect, as defined by and in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001; or BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155, dated February 15, 2002. As of the effective date of this AD, only BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155 may be used.

(1) For airplanes post-Modification HCM50258A: Identify the part numbers within 30 days after September 10, 2001 (the effective date of AD 2001–15–23, amendment 39–12358); and, if any part is incorrect, limit the airplane ceiling to 31,000 feet until the incorrect part is replaced, as specified by paragraph (c) of this AD.

(2) For airplanes pre-Modification HCM50258A: Identify the part numbers within 6 months after September 10, 2001.

New Requirements of This AD

Part Identification

(b) For airplanes on which the requirements of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, dated Revision 1, dated February 6, 2001, were accomplished: At the times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, identify the part number of the cabin pressure controller calibrated in inches of mercury to determine if any installed part is incorrect, in accordance with the Accomplishment Instructions of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155, dated February 15, 2002.

(1) For airplanes post-Modification HCM50258A: Identify the part numbers within 30 days after the effective date of this AD; and, if any part is incorrect, limit the airplane ceiling to 31,000 feet until the incorrect part is replaced as specified by paragraph (c) of this AD.

(2) For airplanes pre-Modification HCM50258A: Identify the part numbers within 6 months after the effective date of this AD.

Corrective Action

(c) For any incorrect part identified in accordance with paragraphs (a) or (b) of this AD: Within 500 flight cycles after identification of the part number, replace the part with a new, correct part, in accordance with the Accomplishment Instructions of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001; or BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155, dated February 15, 2002. As of the effective date of this AD, only BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–155 may be used. After installation of a correct part, prior to further flight, do a structural inspection and accomplish any applicable corrective actions, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Credit for Accomplishment of Previous Actions

(d) Accomplishment of the actions specified in this AD in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, dated November 17, 2000, is acceptable for compliance with the corresponding actions required by this AD.

Submission of Inspection Results and Parts Not Required

(e) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, and to return certain parts to the part manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–15–23, amendment 39–12358, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 1: The subject of this AD is addressed in British airworthiness directive 004–02–2002.

Issued in Renton, Washington, on June 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13916 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2001–9182]

RIN 2125–AE75

Highway Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation governing the highway bridge replacement and rehabilitation program (HBRRP). This proposed action is necessary to incorporate program flexibility provided by the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21st Century; incorporate FHWA policies implemented since inception of the HBRRP; provide further clarification of issues that have proven to be vague or ambiguous; and make the regulation easier to read and understand. The intent is to revise the regulation so that it better meets the need of State and local bridge owners while also meeting national goals for improving the condition of the Nation's bridges.

DATES: Comments must be received on or before August 20, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*, or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. 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: Mr. Thomas Everett, Federal Highway Administration, Office of Bridge Technology, HIBT–30, 400 Seventh Street, SW., Washington, DC 20590–0001 or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

Section 204 of the Federal-aid Highway Act of 1970 (Public Law 91–605, 84 Stat. 1713, Dec. 31, 1970) established the Special Bridge Replacement Program (SBRP). Under this program codified in 23 U.S.C. 144, structurally inadequate or functionally obsolete bridges on the Federal-aid system were eligible for replacement or rehabilitation. Section 124 of the Surface Transportation Assistance Act of 1978 (Public Law 95–599, 92 Stat. 2689, 2702, Nov. 6, 1978) amended and retitled 23 U.S.C. 144, relative to the SBRP, to create the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The HBRRP was applicable to on-system and off-system bridges. The purpose of the program was to assist the States in the replacement and rehabilitation of bridges declared unsafe because of structural deficiencies, physical deterioration, or functional obsolescence. The FHWA published regulations to provide guidance and establish procedures for administering the HBRRP at 44 FR 15665 on March 15, 1979. The regulation for administering the HBRRP is contained in 23 CFR part 650, subpart D. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240, 105 Stat. 1914, Dec. 18, 1991) and the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107 (1998)) provided considerable flexibility to the States with regard to the overall Federal-aid program.

The FHWA recognizes that the current regulation needs to be revised to incorporate and clarify past policies as well as accommodate the flexibility allowed by law to enable State and local governments to manage their bridge assets in the most effective manner. Accordingly, the FHWA published an advanced notice of proposed rulemaking (ANPRM) on September 26, 2001 (66 FR 49152), requesting public comments on the current regulation.

Discussion of Comments Received to the Advance Notice of Proposed Rulemaking (ANPRM)

On September 26, 2001 (66 FR 49152), the FHWA published an ANPRM to solicit comments on whether to revise the HBRRP regulation. Forty-one sets of comments were submitted to the docket representing 31 State Departments of Transportation, 1 Federal agency, 3 counties, 1 private citizen, 2 trade associations and 1 public interest group. In summary, the majority of the commenters believed the HBRRP regulation should be revised.

The FHWA posed eight questions in the ANPRM. A general discussion of the questions and docket comments is provided in the next few paragraphs. A detailed discussion of comments is provided in the Section-by-Section Analysis.

The first two questions dealt with the definition of major reconstruction and rehabilitation. Currently, a bridge is eligible for HBRRP funding if it is undergoing major reconstruction. Although "major reconstruction" is not specifically defined in 23 CFR part 650, it is interpreted to mean rehabilitation or replacement as defined under 23 CFR 650.405(b). In the ANPRM, the FHWA solicited suggestions for modifications to the definitions. The majority of commenters recommended either the addition of preventive maintenance to the reconstruction definition or inclusion of the term as a stand-alone definition in 23 CFR part 650. Several commenters identified specific activities that they would like to see eligible for funding under the HBRRP regardless of a bridge's eligibility status. These comments will be summarized in the response to question 5 under this heading.

The third question requested suggestions for increased flexibility within the regulation that would improve the effectiveness of the bridge program. In general, the majority of commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater latitude in the selection of work activities and associated bridges.

The fourth question asked if there should be national consistency on the appropriate standard(s) to be followed on all bridges that are not dependent upon highway classification. Commenters were divided on this issue.

Question five provided a list of activities that are not currently considered eligible for HBRRP funding, and asked if the definition of major reconstruction should be adjusted to include some or all of the listed items. The majority of commenters provided specific recommendations for items that should be considered eligible for funding. In addition, many commenters offered additional suggestions for eligible work activities, either in response to question five or one of the previous questions.

The ANPRM did not include a question six.

With respect to question seven regarding use of the sufficiency rating for establishing eligibility and priority for HBRRP funding, comments ranged from supporting continued use of the sufficiency rating and revising the current sufficiency rating formula, to the need for an alternate process.

The eighth question related to the current process of using three-year averages of bridge construction unit costs for determining apportionment factors. The FHWA also requested ideas for improving the accuracy of the unit cost data. A few commenters supported the current process while others identified weaknesses in the process. Eighteen commenters did not provide a specific response to this question.

The ninth question requested suggestions for modifications, as deemed necessary, to current § 650.411 provisions. Section 650.411 outlines the procedures for bridge replacement and rehabilitation projects. Nearly half of the commenters recommended no change to the current procedures. Eleven

commenters did not provide a specific response to this question.

Summary of the Proposed Revisions to the HBRRP

The proposed revisions to the HBRRP are based in part on comments received to ANPRM. The FHWA proposes to change the name of the program under Subpart D from Highway Bridge Replacement and Rehabilitation Program to Highway Bridge Program. By removing the terms replacement and rehabilitation from the title, the proposed name change recognizes the importance and benefits of preventive maintenance activities that are identified and undertaken on a systematic basis. The title change also reflects the inclusion of other activities that are eligible for funding under this program in addition to replacement and rehabilitation. The Highway Bridge Program title is more general and thus inclusive of many eligible activities, such as the funding of bridge inspection programs, which do not specifically fall under rehabilitation or replacement.

We have proposed to add several definitions to address ambiguous areas in the current regulation as well as to describe terminology used in the proposed changes. The FHWA proposes to clarify existing program procedures and add flexibility to the regulation by incorporating alternative program procedures for selecting eligible work activities based on the use of a bridge management system. The FHWA also proposes to clarify the types of eligible and ineligible work. The proposed regulation also eliminates language that simply repeats provisions of 23 U.S.C. 144, Highway Bridge Replacement and Rehabilitation Program.

Section-by-Section Discussion of the Proposals

Proposed Section 650.401 Purpose

The FHWA proposes to change the name of the program from "Highway Bridge Replacement and Rehabilitation Program" to "Highway Bridge Program." This change would recognize the importance and benefits of preventive maintenance activities that are identified and undertaken on a systematic basis. The title change would also reflect the inclusion of other activities that are eligible for funding under this program in addition to replacement and rehabilitation.

Proposed Section 650.403 Definitions

The Michigan, New Jersey, Delaware, Wyoming, Arkansas, New York, Utah, and Alcona County DOT (Michigan) commenters believe that the current definition of major reconstruction is adequate. The FHWA proposes to leave the definitions of replacement and rehabilitation essentially unchanged and to add a separate definition for preventive maintenance. However, to address a comment from Iowa, the FHWA proposes to modify the rehabilitation definition by adding a sentence that provides example categories of major safety defects. This proposed change would address comments by both the Bureau of Indian Affairs and the New Hampshire DOT that recommended including bridge widening in the definition of rehabilitation.

Furthermore, the FHWA proposes that the definition for rehabilitation be expanded to include "the major work required to extend the useful life of bridge." This addition should address the opinions of twenty-two commenters who indicated they would like to see preventive maintenance activities added to the major reconstruction definition. This expanded definition would also address the comment of the Florida DOT that the installation of cathodic protection systems be included in the definition of rehabilitation.

Several commenters also indicated that they would prefer to see preventive maintenance added as a separate category rather than incorporating it into the definition of major reconstruction. These comments are also addressed through the proposed change that would allow preventive maintenance activities identified through an approved systematic process to be an eligible activity on all highway bridges. In addition, further flexibility would be permitted under the Alternate Program described in proposed § 650.411.

The FHWA proposes to add definitions for the following terms in order to address past ambiguities and explain terms related to the alternate program procedures proposed in § 650.411: approved, eligible highway bridge, Federal-aid highways, bridge management system, bridge performance goals, bridge performance plan, preventive maintenance, safety improvements, and systematic process.

Proposed Section 650.405 Eligible and Ineligible Activities

The FHWA proposes to change the section title from "Eligible projects" to "Eligible and Ineligible Activities." The proposed title distinguishes between projects and activities. "Project" is defined in 23 CFR 1.2 for undertaking highway construction work or activities to carry out the provisions of Federal law for administration of Federal aid for highways. Section 106 of title 23, U.S.C., requires the States to enter into an agreement with FHWA for each Federal-aid highway project. This formal agreement defines the scope of work and project related commitments and constitutes the Federal obligation to pay its share of the project costs. Although "activity" is a broad term relative to Federal-aid projects, for the purpose of this rulemaking, it describes the types of work eligible for Federal participation under this program. Federal participation in these activities is limited to costs directly attributable and properly allocable to specific projects. The FHWA proposes to focus on eligible and ineligible activities within the regulation.

As discussed in the "*Proposed Section 650.403 Definitions*," twenty-two commenters indicated that they would like to see preventive maintenance activities added to the major reconstruction definition. Therefore, the FHWA proposes to expand the definition for "rehabilitation" to include "the major work required to extend the useful life of a bridge." In addition, the FHWA proposes to allow for "preventive maintenance activities identified through an approved systematic process" to be eligible on all highway bridges on public roads. This would also be available in proposed § 650.407.

Seventeen commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater flexibility in the selection of work activities and associated bridges. This proposed section, along with proposed § 650.407, does address these comments by proposing to expand the list of activities that may be eligible for funding under the Highway Bridge Program as well as proposing to expand the list of bridges on which many of these activities may be performed.

Several commenters identified specific activities that they would like to see eligible for funding under the HBRRP regardless of a bridge's eligibility status. For example, twenty-three commenters were in favor of including safety feature replacement or upgrading and twenty-two commenters were in favor of including emergency repair to restore structural integrity following an accident.

With respect to use of HBRRP funds for emergency related work activities, the Bureau of Indian Affairs recommended that eligibility be limited to those emergencies that are not covered by Federal Emergency Relief funding.

Twenty-one commenters were in favor of including bridge deck overlays. The Maine, Oregon, South Dakota, Colorado, and Kansas DOT's stated that they were in favor of protective or structural overlays only.

Seventeen commenters were in favor of including retrofitting to correct deficiencies, without significantly altering physical geometry or increasing load capacity.

Seventeen commenters were in favor of including work performed to keep a bridge operational while plans for complete rehabilitation or replacement are under preparation.

The majority of commenters were either opposed to, or silent on, the inclusion of utility work and the cost of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures.

The Arizona, California, Connecticut, Alaska, New York, and Washington DOT's, along with a private citizen, would like installation of scour countermeasures added as an eligible activity for all bridges.

The Arizona, California, New York, and Oregon DOT's, along with a private citizen, would like seismic retrofit added as an eligible activity for all bridges.

The Delaware, Washington, California, New York, Iowa, and Oregon DOT's would like painting added as an eligible activity for all bridges.

The Bureau of Indian Affairs, New Jersey DOT, and Anderson County in South Carolina recommended considering any work activity that protects the structural integrity of a bridge as eligible for funding under the HBRRP.

The Oregon DOT recommended that historic non-deficient structures be considered eligible for HBRRP funding.

The New York DOT recommended retrofit of fatigue prone details as an eligible activity for all bridges.

The Wyoming DOT recommended that the work required to accommodate traffic during construction be considered eligible for HBRRP funding.

In response to these suggestions, the FHWA proposes to provide a list of eligible work activities. The list would include many of the activities recommended by the commenters such as installation of scour countermeasures, seismic retrofit, preventive maintenance activities identified through an approved systematic process, and safety improvements on all bridges on public roads. Application of these activities to specific bridges is addressed in proposed §§ 650.407 and 650.411. The inclusion of preventive maintenance as an eligible activity and the proposed alternative approach in § 650.411 would give the States the flexibility to perform safety and preventive maintenance activities on bridges identified through a systematic process, as part of a rehabilitation project, or in their bridge management system (BMS). All bridges, including historic bridges, would be eligible for preventive maintenance activities; additional flexibility may be available under the proposed alternate program.

Similarly, the FHWA proposes to address ineligible work activities in § 650.405(b). The FHWA concurs with the commenters who indicated that the cost of utility work and long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond attainable touchdown points, should be considered ineligible for HBRRP funding. Twenty-two commenters expressed a concern favoring the inclusion of emergency structural repairs as an eligible HBR activity following accidental damage to a bridge. Federal funds may participate in emergency situations with Emergency Relief funds following a declared emergency [1] or through the force account provisions [2] available in 23 CFR 635.204, as applicable, but these provisions do not lend themselves to the lesser emergencies resulting from typical accidental bridge damage. The use of Federal highway funding implies that a Federal-aid construction project is developed including planning, programming, environmental clearance, and competitive bidding, which is a lengthy process not suitable for most emergency work. This process is abbreviated only as specified in the regulations cited above and for this reason leaves most emergency work as the responsibility of the bridge owner.

The FHWA does not agree with the seventeen entities that recommended that work performed to keep a bridge operational while plans for rehabilitation or replacement are being prepared should be an eligible HBP activity. Funds available under this Highway Bridge Program should focus on the removal of deficiencies, or on activities that prevent future deficiencies, rather than on temporary measures that do not completely address bridge deficiencies. This position does not eliminate the eligibility of work planned as an initial stage of construction or work performed as preventive maintenance through a Federal-aid construction project.

Proposed Section 650.407 Applicability

There were no specific comments on this topic.

The FHWA proposes to change the section title from "Application for bridge replacement or rehabilitation" to "Applicability" to address changes in other sections of the regulation.

The FHWA proposes to relocate and revise, or delete information contained in the current § 650.407. Specifically, we propose to revise and relocate paragraphs (a) and (b) to proposed § 650.409, Program procedures and requirements. The proposed revisions will be discussed later. We propose to remove paragraph (c) because it is a repeat of a requirement in 23 CFR 650, Subpart C, National Bridge Inspection Standards.

In proposed § 650.407, the FHWA intends to clarify the bridges on which the work activities described in proposed § 650.405 may be undertaken. A distinction would be made between activities that may be performed on all bridges on public roads versus eligible highway bridges on public roads. The FHWA proposes a definition of an "eligible highway bridge" for inclusion in § 650.403.

Proposed Section 650.409 Program Procedures and Requirements

The FHWA proposes to change the section title from "Evaluation of bridge inventory" to "Program procedures and requirements." The proposed section would combine provisions from the current §§ 650.407, 650.409, and 650.411 into an orderly format that follows the project development process.

As stated in the current regulation, the FHWA has used a sufficiency rating as a basis for establishing eligibility and priority for replacement or rehabilitation of bridges; in general, the lower the rating, the higher the priority. The formula for calculating the sufficiency rating was established by the FHWA, through consultation with the American Association of State Highway Transportation Officials (AASHTO), shortly after passage of the Federal-aid Highway Act of 1970. The formula provides a composite rating based on bridge data collected and reported in accordance with the "Recording and

[1] *See* 23 U.S.C. 120 and 125.

[2] Force account means the direct performance of highway construction work by a State, county, railroad, or public utility company by use of labor, equipment, materials and supplies furnished by them and used under their direct control. Under the emergency provisions of 23 CFR 635.204, the FHWA may approve a federally financed highway construction project by the force account methods.

Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges", Report No. FHWA–PD–96–001.[3] Four separate factors are used to obtain an overall numeric value, ranging from 0 to 100, which is indicative of bridge sufficiency to remain in service. The four factors considered are structural adequacy and safety, serviceability and functional obsolescence, essentiality for public use, and special reductions for items such as detour length and substandard safety features. The formula does not appear in regulations; however, it is published in appendix B of the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges". Only minor modifications have been made to the formula since its inception.

Twelve commenters recommended no change to the use of a sufficiency rating; however, seven of these commenters noted weaknesses or limitations in the current process such as incorrect parameters in the sufficiency rating formula and that the current process is good for identifying replacement needs, but not rehabilitation or preventive maintenance.

The North Dakota, Massachusetts, and Oregon DOTs noted that they do not currently use the sufficiency rating for prioritization of bridges.

Ten commenters indicated that the use of a sufficiency rating was acceptable for eligibility and/or apportionment determinations; however, individual States should have the flexibility to prioritize their work on all bridges.

Twenty-three commenters recommended significant changes to the current process, or alternate processes for determining eligibility and priorities.

The FHWA recognizes that the sufficiency rating is a suitable and effective means for determining eligibility and an initial prioritization of needs for many bridge owners. The FHWA also recognizes that through the implementation and advancement of bridge management systems, many bridge owners now have improved processes for evaluating bridge needs and prioritizing those needs. Accordingly, the FHWA is proposing to offer more flexibility to determine bridge eligibility as follows:

1. Bridge owners can continue to use the selection list for their bridge replacement and rehabilitation program with provisions that allow painting, seismic retrofit, installation of scour countermeasures, and application of anti-icing and de-icing technology on all bridges. They can further enhance this program to perform safety and preventive maintenance activities identified through approved systematic processes.

2. Bridge owners can employ an approved Bridge Management System to determine eligible projects and activities on all bridges.

Regardless of the option the bridge owner selects, Federal-aid projects and activities must ultimately be programmed through the intermodal statewide transportation planning process outlined in 23 CFR 450, subpart B. This process involves the development of a statewide transportation improvement program that defines a staged, multi-year, intermodal program of transportation projects.

It is our intent that approvals of systematic processes would include the development of goals and measures for the types of activities included in the systematic process and annual reports on progress. Owners that choose the BMS approach will develop goals and measures for their entire bridge inventory covered under their BMS and report annually to the FHWA on their progress. The FHWA proposes to retain the sufficiency rating and the method of distributing HBRRP funds for the new HBP program. Since the sufficiency rating formula is not part of the regulation, comments regarding weaknesses in the current formula can be considered and addressed by the FHWA without requiring a change in the regulation.

Currently, the FHWA uses three-year averages of bridge construction unit costs for determining apportionment factors. Eighteen commenters did not comment on this process. The Delaware, California, Oregon, South Dakota, Missouri, Kansas, and Oklahoma DOTs, along with the commenter from Alcona County, Michigan, indicated that the current process was acceptable.

The New Jersey, Wyoming, Alaska, New Hampshire, and New York DOTs, as well as the American Road and Transportation Builders Association (ARTBA) commenter, indicated that the current unit cost does not adequately consider other significant project costs such as mobilization and environmental mitigation.

Commenters from Arizona and Nevada DOTs indicated that the unit cost process did not affect them since they received minimum allocations. Several commenters offered alternate methods for determining apportionment factors.

On an annual basis, the FHWA issues, via a Memorandum from our Headquarters Office of Bridge Technology, a call for the collection of bridge construction unit cost data. The memorandum includes specific instructions for reporting the data. The most recent call was issued on December 30, 2003.[4] The FHWA proposes to continue the annual collection of bridge construction unit cost data and use this data for the determination of apportionment factors. The process has been well understood and used for a number of years and there is no compelling reason to change at this time. Comments regarding weaknesses in the current calculation can be considered and addressed by the FHWA without requiring a change in the regulation.

Seventeen commenters stated that the current procedures for evaluation of the bridge inventory, as described in § 650.411, should not be changed. The North Dakota, Delaware, Kansas, and Washington DOTs recommended that the FHWA provide additional flexibility in project type and selection.

Two county commenters, Alcona in Michigan and Siskiyou in South Carolina, recommended that the FHWA streamline the environmental review process. Alcona County, Michigan, and the National Association of County Engineers requested additional flexibility in the selection of design guidelines. The Alaska DOT asked that National Bridge Inventory data be accepted in English units of measure. The Utah DOT would like to see responsibility for ensuring future maintenance as described in § 650.411(c)(1) shifted to the local governments since the State has no authority over requiring the local governments to maintain their bridges.

Seventeen commenters were opposed to establishing national standards that are not dependent upon highway classification. Ten commenters were in favor of national standards. Of these ten, Alcona County, Oklahoma, Illinois, and the National Association of County Engineers were in favor of a national standard for determining eligibility, but not for design purposes.

The FHWA agrees with the majority of commenters who were not in favor of requiring national consistency on appropriate standards that are not dependent upon highway classification. The FHWA proposes to retain the

[3] This document is available at: *http://www.fhwa.dot.gov/bridge/mtguide.pdf* and may be inspected and copied as prescribed at 49 CFR part 7.

[4] The most recent memorandum requesting this information is available at the following URL: *http://www.fhwa.dot.gov/bridge/123003.htm.*

requirement that all bridge program activities must conform to 23 CFR 625, Design Standards for Highways. States that choose to perform safety improvements or preventive maintenance activities are encouraged to work with the FHWA Division Administrator in their State to determine the applicability of the design standards in 23 CFR 625 to those activities as discussed in § 625.3(e).

Currently, 23 CFR 650.407(a) requires Federal agencies to submit their bridge inspection data to the appropriate State agency for review and processing. On January 4, 1995, the FHWA issued a policy memorandum [5] enabling Federal agencies to annually submit their data directly to the FHWA. The purpose of this change was to ensure timeliness and uniformity in data submission. The data is processed into the National Bridge Inventory by FHWA and is uniquely identified as data for bridges owned by Federal agencies. After processing, a copy of each State's portion of this data is extracted and sent through organizational channels to the various State highway agencies, thereby enabling the States to comply with the National Bridge Inspection Standards of 23 CFR 650 while also relieving them of the obligation of collecting and submitting data from various Federal agencies. The FHWA proposes to change the wording in the regulation to reflect the direction outlined in the January 4, 1995 memorandum.

Proposed Section 650.411 Alternate Program

Seventeen commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater flexibility in the selection of work activities and associated bridges.

The Delaware, North Carolina, Pennsylvania, Alaska, South Carolina, Colorado, Kansas, Oklahoma, and Florida DOTs specifically recommended that bridge owners be allowed to select bridges and work activities based on output from their bridge management systems.

The Advocates for Highway and Auto Safety (AHAS) noted that the HBRRP has worked well and should not be changed to allow for the diversion of HBRRP funds, which are intended for rehabilitation and reconstruction, to routine maintenance activities.

The American Road and Transportation Builders Association (ARTBA) noted that significant changes to the HBRRP regulation that could affect funding levels should not be undertaken; however, ARTBA is in favor of changes that provide the States more flexibility in the selection of bridges for funding.

The FHWA recognizes that the effective use of a comprehensive bridge management system necessitates flexibility in the selection of work activities and associated bridges. Furthermore, the use of bridge management systems has increased over the past decade, and computer bridge management tools have seen significant improvements in functionality and modeling capabilities. In recognition of these technological and program management advances, as well as the strong desire of bridge owners for increased flexibility, the FHWA proposes to add an alternate planning and programming approach to the regulation. Proposed § 650.411 Alternate Program would allow those States with an approved BMS and bridge performance goals to use Federal bridge program funds for the type of work activities identified in proposed § 650.405(a) on all public road highway bridges that are included in the BMS, regardless of a bridge's eligibility status. Use of the alternate approach requires development and periodic review of a bridge performance plan, outlining performance goals and measures that demonstrate an overall reduction in bridge deficiencies. The FHWA will identify key attributes of a BMS and bridge performance plan that will serve as guidance for approval of these items by FHWA Division Administrators.

The FHWA does not consider this flexibility to be a diversion of funds from reconstruction and rehabilitation, but rather a more effective use of limited funds. The primary goal of the program is still to ensure that bridges most in need of repair or replacement receive priority. The FHWA recognizes and acknowledges the advantages offered by prioritizing needs and selecting work activities through an effective and systematic BMS as currently employed in several States. Comprehensive bridge management systems have proven effective for evaluating the long-term effects of programming decisions as well as maintaining safe condition levels on all bridges. Additionally, the FHWA recognizes that the identification and implementation of cost-effective preventive maintenance activities on a systematic basis is critically important to protect our investment and reduce future major reconstruction and replacement needs.

In summary, we are proposing several changes that recognize that importance of preserving our bridge inventory while still ensuring a safe condition level through replacement and rehabilitation of those bridges that have become deficient. We are proposing to incorporate additional flexibility in the selection of activities and bridges by the owners to take advantage of improved cost-effective decision-making tools. Finally, we have proposed several revisions that serve to clarify terms and policies that have been ambiguous in the past.

Related Rulemakings and Notices

The FHWA is in the process of reviewing 23 CFR 650, Subpart C, National Bridge Inspection Standards (NBIS), and published a notice of proposed rulemaking for the NBIS on September 9, 2003, at 68 FR 53063.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The proposed regulatory changes increase the decision-making flexibility of the States and extend eligibility to include activities that preserve bridges and prevent further deterioration, thereby extending the useful service life of existing bridges. While the proposed changes have the potential to change the number of bridges eligible for funding under the program, the method for distributing total program funds remains the same. Accordingly, it is anticipated that the economic impact of this rulemaking would be minimal.

[5] This memorandum, subject "Federal Bridges in the National Bridge Inventory," is available at the following URL: *http://www.fhwa.dot.gov/bridge/010495.htm.*

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities. These proposed changes are primarily directed at States, which are not considered small entities for the purposes of the Regulatory Flexibility Act. Therefore, the FHWA is able to preliminarily certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FHWA welcomes comments on this analysis.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed 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 (2 U.S.C. 1532). Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The federal-aid highway program permits this type of flexibility.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This proposal 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.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000. The FHWA believes that this proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The regulation described in this notice of proposed rulemaking would enable bridge owning agencies to select eligible structures for Highway Bridge Program funds by either using the current processes or an alternative process based on bridge management system approaches. The current process is based on a currently OMB approved information collection, Structure Inventory and Appraisal (SI&A) Sheet, OMB control number 2125–0501 scheduled to expire on July 31, 2004.

If a bridge owning agency chooses to use the proposed alternative process, reports would be required to document the agency's goals and assess its performance toward achieving the goals. The FHWA intends to request OMB approval under the PRA of the information collection associated with the alternative process proposed in this NPRM. The information required under the proposed alternative process would fall under a new information collection that the FHWA intends to request approval of this new collection from OMB.

A paperwork reduction act submission has been completed for the collection associated with the proposed alternate process collection and will be submitted to OMB. Primary affected public agencies include State, local or Tribal governments with secondary application to Federal agencies. The number of respondents is expected to be below 52 with a total of 208 burden hours annually for these agencies. Costs would be constrained to annualized Operation and Maintenance Costs estimated at $10,400 or less nationally, depending on the number of agencies electing to use the alternative program. Recordkeeping would be required for programming planning and management and for program evaluation and would be required annually. Statistical methods would not be required and all information could be submitted in electronic form. Moreover, information would be submitted in the format chosen by the bridge owning agency.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of the FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed 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 although it is not a significant regulatory action under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a statement of energy effects under Executive Order 13211.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant Programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Authority: 23 U.S.C. 144 and 315; 49 CFR 1.48.

Issued on: June 14, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 650, subpart D, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 116(d), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678).

2. Revise subpart D to read as follows:

Subpart D—Highway Bridge Program

Sec.

§ 650.401 Purpose.

The purpose of this subpart is to prescribe policies and outline procedures for administering the Highway Bridge Program (HBP) in accordance with 23 U.S.C. 144.

§ 650.403 Definitions.

Terms used in this regulation are defined as follows:

Approved. As used in this regulation, the term "approved" means the FHWA acceptance of the specified document, bridge management system, or systematic process proposed by the State.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying vehicular traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Bridge Management System (BMS). A systematic process, approved by FHWA, used for analyzing bridge data to make forecasts and recommendations, and to provide the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently considered as outlined in 23 CFR 500.107.

Bridge performance goals. Established target goals that define the performance level at which the State intends to maintain its bridges.

Bridge performance plan. A document, prepared by the State for approval by FHWA, that includes baseline reference data and clearly defined performance goals and measures that address an overall reduction of bridge deficiencies.

Eligible highway bridge. A bridge on the current selection list or otherwise approved by FHWA to be eligible for Highway Bridge Program funding.

Federal-aid highways. Refer to 23 CFR 470.103.

Preventive maintenance. Activities performed on bridges or their elements to prevent, delay, or reduce deterioration.

Rehabilitation. The major work required to restore the structural integrity and extend the useful life of a bridge as well as work necessary to correct major safety defects, which include substandard vertical clearance, approach roadway alignment, and bridge widths.

Replacement. Total replacement of an eligible bridge with a new facility constructed in the same general traffic corridor.

Safety improvements. Improvements to bridges that reduce the number or severity of vehicular crashes.

Selection list. A list of bridges within each State that are eligible for the Highway Bridge Program. The list is generated by the FHWA annually using bridge inventory data.

Sufficiency rating. The numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

Systematic process. A methodology for identifying and prioritizing cost-effective work activities applied to a network or subset of bridges.

§ 650.405 Eligible and ineligible activities.

(a) The following types of work are eligible for participation under the HBP, subject to the applicability provisions of § 650.407:

(1) Replacement, including a nominal amount of approach work, sufficient to connect the new facility to the existing roadway or to return the gradeline to a reasonable and attainable touchdown point in accordance with good design practice.

(2) Rehabilitation.

(3) Application of calcium magnesium acetate, sodium acetate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions.

(4) Installation of scour countermeasures.

(5) Purchase and installation of the initial set of load posting signs immediately adjacent to the bridge.

(6) Safety Improvements and preventive maintenance activities identified through an approved systematic process.

(7) Seismic retrofit.

(8) Bridge safety inspections and related activities (includes load rating and analysis).

(9) Bridge Management System development and implementation.

(10) Historic Bridge work as identified in Title 23, United States Code, Section 144(o).

(11) Inventory bridges for historic significance.

(12) Painting.

(b) The following types of work are ineligible under the HBP:

(1) Costs of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when

constructed beyond the attainable touchdown point.

(2) Utility work not associated with any other bridge activities.

(3) Other activities deemed ineligible by FHWA on a case-by-case basis.

§ 650.407 Applicability.

HBP funding may be used for Federal aid projects including:

(a) The types of work activities identified in § 650.405(a)(1), (a)(2), (a)(5) and (a)(10) on eligible highway bridges on public roads.

(b) The types of work activities identified in § 650.405(a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(11), and (a)(12) on all bridges on public roads.

§ 650.409 Program procedures and requirements.

(a) State agencies participate in the HBP by conducting bridge inspections and submitting Structure Inventory and Appraisal (SI&A) inspection data to the FHWA. Local governments supply SI&A data to the State agency for review and processing. The State is responsible for submitting all public road SI&A bridge information, except for those bridges under Federal jurisdiction, to the FHWA for processing annually or upon request from the FHWA. Federal agencies will supply SI&A data directly to the FHWA. Requirements for data submission are prescribed in 23 CFR 650, the National Bridge Inspection Standards.

(b) States are responsible for collecting bridge construction unit cost data for State and Local Government bridges and annually submitting data summaries to the FHWA for processing.

(c) Inventory and bridge construction unit cost data may be submitted as available and must be submitted at such additional times as the FHWA may request.

(d) Upon receipt and evaluation of the bridge inventory, a sufficiency rating will be assigned to each bridge by the Secretary in accordance with the FHWA sufficiency rating formula. The sufficiency rating will be used as a basis for establishing eligibility and may be used for determining priority for replacement or rehabilitation of bridges.

(e) After evaluation of the inventory and assignment of sufficiency ratings, the Secretary will provide the States with selection lists of bridges that are eligible for the HBP. Eligible types of work may be selected for bridges that are on the list. Funding for work on bridges that are not on the current selection list must be approved by the FHWA.

(f) HBP projects must be submitted by the State to the Secretary in accordance with 23 CFR 630, Subpart A, Project Authorization and Agreements.

(g) Each approved project will be designed, constructed, and inspected for acceptance in the same manner as other projects on the system of which the project is a part. Design standards for all HBP activities must conform to the provisions of 23 CFR 625, Design Standards for Highways.

(h) Whenever an eligible bridge is replaced or its deficiency alleviated by a new bridge under the bridge program, the eligible bridge must either be dismantled or demolished or its use limited to the type and volume of traffic the structure can safely service over its remaining life. For example, if the only deficiency of the existing structure is an inadequate roadway width and the combination of the new and existing structure can be made to meet current standards for the volume of traffic the facility will carry over its design life, the existing bridge may remain in place and be incorporated into the system.

§ 650.411 Alternate Program.

The Alternate Program provides an alternative to the applicability, procedures, and requirements of §§ 650.407 and 650.409(e).

(a) In those States with an approved Bridge Management System (BMS) and a Bridge Performance Plan, HBP funding may be used for the types of work identified in § 650.405(a) on all highway bridges on public roads that are included in a BMS regardless of a bridge's eligibility status.

(b) A State's systematic process for planning and programming may supplement the BMS and will be used for unusual or new needs that cannot be addressed through the BMS.

(c) States using the provisions of this alternate program are responsible for developing and implementing a Bridge Performance Plan approved by the FHWA. States are responsible for submitting an Annual Report to the FHWA over the plan's period, or at such additional times as the FHWA may request. The report will address the progress made in relation to the established bridge performance goals.

(d) If the report cited in § 650.411(c) indicates that a State is not meeting or making progress towards its established performance goals, then the report shall identify revised or additional strategies that should result in attainment of the goals. Failure of a State to identify and obtain approval for such strategies will disqualify such State from continuing to select projects using the alternate program in § 650.411.

[FR Doc. 04–13839 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–166012–02]

RIN 1545–BB82

National Principal Contracts; Contingent Nonperiodic Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction notice for proposed regulations.

SUMMARY: This document contains a correction to a correction notice for proposed regulations that were published in the **Federal Register** on March 23, 2004 (69 FR 13498) relating to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC).

FOR FURTHER INFORMATION CONTACT: Kate Sleeth, (202) 622–3920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 446 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (REG–166012–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the correction notice (REG–166012–02), which was the subject of FR Doc. 04–6468, is corrected as follows:

On page 13498, columns 1 and 2, under the paragraph heading "Correction of Publication", number 1 is corrected to read as follows:

1. On page 8886, column 1, in the heading, the subject line "National Principal Contracts; Contingent Nonperiodic Payments" is corrected to read "Notional Principal Contracts; Contingent Nonperiodic Payments".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–13954 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–166012–02]

RIN 1545–BB82

National Principal Contracts; Contingent Nonperiodic Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to hearing cancellation for public hearing.

SUMMARY: This document contains a correction to a hearing cancellation notice published in the **Federal Register** on May 14, 2004 (69 FR 26782) that relates to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC).

FOR FURTHER INFORMATION CONTACT: Kate Sleeth, (202) 622–3920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The hearing cancellation notice that is the subject of this correction is under section 446 of the Internal Revenue Code.

Need for Correction

As published, the hearing cancellation notice (REG–166012–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the hearing cancellation notice (REG–166012–02), which was the subject of FR Doc. 04–11016, is corrected as follows:

On page 26782, column 3, in the heading, the subject line "National Principal Contracts; Contingent Nonperiodic Payments; Hearing Cancellation" is corrected to read "National Principal Contracts; Contingent Nonperiodic Payments; Hearing Cancellation".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–13953 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0445; FRL–7775–3]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Antelope Valley Air Quality Management District's (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing action on a local rule that regulates these emission sources. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 21, 2004.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

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

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

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956.

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

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 shows the rule addressed by this proposal with the dates that it was adopted by the local air agencies and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1113	Architectural Coatings	03/18/03	06/05/03

On July 18, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of AVAQMD Rule 1113 into the SIP on January 24, 1985. The AVAQMD adopted revisions to the SIP-approved version of this rule on March 18, 2003. CARB submitted the rule revision to us on June 5, 2003.

C. What Is the Purpose of the Submitted Rule Revisions?

The rule revisions primarily modify the rule for consistency with the Suggested Control Measure for Architectural Coatings (SCM). The SCM is a model rule developed by CARB which seeks to provide statewide

consistency for the regulation of architectural coatings. The recommended VOC content limits and other provisions of the SCM are the results of an extensive investigation of architectural coatings which included a statewide survey of architectural coatings sold in California and several technology assessments. CARB adopted the SCM on June 22, 2000. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) in moderate to extreme nonattainment areas for major sources of volatile organic compounds (VOC) and VOC sources covered by a Control Technique Guideline (CTG)(*see* section 182(b)(2)), must not relax requirements adopted before the 1990 CAA amendments in nonattainment areas (section 193), and must not interfere with attainment, reasonable further progress or other applicable requirements of the CAA (section 110(l)). The AVAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), however, because this rule regulates sources that are not covered by a CTG and that are nonmajor area sources, it is not subject to CAA RACT requirements.

Guidance and policy documents that we used to help evaluate this revised rule to ensure enforceability and compliance with other CAA requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. National Volatile Organic Compound Emission Standards for Architectural Coatings, September 11, 1998 (40 CFR part 59, subpart D).
5. "Suggested Control Measure for Architectural Coatings," CARB, June 22, 2000.
6. "Improving Air Quality with Economic Incentive Programs," EPA–452/R–01–001, EPA, January 2001 (the EIP).

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing more stringent emission limits and by clarifying labeling and reporting provisions. It is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Provisions of the rule which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule's Deficiencies?

This rule was based on the SCM and, as a result, contains many of the same deficiencies as the SCM. The deficiencies relate to the averaging provisions incorporated into this rule. While we believe the VOC limits contained in these rules to be feasible and substantiated by a significant investigation of architectural coatings, the averaging provisions provide a valuable alternative compliance mechanism for the VOC limits contained in this rule and may reduce the overall economic impact of compliance with the VOC limits on manufacturers. We have identified five specific problems with these provisions. The first four could be addressed through relatively minor changes to the averaging provisions which we have described below. The fifth could also be addressed by relatively minor changes or by clarification of the State's authority. The following provisions in AVAQMD Rule 1113 conflict with section 110 of the Act and prevent full approval of the SIP revisions.

1. The rule allows for the sell-through of coatings included in approved averaging programs. Because emissions from coatings sold under the sell-through provision cannot be distinguished based on the information explicitly required to be maintained under the rule from emissions from coatings sold under an averaging program, the enforceability of the rules may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions. One way to correct this is to clarify that manufacturers with an approved averaging program cannot also use the sell-through provision.
2. The provisions of the averaging compliance option that require manufacturers to describe the records being used to calculate emissions are not specific enough to verify compliance with the rule and represent executive officer discretion. More specificity as to the types of suitable records is needed to verify compliance with the averaging compliance option.
3. The rule's language regarding how violations of the averaging compliance option shall be determined is ambiguous. The language should be clarified to specify that an exceedance for each coating that is over the limit shall constitute a separate violation for each day of the compliance period.
4. The rule allows manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis. The rule should clarify whether emissions from averaging programs will be calculated using statewide or district-specific data.
5. The rule grants the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues which could create enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

D. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). Note that the submitted rule has been adopted by the district and EPA's final limited disapproval would not prevent the local agencies from enforcing it.

All of the identified deficiencies are associated with the averaging program in this rule which sunsets on January 1, 2005. If we finalize this notice as proposed, the effective date of our action will be after July 1, 2003 and would trigger CAA section 179 sanction clocks that expire 18 and 24 months later. However, we believe that sunsetting the averaging program effectively corrects all the deficiencies associated with averaging, and revisions to this rule are not needed to avoid associated sanctions.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days. EPA finalized a similar limited approval and limited disapproval for seven other California architectural coating rules on January 2, 2004 (69 FR 34). While the eight California rules are very similar, we divided them into several actions for internal administrative and workload management reasons.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agencies' VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and title I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of

section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not "economically significant" under Executive Order 12866.

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 4, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–13932 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7775–7]

Control of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule; correction.

SUMMARY: The notice of proposed rulemaking concerning air pollution control was published in the **Federal Register** on June 10, 2004 (69 FR 32803). As published, EPA failed to include the rule text. It is provided below in its entirety.

DATES: *Comments:* Comments must be received on or before August 16, 2004 (*see* section IV of the notice of proposed rulemaking at 69 FR 32818 on June 10, 2004, for more information about written comments).

Hearings: We will hold a public hearing on July 15, 2004. The hearing will start at 10 a.m. local time. If you want to testify at the hearing, notify the contact person listed below at least ten days before the hearing. *See* section IV of the notice of proposed rulemaking for more information.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0072, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2004–0072. Also send your comments to: Carol Connell, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48130, Attention Docket ID No. OAR–2004–0072.

4. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0072. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0072. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Hearings: We will hold a public hearing at the following location: U.S. Environmental Protection Agency, 1310 L. Street, NW., Washington, DC 20460. Telephone: (202) 343–9540, fax: (202) 343–2840. *See* section IV, "Public Participation" in the notice of proposed rulemaking for more information on the comment procedure and public hearings.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline at (734) 214–4636 or *asdinfo@epa.gov,* or alternatively Carol Connell (734) 214–4349 or *connell.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action would affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses, or produce or import such highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels.

The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Category	NAICS codes[a]	SIC codes[b]	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and Truck Manufacturers.
Industry	811112 811198	7533 7549	Commercial Importers of Vehicles and Vehicle Components.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

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

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2004–0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section IV of the notice of proposed rulemaking.

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.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 15, 2004.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.1 is amended by adding paragraph (b)(6) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b)* * *

(6) *NIST material.* The following table lists material from the National Institute of Standards and Technology that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Government Printing Office, Washington, DC 20402 or download them from the Internet at *http://physics.nist.gov/Pubs/SP811/.*

Document number and name	Part 86 reference
NIST Special Publication 811, Guide for the Use of the International System of Units (SI), 1995 Edition	86.1901

Subpart N—[Amended]

3. A new § 86.1375–2007 is added to read as follows:

§ 86.1375–2007 Equipment specifications for field testing.

For field testing conducted pursuant to the requirements of this part, including field testing conducted to measure emissions under Not-To-Exceed test procedures, use the test procedures and equipment specified in 40 CFR part 1065.

4. A new subpart T is added to read as follows:

Subpart T—Manufacturer-Run In-Use Testing Program for Heavy-Duty Diesel Engines

Sec.

§ 86.1901 What testing requirements apply to my engines that have gone into service?

(a) If you manufacture diesel heavy-duty engines above 8500 lbs. GVWR that are subject to engine-based exhaust emission standards under this part, you must test them starting in calendar year 2005 as described in this subpart. *See* § 86.1930 for special provisions that apply to engines manufactured before model year 2007.

(b) We may void your certificate of conformity for an engine family if you do not meet your obligations under this subpart. We may also void individual tests and require you to retest those vehicles or take other appropriate measures in instances where you have not performed the testing in accordance with the requirements described in this subpart.

(c) Independent of your responsibility to test in-use engines under this subpart, we may choose to do our own testing of your in-use engines.

(d) In this subpart, the term "you" refers to the certificate-holder for any engines subject to the requirements of this subpart.

(e) In this subpart, *round* means to round numbers according to NIST Special Publication 811 (incorporated by reference in § 86.1).

§ 86.1905 How does this program work?

(a) You must test in-use engines from the families we select. We may select the following number of engine families for testing, except as specified in paragraph (b) of this section:

(1) We may select up to 25 percent of your engine families in any calendar year, calculated by dividing the number of engine families you certified in the model year corresponding to the calendar year by four and rounding to the nearest whole number. We will consider only engine families with annual U.S.-directed production volumes above 1,500 units in calculating the number of engine families subject to testing each calendar year under the annual 25 percent engine family limit. In addition, for model year 2007 through 2009, identical engine families that are split into two families under § 86.007–15(m)(9) will count as only one engine family. If you have only three or fewer families that each exceed an annual U.S.-directed production volume of 1,500 units, or if you have no engine families above this limit, we may select one engine family per calendar year for testing.

(2) Over any four-year period, we will not select more than the average number of engine families that you have certified over that four-year period (the model year when the selection is made and the preceding three model years), based on rounding the average value to the nearest whole number.

(b) If there is clear evidence of a nonconformity with regard to an engine family, we may select that engine family without counting it as a selected engine family under paragraph (a) of this section. We will consult with you in reaching a conclusion whether clear evidence of a nonconformity exists for any engine family. In general, there is clear evidence of a nonconformity regarding an engine family under this subpart in any of the following cases:

(1) The engine family is a carry-over from an engine family you tested under this subpart and was subsequently remedied based at least in part on the Phase 1 or Phase 2 testing outcomes described in § 86.1915.

(2) The engine family is a carry-over from an engine family that was remedied based on an EPA in-use testing program.

(c) We may select any individual engine family for testing, regardless of its production volume, as long as we do not select more than the number of engine families described in paragraph (a) of this section. We may select an engine family from the current model year or any previous model year, except that beginning in calendar year 2007, we will not select any engine families from model years before 2007.

(d) You must complete all the required testing and reporting under

this subpart within 18 months after we direct you to test a particular engine family. We will typically select engine families for testing and notify you in writing by June 1 of the applicable calendar year. You may ask for up to six months longer to complete Phase 2 testing if you can justify the need for more time.

(e) If you make a good-faith effort to access enough test vehicles to complete Phase 1 or Phase 2 testing requirements under this subpart for an engine family, but are unable to do so, you must ask us either to modify the testing requirements for the selected engine family or, in the case of Phase 1 testing, to select a different engine family.

(f) After you complete the in-use testing requirements for an engine family that we selected for testing in a given calendar year, we may select that same family in a later year to evaluate the engine family's compliance closer to the end of its useful life. This would count as an additional engine-family selection under paragraph (a) of this section, except as described in paragraph (b) of this section.

(g) For any communication related to this subpart, contact the Engine Programs Group Manager (6405–J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§ 86.1908 How must I select and screen my in-use engines?

(a) Once we direct you to do testing under this subpart, you must make arrangements to select test vehicles and engines that meet the following criteria:

(1) The engines must be representative of the engine family.

(2) The usage of the vehicles must be representative of typical usage for the vehicles' particular application.

(3) The vehicles come from at least two independent sources.

(4) The engines have been properly maintained and used.

(5) The engines have not been tampered with, misfueled, rebuilt or undergone major repair that could be expected to affect emissions.

(6) The vehicles are likely to operate for at least three hours (excluding idle) over a complete shift-day, as described in § 86.1910(g).

(7) The vehicles have not exceeded the applicable useful life, in miles or years (see subpart A of this part); you may otherwise not exclude engines from testing based on their age or mileage.

(b) You must send us a general plan describing how you will procure and select vehicles for in-use testing. Your general plan should apply to any engine family that could be selected for testing under this subpart. Your plan should include the range of activities you intend to use to identify, locate, and screen vehicles for in-use testing. Do not start testing until we approve your general plan. Notify us promptly in writing if you deviate from the general plan we have approved. Deviations are deemed accepted if we either notify you of our acceptance or if we do not contact you within 21 calendar days of receipt to disapprove or express concerns with your deviation. Do all the following things in your general plan:

(1) Describe how you will recruit vehicles and explain whether this may result in an emphasis on testing engines with a particular type of driving route or from a particular geographic area. Describe any preference for a particular driving route or geographic area. Treat any situation where there is an actual emphasis on a particular engine configuration, application, or service class as a deviation from your general plan. If you will rely on a business relationship to recruit vehicles—such as with vehicle manufacturers or fleet operators—identify these other companies and describe how you will work together to recruit vehicles.

(2) Describe the methods you will use to gather available information about whether vehicles and engines meet the acceptance criteria described in paragraph (a) of this section. Describe any quantitative thresholds you will use to accept individual vehicles and engines for testing.

(c) You must keep any records of a vehicle's maintenance and use history you obtain from the owner or operator, as required by § 86.1925. You must report the engine's maintenance and use history and information related to the OBD system, as described in § 86.1920. The presence of an OBD trouble code or an illuminated MIL is not automatic grounds for rejecting a candidate vehicle under this subpart.

(d) You must notify us before rejecting a candidate vehicle for reasons other than failing to meet the acceptance criteria in paragraph (a) of this section and the quantitative thresholds in paragraph (b)(2) of this section. A candidate vehicle is any prospective vehicle you have identified to potentially fulfill your testing requirements under this subpart. Include your reasons for rejecting each vehicle. We may allow you to replace the rejected vehicle with another candidate vehicle to meet your testing requirements for the specific engine family.

(e) You must report when, how, and why you reject candidate vehicles, as described in § 86.1920.

§ 86.1910 How must I prepare and test my in-use engines?

(a) You must limit maintenance to what is in the owners manual for engines with that amount of service and age. For anything we consider an adjustable parameter (*see* § 86.094–21(b)(1)(ii) and § 86.094–22(e)), you may adjust that parameter only if it is outside of its adjustable range. You must then set the adjustable parameter to the mid-point of its adjustable range, unless we approve your request to do otherwise. You must receive permission from us before adjusting anything not considered to be an adjustable parameter. You must keep records of all maintenance and adjustments, as required by § 86.1925. You must send us these records, as described in § 86.1920(a)(3)(x), unless we instruct you not to send them.

(b) The presence of an OBD trouble code or an illuminated MIL is not automatic grounds for eliminating a vehicle that has been accepted for in-use testing under this subpart. This includes an activated OBD trouble code or illuminated MIL that you find when you first observe the vehicle. The presence of an OBD trouble code or an illuminated MIL is also not grounds for automatically aborting or voiding a test.

(1) You must address activated OBD trouble codes and illuminated MILs that occur before testing as follows:

(i) You may continue to prepare and test the vehicle without remedying the cause of the OBD code or MIL illumination.

(ii) If you wish to remedy the cause of an OBD trouble code or illuminated MIL before testing, you must first get our approval.

(iii) We will generally allow you to remedy problems that cause OBD trouble codes or MIL illumination if the problem is related to scheduled maintenance that you specify in the owner's manual. If we allow you to remedy these problems, you may also clear the trouble codes and turn off the MIL.

(iv) We will generally not allow you to remedy problems that cause OBD trouble codes or MIL illumination if the problem is related to a malfunctioning component, an assembly within the emission-control system, or an unknown cause. In these cases, you may also not clear the trouble codes or turn off the MIL.

(2) You must complete any test in which an activated OBD trouble code or illuminated MIL is discovered after emission testing has started.

(3) If we do not allow you to remedy problems that cause OBD trouble codes or MIL illumination before testing, you

may remedy the problems after testing, clear the trouble codes and turn off the MIL, and retest the vehicle. If you retest an engine under this paragraph (b)(3), we will consider the results of both tests, as follows:

(i) We will use the initial test results conducted before remedying the cause of the OBD code or MIL illumination to determine whether the vehicle meets the vehicle-pass criteria described in § 86.1912.

(ii) We will consider the results of the retest conducted after remedying the cause of the OBD code or MIL illumination in determining an appropriate course of action to address the possible outcomes described in § 86.1915(b)(2) or § 86.1915(b)(3).

(c) You must test the selected engines while they remain installed in the vehicle. Use portable emission-sampling equipment and field-testing procedures referenced in § 86.1375 and diesel fuel specified in § 86.1313 for the applicable model year. Measure emissions of THC, CO, NO_X, PM, O_2, and CO_2.

(d) For Phase 1 testing, you must test the engine under conditions reasonably expected to be encountered during normal vehicle operation and use consistent with the general NTE requirements described in § 86.1370–2007(a). For the purposes of this subpart, normal operation and use would generally include consideration of the vehicle's normal routes and loads (including auxiliary loads such as air conditioning in the cab), normal ambient conditions, and the normal driver.

(e) For Phase 2 testing, we may give specific directions, as described in § 86.1915(c)(2).

(f) Once an engine is set up for testing, test the engine for at least one shift-day. To complete a shift-day's worth of testing, start sampling at the beginning of a shift and continue sampling for the whole shift. A shift-day is the period of a normal workday for an individual employee. If the first shift-day of testing does not involve at least 3 hours of accumulated non-idle operation, repeat the testing for a second shift-day. If the second shift-day of testing also does not result in least 3 hours of accumulated non-idle operation, you may choose whether or not to continue testing with that vehicle. If after 2 shift-days you discontinue testing before accumulating 3 hours of non-idle operation, evaluate the valid NTE samples as described in § 86.1912 and include the data in the reporting and recordkeeping requirements specified in §§ 86.1920 and 1925. Count the engine toward meeting your testing requirements under this subpart and use the data for deciding whether additional engines must be tested under the applicable Phase 1 or Phase 2 test plan.

(g) You may count a vehicle as meeting the vehicle-pass criteria described in § 86.1912 if two shift-days of testing does not generate a single valid NTE sampling event, as described in § 86.1912(c). Count the engine towards meeting your testing requirements under this subpart.

(h) You may ask us to waive measurement of particular pollutants if you can show that in-use testing for such pollutants is not necessary.

§ 86.1912 How do I determine whether an engine meets the vehicle-pass criteria?

In general, the average emissions for each regulated pollutant must remain at or below the NTE threshold in paragraph (a) of this section for at least 90 percent of the valid NTE sampling events, as defined in paragraph (b) of this section. For 2007 through 2009 model year engines, the average emissions from every NTE sampling event must also remain below the NTE thresholds in paragraph (f)(2) of this section. Perform the following steps to determine whether an engine meets the vehicle-pass criteria:

(a) Determine the NTE threshold for each pollutant subject to an NTE standard by adding all three of the following terms and rounding the result to the same number of decimal places as the applicable NTE standard:

(1) The applicable NTE standard.

(2) The in-use compliance testing margin specified in § 86.007–11(h), if any.

(3) An accuracy margin for portable in-use equipment equal to 0.05 times the sum of the terms in paragraphs (a)(1) and (2) of this section.

(b) For the purposes of this subpart, a valid NTE sampling event consists of at least 30 seconds of continuous operation in the NTE control area. An NTE event begins when the engine starts to operate in the NTE control area and continues as long as engine operation remains in this area (see § 86.1370). When determining a valid NTE sampling event, exclude all engine operation in approved NTE carve-outs under § 86.1370–2007(b)(6) and any approved NTE deficiencies under § 86.007(a)(4)(iv). Exclude any portion of a sampling event that would otherwise exceed the 5.0 percent limit for the time-weighted carve-out defined in § 86.1370–2007(b)(7). For EGR-equipped engines, exclude any operation that occurs during the cold-temperature operation defined by the equations in § 86.1370–2007(f)(1).

(c) Calculate the average emission level for each pollutant over each valid NTE sampling event (E_i^{ave} in g/bhp-hr) by dividing the mass of emissions (grams) by the work done during that period of operation (brake horsepower-hour). Round the resulting value to the same number of decimal places as the applicable NTE threshold. Calculate the average emission level as follows:

$$E_i^{ave} = \frac{\sum_{j=1}^{t} E_j}{\sum_{j=1}^{t} w_j}$$

Where:

E_j = an individual emissions measurement at measurement interval j within sampling event I (g),

w_j = an individual measurement of work output (bhp-hr) at measurement interval j within sampling event i, and

t = the duration of the NTE sampling event I (sec).

(d) Calculate a time-weighted vehicle-pass ratio (R_{pass}). To do this, first sum the time from each valid NTE sampling event whose average emission level is at or below the NTE threshold for any pollutant, then divide this value by the sum of the engine operating time from all valid NTE samples. Round the resulting vehicle-pass ratio to two decimal places.

(1) Calculate the time-weighted vehicle-pass ratio as follows:

$$R_{pass} = \frac{\sum_{m=1}^{n_{pass}} t}{\sum_{k=1}^{n_{total}} t}$$

Where:

n_{pass} = the number of sampling events for which the average emission level is at or below the NTE threshold, and

n_{total} = the total number of valid sampling events.

(2) For both the numerator and the denominator of the vehicle-pass ratio, use the smallest of the following values for determining the duration of any NTE sampling event:

(i) The measured time of operation in the NTE control area for that NTE sampling event.

(ii) 600 seconds.

(iii) 10 times the length of the shortest valid NTE sample for all testing with that engine.

(e) The following example illustrates how to select the duration of NTE

sampling events for calculations, as described in paragraph (d) of this section:

NTE sample	Duration of NTE sample (seconds)	Duration limit applied?	Duration used in calculations (seconds)
1	45	No	45
2	168	No	168
3	605	Yes. Use 10 times shortest valid NTE	450
4	490	Yes. Use 10 times shortest valid NTE	450
5	65	No	65

(f) Engines meet the vehicle-pass criteria under this section if they meet both of the following criteria:

(1) The vehicle-pass ratio calculated according to paragraph (d) of this section must be at least 0.90.

(2) For model year 2007 through 2009 engines, emission levels from all valid NTE sampling events must be less than 2.0 times the NTE thresholds calculated according to paragraph (b) of this section for all pollutants, except that engines certified to a NO_X FEL at or below 0.50 g/bhp-hr may meet the vehicle-pass criteria for NO_X if measured NO_X emissions from all valid NTE samples are less than either 2.0 times the NTE threshold for NO_X or 2.0 g/bhp-hr.

§ 86.1915 What are the requirements for Phase 1 and Phase 2 testing?

For all selected engine families, you must do the following:

(a) To determine the number of engines you must test from each selected engine family under Phase 1 testing, use the following criteria:

(1) Start by measuring emissions from five engines using the procedures described in § 86.1375. If all five engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If one of the engines tested under paragraph (a)(1) of this section fails to comply fully with the vehicle-pass criteria in § 86.1912 for one or more pollutants, test one more engine. If this additional engine complies fully with the vehicle-pass criteria in § 86.1912, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(3) If your testing results under paragraphs (a)(1) and (2) of this section do not satisfy the criteria for completing your testing requirements under those paragraphs, test four additional engines so you have tested a total of ten engines.

(b) For situations where a total of ten engines must be tested under paragraph (a)(3) of this section, the results of Phase 1 testing lead to the following outcomes:

(1) If at least eight of the ten engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If six or seven vehicles from the Phase 1 sample of test vehicles comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, then you must engage in follow-up discussions with us to determine whether any further testing (including Phase 2 testing), data submissions, or other actions may be warranted.

(3) If fewer than six of the ten engines tested under paragraph (a) of this section comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, we may require you to initiate Phase 2 testing, as described in paragraph (c) of this section.

(4) You may under any circumstances elect to conduct Phase 2 testing following the completion of Phase 1 testing. All the provisions of paragraph (c) of this section apply to this Phase 2 testing.

(c) If you perform Phase 2 testing for any reason, test your engines as follows:

(1) You must test ten engines using the test procedures described in § 86.1375–2007, unless we require you to test fewer vehicles.

(2) We may give you any of the following additional directions in selecting and testing engines:

(i) We may require you to select a certain subset of your engine family. This may include, for example, engines within a specific power range, engines used in particular applications, or engines installed in vehicles from a particular manufacturer.

(ii) We may direct you to test engines in a way that simulates the type of driving and ambient conditions associated with high emissions experienced during Phase 1 testing.

(iii) We may direct you to test engines in a specific state or any number of contiguous states.

(iv) We may direct you to select engines from the same sources used for previous testing, or from different sources.

(v) We may require that you complete your testing and reporting under Phase 2 within a certain period. This period may not be shorter than three months and must allow a reasonable amount of time to identify and test enough vehicles.

§ 86.1917 How does in-use testing under this subpart relate to the emission-related warranty in section 207(a)(1) of the Clean Air Act?

(a) An exceedance of the NTE found through the in-use testing program under this subpart is not by itself sufficient to show a breach of warranty under Clean Air Act section 207(a)(1) (42 U.S.C. 7541(a)(1)). A breach of warranty would also require one of the following things:

(1) That, at the time of sale, the engine or vehicle was designed, built, and equipped in a manner that does not conform in all material respects reasonably related to emission controls to the engine as described in the application for certification and covered by the certificate; or

(2) A defect in materials or workmanship of a component causes the vehicle or engine to fail to conform to the applicable regulations for its useful life.

(b) To the extent that in-use NTE testing does not reveal such a material deficiency at the time of sale in the design or manufacture of an engine compared with the certified engine, or a defect in the materials and workmanship of a component or part, test results showing an exceedence of the NTE by itself would not show a breach of the warranty under 42 U.S.C. 7541(a)(1).

§ 86.1920 What in-use testing information must I report to EPA?

(a) Within 30 days after the end of each calendar quarter, send us reports

containing the test data from each engine for which testing was completed during the calendar quarter. Alternatively, you may separately send us the test data within 30 days after you complete testing for an engine. Once you send us information under this section, you need not send that information again in later reports. Prepare your test reports as follows:

(1) For each engine family, describe how you recruited vehicles. Describe how you used any criteria or thresholds to narrow your search or to screen individual vehicles.

(2) Include a summary of the candidate vehicles you have rejected and the reasons you rejected them, whether you base the rejection on the criteria in § 86.1908(a) or anything else.

(3) For the test vehicle, include the following background information:

(i) The EPA engine-family designation, and the engine's model number, total displacement, and power rating.

(ii) The applicable test phase (Phase 1 or Phase 2).

(iii) The date EPA selected the engine family for testing.

(iv) The vehicle's make and model and the year it was built.

(v) The vehicle's type or application (such as delivery, line haul, or dump truck). Also, identify the type of trailer, if applicable.

(vi) The vehicle owner's name, address, phone number, and e-mail address.

(vii) The vehicle's maintenance and use history. Compare this information with the criteria you establish in your test plan under § 86.1908(b).

(viii) The known status history of the vehicle's OBD system and any actions the owner or operator took to address OBD trouble codes or MIL illumination over the vehicle's lifetime.

(ix) Any OBD codes or MIL illumination that occur after you accept the vehicle for in-use testing under this subpart.

(x) Any steps you take to maintain, adjust, modify, or repair the vehicle or its engine to prepare for testing, including actions to address OBD trouble codes or MIL illumination.

(4) For each test, include the following data and measurements:

(i) The date and time of testing, and the test number.

(ii) Shift-days of testing (*see* § 86.1910(g)), duration of testing, and the total hours of non-idle operation.

(iii) Route and location of testing. You may base this description on the output from a global-positioning system.

(iv) The steps you took to ensure that vehicle operation during testing was consistent with normal operation and use, as described in § 86.1910(e).

(v) Fuel specifications, if available.

(vi) The vehicle's mileage at the start of the test. Include the engine's total lifetime hours of operation, if available.

(vii) Ambient temperature, dewpoint, and barometric pressure at the start and finish of each valid NTE event.

(viii) The number of valid NTE events (*see* § 86.1912(c)), and the percent of measured operating time in the NTE zone (both for valid NTE events and for instantaneous excursions).

(ix) Average emissions for each pollutant over each valid NTE event. See Appendix I of this subpart for an example of graphically summarizing NTE emission results.

(x) Exhaust-flow measurements.

(xi) Vehicle-pass ratio (*see* § 86.1912(d)).

(xii) Recorded one-hertz test data for all the parameters specified in 40 CFR part 1065, subpart J, including any other relevant parameters electronically sensed, measured, calculated, or otherwise stored by the engine's onboard computer. This also includes any parameters used to modulate the emission-control system.

(5) For each engine family, identify the applicable requirements, as follows:

(i) Identify the applicable NTE thresholds.

(ii) Identify the approved NTE carve-outs under § 86.1370–2007(b)(6) and § 86.1370–2007(b)(7).

(iii) Identify any approved NTE deficiencies under § 86.007(a)(4)(iv).

(6) Include the following summary information after you complete testing with the engine:

(i) State whether the engine meets the vehicle-pass criteria in § 86.1912(f).

(ii) Identify how many engines you have tested from the applicable engine family and how many engines still need to be tested.

(iii) Identify how many engines from an engine family have passed the vehicle-pass criteria and the number that have failed the vehicle-pass criteria (see § 86.1912(f)).

(iv) If possible, state the outcome of Phase 1 testing for the engine family based on the criteria in § 86.1915(b).

(b) In your reports under this section, you must do all the following:

(1) Include results from all emission testing, including incomplete tests, invalid tests, and additional tests you voluntarily conduct under § 86.1915(b)(2).

(2) Include results of testing or evaluations designed to determine why a vehicle failed the vehicle-pass criteria in § 86.1912.

(3) Describe any instances in which the OBD system illuminated the MIL or set trouble codes. Also describe any approved actions taken to address the trouble codes or MIL.

(4) Describe the reason for invalidating, voiding, or otherwise not completing tests. Also describe the purpose of any diagnostic procedures or additional tests you voluntarily conduct.

(c) We may ask you to send us less information in your reports under this section.

(d) Send us electronic reports at *?@epa.gov* using an approved information format. If you want to use a different format, send us a written request with justification.

(e) We may require you to send us more information to evaluate whether your engine family meets the requirements of this part.

§ 86.1925 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep the following paper or electronic records of your in-use testing for five years after you complete all the testing required for an engine family:

(1) Keep a copy of testing plans described in § 86.1908.

(2) Keep a copy of the reports described in § 86.1920.

(3) Keep any additional records, including forms you create, related to any of the following:

(i) The procurement and vehicle-selection process described in § 86.1908.

(ii) Pre-test maintenance and adjustments to the engine performed under § 86.1910.

(iii) Evaluations to determine why a vehicle failed the vehicle-pass criteria described in § 86.1912.

(4) Keep a copy of the relevant calibration results required by 40 CFR part 1065.

§ 86.1930 What special provisions apply in 2005 and 2006?

For calendar year 2005 and 2006, we may direct you to test engines under this subpart. In this interim period, all the provisions of this subpart apply, with the following exceptions:

(a) We will not direct you to do the Phase 2 testing in § 86.1915(c), regardless of measured emission levels.

(b) Engines tested under this subpart must use diesel fuel specified in § 86.1313–2004.

(c) For purposes of calculating the NTE thresholds under § 86.1912(a), determine the applicable NTE standards as follows:

(1) Any numerical NTE requirements specified in the terms of any consent

decree that apply to the engine family under this subpart.

(2) If a numerical NTE requirement is not specified in a consent decree for the engine family, the NTE standards are 1.25 times the applicable FELs or the applicable emission standards specified in § 86.004–11(a)(1) or § 86.098–11(a)(1).

Appendix I to Subpart T—Sample Graphical Summary of NTE Emission Results

The following figure shows an example of a graphical summary of NTE emission results:

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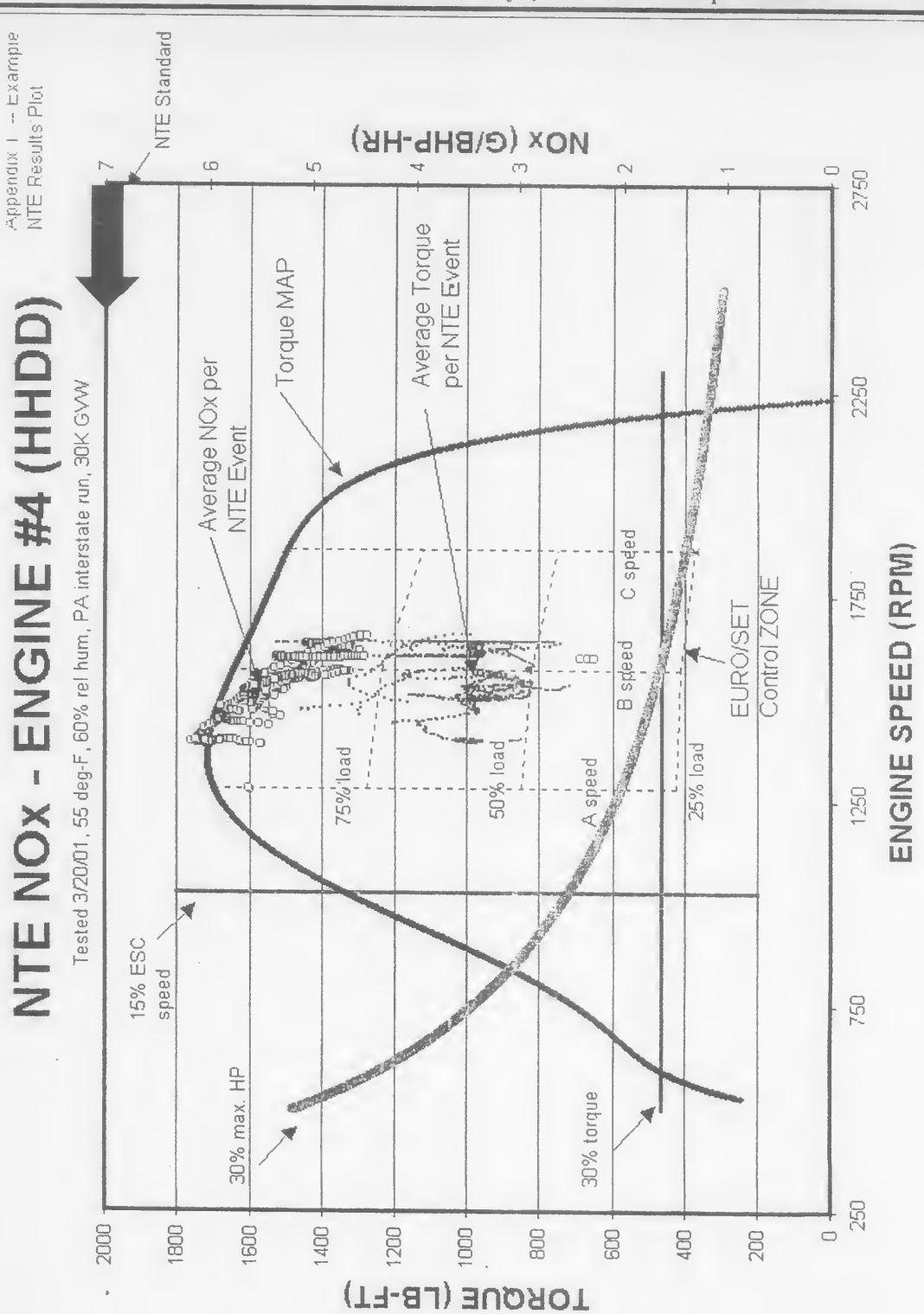
Appendix I -- Example
NTE Results Plot
NTE NOx - ENGINE #4 (HHDD)
Tested 3/20/01, 55 deg-F, 60% rel hum, PA interstate run, 30K GVW
NTE Standard
NOx (G/BHP-HR)
TORQUE (LB-FT)
ENGINE SPEED (RPM)
Average NOx per NTE Event
Torque MAP
Average Torque per NTE Event
15% ESC speed
30% max. HP
30% torque
75% load
50% load
25% load
A speed
B speed
C speed
EURO/SET Control ZONE

[FR Doc. 04–13930 Filed 6–18–04; 8:45 am]
BILLING CODE 6560–50–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 061004C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Georges Bank (GB) Cod Hook Sector Operations Plan

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

ACTION: Notification of Sector Operations Plan and allocation of GB cod Total Allowable Catch (TAC); request for comments.

SUMMARY: The final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (Amendment 13) authorized allocation of up to 20 percent of the annual GB cod TAC to the GB Cod Hook Sector (Sector). Pursuant to that final rule, the Sector has submitted an Operations Plan and Sector Contract titled "Georges Bank Cod Hook Sector Operations Plan and Agreement" (Sector Agreement), and a draft Environmental Assessment (EA), and has requested an allocation of GB cod, consistent with regulations implementing Amendment 13. This document provides interested parties an opportunity to comment on the proposed Sector Agreement prior to final approval or disapproval of the Operations Plan and allocation of GB cod TAC to the Sector for the 2004 fishing year.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before July 6, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GB Cod Hook Sector Operations Plan." Comments may be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *codsector@NOAA.gov*. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of the Sector Agreement and the EA are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination that the Sector Agreement, which contains the Sector Contract and Operations Plan, is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87. The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for a specific groundfish species (or Days-at-Sea), implemented restrictions that apply to all sectors, authorized the GB Cod Hook Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Sector. The principal Amendment 13 regulations applying to the Sector are as follows: Vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the Sector, provided they have documented landings of GB cod through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear. Membership in the Sector is voluntary, and each member would be required to remain in the Sector for the entire fishing year and could not fish outside the NE multispecies DAS program during the fishing year, unless certain conditions are met. Vessels fishing in the Sector (participating vessels) would be confined to fishing in the Sector Area, which is that portion of the GB cod stock area north of 39° 00′ N. lat. and east of 71° 40′ W. long. Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a Letter of Authorization, and the provisions of an approved Operations Plan.

While Amendment 13 authorized the Sector, in order for GB cod to be allocated to the Sector and the Sector authorized to fish, the Sector must submit an Operations Plan and Sector Contract to the Regional Administrator annually for approval. The Operations Plan and Sector Contract must contain certain elements, including a contract signed by all Sector participants and a plan containing the management rules that the Sector participants agree to abide by in order to avoid exceeding the allocated TAC. An additional analysis of the impacts of the Sector's proposed operations may be required in order to comply with the National Environmental Policy Act, and the public must be provided an opportunity to comment on the proposed Operations Plan and Sector Contract. Amendment 13 provides that, upon completion of the public comment period, the Regional Administrator will make a determination regarding approval of the Sector Contract and Operations Plan. If approved by the Regional Administrator, participating vessels would be authorized to fish under the terms of the Operations Plan and Sector Contract.

On May 24, 2004, the Sector submitted the Sector Agreement and a Draft EA which analyzes the impacts of the proposed Sector Agreement. The Sector Agreement would be overseen by a Board of Directors and a Sector Manager. The Sector Agreement specifies, in accordance with Amendment 13, that the GB cod TAC for the Sector would be based upon the number of Sector members and their historic landings of GB cod. The GB cod TAC is a "hard" TAC, meaning that, once the TAC is reached, Sector vessels could not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations). As of June 1, 2004, 58 prospective Sector members had signed the Sector Contract. The allocation percentage was calculated, as specified in Amendment 13, by dividing the sum of total landings of GB cod by Sector members for the fishing years 1996 through 2001 (when fishing with jigs, demersal longline, or handgear)(14,285,443 lb)(6,480 mt), by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period (113,278,842 lb)(51,382 mt). The resulting number is 12.611 percent. Based upon these 58 prospective Sector members, the Sector TAC of GB cod would be 372 mt (12.611 percent times the fishery-wide GB cod target TAC of 2,949 mt). The fishery-wide GB cod target TAC of 2,949 mt is less than the GB cod target TAC specified in Amendment 13 (3,949 mt) because the

3,949 mt included Canadian catch. The fishery-wide GB cod target TAC of 2,949 mt was calculated by subtracting the GB cod TAC specified for Canada under the U.S./Canada Resource Sharing Understanding for the 2004 fishing year (1,000 mt), from the overall GB cod target TAC of 3,949 mt specified in Amendment 13. Because the proposed Sector Manager stated that some prospective members of the Sector may change their minds after the publication of this notice and prior to a final decision by the Regional Administrator, it is possible that the total number of participants in the Sector and the TAC for the Sector may be slightly reduced from the numbers above.

The Sector Agreement contains procedures for the enforcement of the Sector rules, a schedule of penalties, and provides the authority to the Sector Manager to issue stop fishing orders to members of the Sector. Participating vessels would be required to land fish only in designated landing ports and would be required to provide the Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hours of offloading. Dealers purchasing fish from participating vessels would be required to provide the Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Sector Manager would transmit to NMFS a copy of the VTRs and the aggregate catch information from these reports. After 90 percent of the Sector's allocation has been harvested, the Sector Manager would be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Sector's GB cod TAC, minus a reserve, would be allocated to each month of the fishing year. GB Cod quota that is not landed during a given month would be rolled over into the following month. Once the aggregate monthly quota of GB cod is reached, for the remainder of the month, participating vessels could not fish under a multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated multispecies. Once the annual TAC of GB cod is reached, Sector members could not fish under a multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated multispecies for the rest of the fishing year. The harvest rules would not preclude vessels from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips. For each fishing trip, participating vessels would be required to fish under the NE multispecies DAS program, and are required to call the Sector Manager prior to leaving port, in addition to calling into the DAS program. There would be no trip limit for GB cod for participating vessels. All legal-sized cod caught would be retained and landed and counted against the Sector's aggregate allocation. Those species that do not meet the minimum size restrictions specified in the regulations would be returned to the sea as quickly as possible to minimize, to the extent practicable, the mortality to such species. Participating vessels would not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. Participating vessels would be limited to using 4,500 hooks within an inshore area, but may use an unlimited number of hooks in the rest of the Sector Area. NE multispecies DAS used by participating vessels while conducting fishery research under an Exempted Fishing Permit during the 2004 fishing year would be deducted from that Sector member's individual DAS allocation. Similarly, all GB cod landed by a participating vessel while conducting research would count toward the Sector's allocation of GB cod TAC. Participating vessels would be exempt from the GB Seasonal Closure Area during the month of May. In addition, the Sector Agreement provides that participating vessels must fish under their Amendment 13 DAS allocation to account for any incidental groundfish species that they may catch while targeting GB cod.

The draft EA prepared for the Sector operations concludes that the biological impacts of the Sector will be positive because the hard TAC and the use of DAS will provide two means of restricting both the landings and effort of the Sector. Implementation of the Sector would have a positive impact on essential fish habitat and bycatch by allowing a maximum number of hook vessels to remain active in the hook fishery, rather than converting to (or leasing DAS to) other gear types that have greater environmental impacts. The analysis of economic impacts of the Sector concludes that Sector members would realize higher economic returns if the Sector were implemented. The draft EA asserts that fishing in accordance with the Sector Agreement rules enables more efficient harvesting of GB cod with hook gear than would be possible if the vessels were fishing in accordance with the common pool rules. The social benefits of the Sector would accrue to both Sector members as well as the Chatham/Harwichport, MA, community, which is highly dependent upon groundfish revenues and is likely to be negatively affected by the reduced cod trip limit that was implemented by Amendment 13. The draft EA concludes that the self-governing nature of the Sector and the development of rules by the Sector enables stewardship of the cod resource by Sector members. The cumulative impacts of the Sector are expected to be positive due to a positive biological impact, neutral impact on habitat, and a positive social and economic impact. In contrast, the cumulative impact of the no action alternative is estimated to be neutral, with negative social and economic impacts.

Should the Regional Administrator approve the Sector Agreement as proposed, a Letter of Authorization would be issued to each member of the Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GB cod possession restrictions and the requirements of the Gulf of Maine trip limit exemption program, limits on the number of hooks, and the GB Seasonal Closure Area, as specified in §§ 648.86(b), 648.80(a)(4)(v), and 648.81(g), respectively.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: June 16, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–13941 Filed 6–18–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 118
Monday, June 21, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana July 13th. The purpose of this meeting is to vote on 2004 RAC projects.

DATES: The meeting will be held from 4 p.m. to 6 p.m.

ADDRESSES: The meetings will be held at the Flathead County Commissioner's Office, Commissioner's Conference Room, 800 South Main, Kalispell, Montana, 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Denise Germann,
Public Affairs Specialist.
Cathy Barbouletos,
Forest Supervisor.
[FR Doc. 04–13912 Filed 6–18–04; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Nebraska's Central Filing System

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

SUMMARY: In response to a request from Nebraska's Deputy Secretary of State we are approving the addition of a farm product to Nebraska's certified central filing system for notification of liens on farm products.

DATES: *Effective Date:* June 15, 2004.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the Clear Title program for the Secretary of Agriculture. The Clear Title program is authorized by section 1324 of the Food Security Act of 1985 and requires that States implementing central filing system for notification of liens on farm products must have such systems certified by the Secretary of Agriculture.

A listing of the States with certified central filing systems is available through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*). Listings of the specified farm products covered by a State's central filing system are also available through the GIPSA Web site.

We originally certified the central filing system for Nebraska on December 19, 1986. On April 6, 2004, Debbie Pester, Nebraska's Deputy Secretary of State, requested the certification be amended to add the following farm product produced in Nebraska: *Bull Semen.*

This notice announces the amended certification for Nebraska's central filing system in accordance with the request to add an additional farm product.

Effective Date

This notice is effective upon signature for good cause because it will allow Nebraska to provide information about an additional farm product through its central filing system. Approving additional farm products for approved central filing systems does not require public notice. Therefore, this notice may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 1631, 7 CFR 2.22(a)(3)(v) and 2.81(a)(5), and 9 CFR 205.101(e).

Dated: June 15, 2004.

Donna Reifschneider,
Administrator, Grain Inspection, Packers and Stockyards Administration.
[FR Doc. 04–13899 Filed 6–18–04; 8:45 am]
BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

SABIT Applications and Questionnaires

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before August 20, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; phone number: (202) 482–0266; e–mail: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection should be directed to: Erin Schumacher, SABIT, Department of Commerce, FCB 4100W, 14th Street & Constitution Avenue, NW., Washington, DC 20230; phone: (202) 482–0073; fax: (202) 482–2443, e–mail: *Erin_Schumacher@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special American Business Internship Training (SABIT) programs of the Department of Commerce's International Trade Administration (ITA), are a key element in the U.S. Government's efforts to support the economic transition of Eurasia (the former Soviet Union). SABIT places business executives and scientists from Eurasia in U.S. firms for one-to-six month internships to gain firsthand experiences working in a market economy. This unique private sector-U.S. Government partnership was created in order to tap the U.S. private sector's expertise in assisting Eurasia's transition to a market economy while boosting U.S.-Eurasian long-term trade. Under the original or "Grant" SABIT

program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. The information collected by the Application is needed by the SABIT staff to recruit and screen respondents and provide U.S. firms with a pool of eligible candidates from which to select interns. Intern applications are required to determine the suitability of candidates for SABIT internships. Feedback surveys and end-of-internship reports are needed to enable SABIT to track the success of the program as regards trade between the U.S. and the countries of Eurasia, as well as to improve the content and administration of the programs. The closing date for applications and supplemental materials is approximately 120 days after the date of publication in the **Federal Register**. Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the Agency for International Development (AID).

II. Method of Collection

Applications are sent to U.S. companies and intern candidates via facsimile or mail upon request. Feedback surveys are given to participating U.S. companies and interns at the completion of programs.

III. Data

OMB Number: 0625–0225.
Form Number: ITA–4143P–5.
Type of Review: Regular submission.
Affected Public: Business or other non-profit, individuals (non-U.S. citizens).
Estimated Number of Respondents: 1600.
Estimated Time Per Response: 1.8 hours.
Estimated Total Annual Burden Hours: 2,875.
Estimated Total Annual Costs: $89,000.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have the practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13896 Filed 6–18–04; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Decision of the Court of International Trade: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

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

ACTION: Notice of decision of the Court of International Trade.

SUMMARY: On June 4, 2004, the Court of International Trade (CIT) reversed the Department of Commerce's (the Department's) antidumping duty order scope determination. *Allegheny Bradford Corporation, d/b/a Top Line Process Equipment Company* v. *United States*, Court No. 02–00073, Slip. Op. 04–59 (CIT, June 4, 2004) (*Allegheny Bradford Corp.*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States*, 893 F.2nd 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the *Allegheny Bradford Corp.* decision was "not in harmony" with the Department's scope determination.

EFFECTIVE DATE: June 21, 2004.

FOR FURTHER INFORMATION CONTACT: James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0159.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department of Commerce (the Department) issued its *Final Scope Ruling on the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Allegheny Bradford Corporation d/b/a Top Line Process Equipment.* In this ruling, the Department found the subject merchandise in question to be within the scope of the order as the Department did not find the designation of the fittings as "tube" rather than "pipe" fittings to provide a meaningful distinction given the significant overlap between common usage of those two terms. Allegheny Bradford Corporation, d/b/a Top Line Process Equipment Company challenged this determination before the CIT arguing, in relevant part, that its stainless steel butt-weld tube fittings from Taiwan were improperly ruled to be within the scope of the antidumping duty order by the Department. On June 4, 2004, the CIT reversed the Department's antidumping duty order scope determination. *Allegheny Bradford Corp.* Stating that the scope of the antidumping duty order unambiguously excludes fittings which are not beveled, the CIT ordered that the Department must exclude the stainless steel butt-weld pipe fittings subject to this request from the scope of the antidumping order. *Id.*

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT which is "not in harmony" with the Department's results. The CIT's decision in *Allegheny Bradford Corp.* was not in harmony with the Department's final scope determination. Therefore, publication of this notice fulfills the obligation. In addition, this notice will serve to continue the suspension of liquidation pending the expiration of the period to appeal the CIT's June 4, 2004, decision, or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will issue liquidation instructions and revise cash deposit instructions effective the date of publication of this notice in the **Federal Register** if the CIT's decision is not appealed, or if it is affirmed on appeal.

Dated: June 15, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14113 Filed 6–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Business/Commerce, Citizen at Large, Commercial Shipping, Conservation, Education, Fishing, Native Hawaiian, Ocean Recreation, Tourism, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in Hawaii. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATE: Applications are due by July 12, 2004.

ADDRESSES: Application packets may be obtained from Keeley Belva (888) 55–WHALE or via e-mail at: *Keeley.Belva@noaa.gov*. Applications are also available on line at *http://hawaiihumpbackwhale.noaa.gov*. Completed applications should be mailed to the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalaniana 'ole Highway, Suite 104, Honolulu, Hawaii 96825, faxed to (808) 397–2650, or returned via e-mail.

FOR FURTHER INFORMATION CONTACT: Keeley Belva (see above for contact information).

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and federal governmental jurisdictions.

The Council is supported by three committees: a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concerns throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary Program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 9, 2004.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–13870 Filed 6–18–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royality bearing, revocable license for the U.S. Patent Application listed below to Precision Lift, Inc. with its principal place of business at 4765 Highway 89, Monarch, MT 59463.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

DATES: File written objections by July 6, 2004.

SUPPLEMENTARY INFORMATION: The exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The exclusive licenses may be granted, unless within fifteen (15) days from the date of this published notice, SSC receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The following Patent Application Number, Title and File date are provided:

Patent Application: 10/802,083.
Title: "Spreader Bar Apparatus"
Filed: March 10, 2004.

Brenda S. Bowen,

Alternate Federal Register Liaison Officer.

[FR Doc. 04–13921 Filed 6–18–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 29, 2004, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions. Meetings involving members of the IAB in connection with a meeting of the IEA's Emergency Response Exercise (ERE 3) Design Group, and in connection with an IEA workshop on near-term risks in the oil market, as preparation for ERE 3 in October 2004, will be held at the headquarters of the IEA on June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy

Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 29, 2004, beginning at 8:40 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 29, beginning at 9:30 a.m., including a preparatory encounter among company representatives from 8:40 a.m. to 9:15 a.m. The agenda for the preparatory encounter is as follows:

I. Welcome, Review of Agenda, and Introductions
II. Report on Expiration of European Community Exemption for IAB Activities
III. Greek Administration Proposal on Minimum Operating Inventories
IV. Closing and Review of Meetings of Interest to IAB Members

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda

2. Approval of the Summary Record of the 110th Meeting

3. Program of Work

—Progress Report on Planning of Emergency Response Exercise (ERE) 3
—The SEQ Program of Work for 2005–2006

4. Update on Compliance with IEP Stockholding Commitments

—Reports by Non-Complying Member Countries

5. The Current Oil Market Situation and Emergency Preparedness

—Discussion of Present Oil Market and Emergency Preparedness

6. Report on Current Activities of the IAB

7. Gas Security Issues

—Findings from the IEA Study

8. Policy and Other Developments in Member Countries

—Reporting Member Country Developments to the IEA Secretariat
—United States
—Netherlands
—Hungary
—Czech Republic

9. Emergency Response Activities

—Preliminary Assessment of Economic Impacts of Oil Supply Crises
—The Impact of Oil Prices on the Global Economy
—Proposed Monthly Oil Statistics Addendum on Bilateral Stock Tickets
—Oil Demand Restraint in the Transport Sector: An Analysis of Potential Fuel Savings

10. Activities with Non-Member Countries and International Organizations

—The Status of Oil Security in European Union Accession and Candidate Countries
—Report on the IEA/ASEAN/ASCOPE Workshop on Oil Supply Disruption Management Issues, Cambodia
—Report on the International Energy Forum Ministerial meeting, Amsterdam

11. Emergency Response Reviews of IEA Member Countries

—Emergency Response Review of Portugal
—Emergency Response Review of Finland

12. Other Documents for Information

—Emergency Reserve Situation of IEA Member Countries on April 1, 2004
—Emergency Reserve Situation of IEA Candidate Countries on April 1, 2004
—Monthly Oil Statistics: March 2004
—Base Period Final Consumption: 2Q2003–1Q2004
—IEA Dispute Resolution Center: Panel of Arbitrators
—Update of Emergency Contacts List

13. Other Business

—Dates of Next Meetings:
—June 30, 2004: Workshop on Near-Term Risk Assessment in the Oil Market (morning session)
—June 30, 2004: ERE 3 Design Group Meeting (afternoon session)
—October 25–26, 2004: ERE 3 Training Session for New Participants and Non-Member Countries
—October 27–28, 2004: ERE 3
—October 29, 2004: 112th Meeting of the SEQ
—Changes in the EPPD Secretariat and Delegations

A meeting involving members of the IAB in connection with an IEA workshop on the near-term risks in the oil market, as preparation for the IEA's ERE 3 in October 2004, will be held on June 30, 2004, at the headquarters of the IEA from approximately 9:30 a.m. to 12:30 p.m. The purpose of this notice is to permit IAB members to attend the workshop.

The agenda for the workshop is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Introduction by the Chair
2. Introduction by OME: Background and Objectives of IEA Objectives of Emergency Response Exercises
3. Presentation of Objectives of the ERE 3 Simulation Exercises
4. Near-Term Risks in the Oil Market, an Economic View of Possible Scenarios and Their Impact
5. Near-Term Risks in the Oil Market, a Geopolitical View
6. Brainstorming Discussion to Identify Key Elements on Scenario-Building for the ERE 3 Simulation Exercises
7. Closing Remarks by the Chair

A meeting involving members of the IAB in connection with a meeting of the IEA's ERE 3 Design Group will be held on June 30, 2004, at the headquarters of the IEA from approximately 2 p.m. to 4 p.m. The purpose of this meeting is to assist in planning an oil supply disruption simulation exercise to be conducted by the IEA's SEQ between October 25–28, 2004.

The agenda for the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Discussion led by the Chairman of the SEQ

Points for discussion include

—Approve the ERE 3 October 25 training agenda for distribution to IEA member and candidate countries as well as IAB/reporting companies
—Approve the ERE 3 October 26 disruption simulation exercise agenda for new SEQ participants and selected non-member countries for distribution to IEA member and candidate countries as well as IAB/Reporting Companies
—Approve goals and objectives for scenario-building for the simulation exercise
—Approve agenda for the ERE 3 October 27–28 SEQ disruption simulation exercise for distribution to the SEQ and reporting companies for distribution to IEA member and candidate countries as well as IAB/reporting companies
—Discussion of goals and objectives for the December 7 Governing Board disruption simulation exercise
—Discussion on operational issues for the disruption simulation exercise including facilitation and team leaders for the breakout groups
—Discussion of participation and role of outside actors in the simulation exercises (media and traders)

2. Chairman's Conclusion

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 16 , 2004.

Diana D. Clark,

Acting Assistant General Counsel for International and National Security Programs.

[FR Doc. 04–13939 Filed 6–18–04; 8:45 am]

BILLING CODE 6460–50–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–46–NG; 04–49–NG; 04–48–NG; 04–50–NG; 04–51–NG; 90–25–NG; 04–47–NG; 04–53–NG; 04–54–NG; 04–55–NG]

Anadarko Energy Services Company; Indeck-Oswego Limited Partnership; Indeck-Yerkes Limited Partnership; New York State Electric & Gas Corporation; WGR Canada, Inc.; NUI Utilities, Inc. (Formerly Elizabethtown Gas Company); UBS, AG, London Branch; National Fuel Resources, Inc.; West Texas Gas, Inc.; Hunt Oil Company of Canada, Inc.; Orders Granting, and Amending Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2004, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 10, 2004.

Sally Kornfeld,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1978	5–3–04	Anadarko Energy Services Company 04–46–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, and import LNG from other international sources, beginning on May 1, 2004, and extending through April 30, 2006.
1979	5–7–04	Indeck-Oswego Limited Partnership 04–49–NG.	18 Bcf		Import natural gas from Canada, beginning on May 16, 2004, and extending through May 15, 2006
1980	5–7–04	Indeck-Yerkes Limited Partnership 04–48–NG.	18 Bcf		Import natural gas from Canada, beginning on May 16, 2004, and extending through May 15, 2006
1981	5–7–04	New York State Electric & Gas Corporation 04–50–NG.	50 Bcf		Import natural gas from Canada, beginning on July 1, 2004, and extending through June 30, 2006.
1982	5–7–04	WGR Canada, Inc. 04–51–NG	73 Bcf	73 Bcf	Import and export natural gas from and to Canada, beginning on July 14, 2004, and extending through July 13, 2006.
428–A	5–18–04	NUI Utilities, Inc. (Formerly Elizabethtown Gas Company) 90–25–NG.			Name Change
1983	5–14–04	UBS, AG, London Branch 04–47–NG	700 Bcf, 700 Bcf, 400 Bcf		Import and export a combined total of natural gas from and to Canada, and import and export a combined total of natural gas from and to Mexico, and import LNG from other sources, beginning on April 29, 2004 and extending through April 28, 2006.
1984	5–17–04	National Fuel Resources, Inc. 04–53–NG	50 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2004, and extending through May 31, 2006.
1985	5–24–04	West Texas Gas, Inc. 04–54–NG		50 Bcf	Export natural gas to Mexico, beginning on June 1, 2004, and extending through May 31, 2006.
1986	5–24–04	Hunt Oil Company of Canada, 04–55–NG	6.0 Bcf		Import natural gas from Canada, Inc. beginning on December 1, 20002, and extending through November 30, 2004.

[FR Doc. 04–13938 Filed 6–18–04; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–327–000]

ANR Pipeline Company; Notice of Tariff Filing

June 14, 2004.

Take notice that on June 8, 2004, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No, the following tariff sheets, with a proposed effective date of July 8, 2004:

Fifteenth Revised Sheet No. 2
Seventh Revised Sheet No. 102
Sixth Revised Sheet No. 103
Third Revised Sheet No. 162.01
Tenth Revised Sheet No. 191
Third Revised Sheet No. 191A
Second Revised Sheet No. 191B
Fourth Revised Sheet No. 193
Third Revised Sheet No. 194
Second Revised Sheet No. 195
First Revised Sheet No. 196
First Revised Sheet No. 197

ANR states that it is tendering the revised tariff sheets to revise ANR's FERC Gas Tariff to make generally available to its customers three new options in the General Terms and Conditions of its tariff. ANR notes that two of the options would give customers the opportunity to negotiate additional types of discounted rates—one based on a published index price or formula and the other based on agreement to certain operational considerations that would allow ANR to provide incremental capacity for sale and the third option would allow ANR to satisfy a customers request for service where previously ANR would have had to deny the request due to prevailing operating conditions.

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 sections 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 eFiling link.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1379 Filed 6–18–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–326–000]

Marathon LNG Marketing, LLC; Notice of Petition for Declaratory Order

June 14, 2004.

Take notice that on June 7, 2004, Marathon LNG Marketing LLC (Marathon LNG) tendered for filing a petition for a declaratory order to remove uncertainty regarding the applicability of the Commission's "buy/sell" policy to a "redelivery option" provision included in an LNG sales contract between itself and BG LNG Services, LLC (BG LNG Services) pertaining to services at the Elba Island LNG Terminal.

Marathon LNG requests an order declaring that the "redelivery option" in the LNG sales contract does not conflict with the Commission's "buy/sell" policy. To the extent that the Commission concludes otherwise, Marathon LNG asks that the Commission grant any and all waivers to allow the LNG sales contract, including the "redelivery option" to be implemented in its entirety or order that the parties work together to restructure the "redelivery option" as a prearranged release of capacity at Elba Island in a manner consistent with the provisions of the Southern LNG, Inc., tariff.

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 sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed 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. 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 eFiling link.

Intervention and Protest Date: July 7, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1383 Filed 6–18–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–325–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 14, 2004.

Take notice that on June 4, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to become effective July 9, 2004.

Midwestern states that the purpose of this filing is to assure that the electronically executed form of transportation and service agreements, applicable tariff sheets, and the *pro forma* agreements for service rendered under Midwestern's Tariff will not lead to the creation of any material deviations that go beyond filling in the blank spaces or that affects the substantial rights of the parties in any way. Midwestern also states that it is making other housekeeping changes.

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 sections

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1382 Filed 6–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12179–001]

Renewable Power and Light of Saylorville, LLC; Notice of Surrender of Preliminary Permit

June 14, 2004.

Take notice that Renewable Power and Light of Saylorville, LLC, permittee for the proposed Saylorville Project, has requested that its preliminary permit be terminated. The permit was issued on January 8, 2003, and would have expired on December 31, 2006.[1] The project would have been located on the Des Moines River in Polk County, Iowa.

The permittee filed the request on May 3, 2004, and the preliminary permit for Project No. 12179 shall remain in effect through the 30th day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

[1] 102 FERC ¶ 62,011.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1384 Filed 6–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–279–001

Texas Gas Transmission, LLC; Notice of Compliance Filing

June 14, 2004.

Take notice that on June 7, 2004, Texas Gas Transmission, LLC (Texas Gas), submitted a compliance filing in the above-referenced docket.

Texas Gas states that the purpose of this filing is to comply with the Commission's directives as stated in a letter order issued on May 27, 2004, in response to Texas Gas's tariff filing dated April 30, 2004.

Texas Gas states that copies of this compliance filing are being mailed to all parties on the official service list in this docket, to Texas Gas's official service list, to Texas Gas's jurisdictional customers, and to 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 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 eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1381 Filed 6–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–521–005, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

June 4, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER04–521–005]

Take notice that on June 2, 2004, Exelon Corporation submitted for filing a Report on Pathway Capacity.

Comment Date: June 23, 2004.

2. PJM Interconnection, L.L.C. Commonwealth Edison Company

[Docket No. ER04–718–003]

Take notice that on May 27, 2004, Commonwealth Edison Company (ComEd) submitted for filing, in compliance with the Commission's order issued April 27, 2004, in Docket No. ER04–718–001, Accepting Compliance Filing, and Conditionally Accepting Service Agreements for Filing, Suspending Filing, and Establishing Hearing Procedures an amended Financial Hold Harmless Service Agreement under the PJM Open Access Transmission Tariff.

ComEd states that copies of the filing were served upon each person upon the official service list of the Commission.

Comment Date: June 17, 2004.

3. The United Illuminating Company

[Docket No. ER04–770–000]

Take notice that on June 2, 2004, The United Illuminating Company (United Illuminating) submitted for filing an answer to PSEG Energy Resources & Trade, LLC's (PSEG) May 18, 2004, Motion to Intervene, Protest, and Motion to Reject filed in response to United Illuminating's April 27, 2004, filing in Docket No. ER04–770–000. United Illuminating also included in the June 2, 2004, filing a motion to withdraw its April 27, 2004, filing of the Agreement for Supplemental Installed Capacity-Southwest Connecticut (LRP) Resources between United Illuminating

and ISO New England Inc. United Illuminating states that it seeks affirmative relief by including a Motion to Reject PSEG's May 18, 2004, answer.

Comment Date: June 10, 2004.

4. AEP Texas North Company

[Docket No. ER04–888–000]

Take notice that on May 28, 2004, American Electric Power Service Corporation (AEPSC), as agent for AEP Texas North Company (AEPTNC) formerly West Texas Utilities Company, submitted for filing an unexecuted interconnection agreement between AEPTNC and Taylor Electric Cooperative, Inc. (Taylor). AEPTNC requests an effective date of August 1, 2004.

AEPSC states that it has served copies of the filing on Taylor and the Public Utility Commission of Texas.

Comment Date: June 18, 2004.

5. Calpine Energy Services, Inc.

[Docket No. ER04–889–000]

Take notice that on May 28, 2004, Calpine Energy Services, L.C. (CES) on behalf of Calpine Parlin, L.L.C., tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactivepower from the Calpine Parlin Energy Center for sales to PJM Interconnection, L.L.C. CES requests an effective date of August 1, 2004.

CES states that copies of the filing have been served on PJM Interconnection, L.L.C.. Jersey Central Power & Light Company and the New Jersey Board of Public Utilities.

Comment Date: June 18, 2004.

6. Southern California Edison Company

[Docket No. ER04–890–000]

Take notice that on May 28, 2004, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Second Revised Volume No. 6. SCE states that the revisions modifies the TO Tariff by revising the definition of "Reliability Services" to reflect a new category of Reliability Services costs to be imposed by the California Independent System Operator Corporation (ISO) on Participating Transmission Owners (PTOs) in the ISO.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the ISO, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Metropolitan Water District of Southern California, and the wholesale customers that have loads in SCE's historic control area but are not PTOs in the ISO.

Comment Date: June 18, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER04–891–000]

Take notice that on May 28, 2004, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed agreement for dynamic scheduling of transmission service between PJM and the Wisconsin Electric Power Company (WE). PJM states that it is filing the dynamic scheduling agreement (DSA) as a result of the integration of Commonwealth Edison Company (ComEd) into the PJM region, to facilitate the conversion of service from ComEd's tariff to the PJM Open Access Transmission Tariff (PJM Tariff). PJM requests that the DSA be accepted effective May 1, 2004, and therefore requests waiver of the prior notice requirement.

PJM states that copies of this filing were served upon WE and the State commissions in the PJM region.

Comment Date: June 18, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–892–000]

Take notice that on May 28, 2004, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed agreement for network integration transmission service between PJM and the City of St. Charles, Illinois (St. Charles). PJM states that it is filing the agreement because it includes an addendum (not reflected in PJM's Open Access Transmission Tariff that specifies how various responsibilities for St. Charles's load are to be apportioned between St. Charles and Commonwealth Edison Company (ComEd) during periods when St. Charles is a partial requirements customer of ComEd. PJM requests that the enclosed agreement be accepted effective May 1, 2004, and therefore requests waiver of the prior notice requirement.

PJM states that copies of this filing were served upon St. Charles and the State commissions in the PJM region.

Comment Date: June 18, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER04–893–000]

Take notice that on May 28, 2004, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed agreement for network integration transmission service between PJM and the City of Batavia, Illinois (Batavia). PJM states that it is filing the agreement because it includes an addendum (not reflected in PJM's Open Access Transmission Tariff that specifies how various responsibilities for Batavia's load are to be apportioned between Batavia and Commonwealth Edison Company (ComEd) during periods when Batavia is a partial requirements customer of ComEd. PJM requests that the enclosed agreement be accepted effective May 1, 2004, and therefore requests waiver of the prior notice requirement.

PJM states that copies of this filing were served upon Batavia and the State commissions in the PJM region.

Comment Date: June 18, 2004.

10. Maine Public Service Company

[Docket No. ER04–894–000]

Take notice that on May 28, 2004, Maine Public Service Company (MPS) submitted minor revisions to its open access transmission tariff (OATT) to reflect: (1) Revisions to conform the Formula Rate FERC Form No. 1 (FERC Form 1) references to the changes made by the Commission to the FERC Form 1; (2) to revise a footnote to reflect a request by the Maine Public Utilities Commission; and (3) to correct spelling errors, internal cross-references, and to prevent double charging for VAR costs. MPS requests a June 1, 2004, effective date for the OATT revisions.

MPS states that copies of this filing were served on the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: June 18, 2004.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–895–000]

Take notice that on May 28, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners submitted for filing proposed revisions to Attachment O of the Midwest Independent Transmission System Operator, Inc. Open Access Transmission Tariff, in order to update references to FERC Form 1 and to correct ministerial errors. Midwest ISO and the Midwest ISO Transmission Owners requested waiver of the notice provision of section 205 of the Federal Power Act in order to accommodate an effective date of June 1, 2004.

Midwest ISO and the Midwest ISO Transmission Owners state that copies of the filing have been served electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, as well as all state commissions within the region. In addition, Midwest ISO and the Midwest ISO Transmission Owners state that the filing has been electronically posted on

the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter and that hard copies will be provided to any interested parties upon request.

Comment Date: June 18, 2004.

12. PJS Capital, LLC

[Docket No. ER04–896–000]

Take note that on May 28, 2004, PJS Capital, LLC petitioned the Commission for acceptance of PJS Capital, LLC Rate Schedule FERC No. 1 the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations. PJS Capital LLC states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer that it is not in the business of generating or transmitting electric power.

Comment Date: June 18, 2004.

13. Commonwealth Edison Company

[Docket No. ER04–897–000]

Take notice that on June 1, 2004, Commonwealth Edison Company (ComEd) submitted for filing service agreements (SAs) formerly under its open access transmission tariff (OATT), now redesignated under PJM Interconnection, LLC's (PJM) OATT. ComEd states that it has integrated into PJM as of May 1, 2004 and accordingly, its OATT and all applicable SAs under that OATT are cancelled as of that date. *See American Electric Power*, et al., 103 FERC 61,008 at P 18 (2003). ComEd requests those waivers necessary to make the redesignated SAs effective May 1, 2004.

ComEd states that a copy of this transmittal letter has been served on the affected state regulatory bodies, the counterparties to these SAs, and PJM.

Comment Date: June 22, 2004.

14. Virginia Electric and Power Company

[Docket No. ER04–898–000]

Take notice that on June 1, 2004, Virginia Electric and Power Company, doing business as Dominion Virginia Power, (Dominion) tendered for filing revised tariff sheets (Revised Sheets) in Virginia Electric and Power Company's FERC Electric Tariff, Second Revised Volume No. 5 (OATT) modifying the methodology for recovery of its revenue requirement under Schedule 2 to its OATT; amending certain references to be consistent with the currently effective standards of conduct; and deleting Attachments E and I, which have been replaced by information in Dominion's Electronic Quarterly Reports. Dominion requests waiver of the Commission's notice of filing requirements to allow the Revised Sheets amending references regarding the standards of conduct and deleting Attachments E and I to become effective on June 2, 2004, the day after filing, and to allow the Revised Sheets modifying Schedule 2 to become effective on May 1, 2004.

Dominion states that copies of the filing were served upon all tariff customers, Tenaska, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: June 22, 2004.

15. Maine Public Service Company

[Docket No. ER04–899–000]

Take notice that on June 1, 2004, Maine Public Service Company (MPS) submitted revised and new tariff sheets in compliance with Order No. 2003–A, Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003–A, 106 FERC ¶ 61,220 (2004), to incorporate Order No. 2003–A's *pro forma* Standard Large Generator Interconnection Procedure and Standard Large Generator Interconnection Agreement. MPS proposes an effective date of April 26, 2004, for the new and revised tariff sheets.

MPS states that copies of this filing were served on the Maine Public Utilities Commission and the Maine Public Advocate.

Comment Date: June 22, 2004.

16. LG&E Energy LLC.

[Docket No. ER04–900–000]

Take notice that on May 28, 2004, LG&E Energy LLC (LG&E) filed with the Commission an agreement for the sale of wholesale power and energy to East Kentucky Power Cooperative, Inc.

LG&E states that it has served a copy on East Kentucky Power Cooperative, Inc.

Comment Date: June 18, 2004.

17. Entergy Services, Inc.

[Docket No. ER04–901–000]

Take notice that on June 1, 2004, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed revisions to its standard Generator Imbalance Agreement. Entergy requests an effective date of August 1, 2004, for the proposed revisions.

Comment Date: June 22, 2004.

18. Oklahoma Gas and Electric Company

[Docket No. ER04–902–000]

Take notice that on June 2, 2004, Oklahoma Gas and Electric Company (OG&E) tendered for filing a letter agreement between OG&E and the Oklahoma Municipal Power Authority. OG&E requests an effective date of June 1, 2004.

OG&E states that it has served the filing on the Oklahoma Municipal Power Authority and the Oklahoma Corporation Commission.

Comment Date: June 23, 2004.

19. Devon Power LLC

[Docket No. ER04–903–000]

Take notice that on May 28, 2004, Devon Power LLC (Devon) tendered for filing data supporting a new month applicable Reliability Charge for Devon Unit 7 under the Amended Reliability Agreement between Devon and ISO New England, Inc. Devon request an effective date of May 29, 2004.

Devon states that it has provided copies of the filing to ISO-NE and served each person designated on the official service list *et al.*, compiled by the Secretary in Docket Nos. ER04–464–000, ER04–23–000 and ER03–563–029.

Comment Date: June 18, 2004.

20. Orange and Rockland Utilities, Inc.

[Docket No. ER04–905–000]

Take notice that on June 2, 2004, Orange and Rockland Utilities, Inc., (O&R) submitted a filing amending its Tariff for the Wholesale Sale of Electricity at Market-Based Rates to include the Market Behavior Rules promulgated by the Commission. Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

O&R states that it is serving this filing on all parties to the subject dockets and on the New York Public Service Commission.

Comment Date: June 23, 2004.

21. PacifiCorp

[Docket No. TX04–4–000]

Take notice that on May 28, 2004, PacifiCorp tendered for filing with the Commission an Application for an Order under section 211 of the Federal Power Act Directing the Provision of Transmission Service.

PacifiCorp states that copies of this filing were supplied to Nevada Power, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: June 18, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1385 Filed 6–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12118–001]

Northern California Hydro Developers; Notice of Surrender of Preliminary Permit

June 14, 2004.

Take notice that Northern California Hydro Developers, permittee for the proposed Robley Point Project, has requested that its preliminary permit be terminated. The permit was issued on February 14, 2002, and would have expired on January 31, 2005.[1] The project would have been located on the West Branch Feather River in Butte County, California.

The permittee filed the request on May 10, 2004, and the preliminary permit for Project No. 12118 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

[1] 98 FERC ¶ 62,106.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1380 Filed 6–18–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0005, FRL–7775–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Superfund Site Evaluation and Hazard Ranking System, EPA ICR Number 1488.06, OMB Control Number 2050–0095

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 EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Superfund Site Evaluation and Hazard Ranking System; ICR #1488.06. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 20, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0005, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailstop 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, Environmental Protection Agency, Mail Stop 5204G, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–8835.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0005, which is available for public viewing at the CERCLA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the CERCLA Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the 2001 collection of information, 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 within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those State agencies, Indian Tribes, and U.S. Territories performing Superfund site evaluation activities.

Title: Superfund Site Evaluation and Hazard Ranking System.

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous

Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

EPA Regional offices work with States to determine those sites for which the State will conduct the Superfund site evaluation activities and the HRS scoring. The States are reimbursed 100 percent of their costs, except for record maintenance.

Under this ICR, the States will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including conducting field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to range from 44 to 1,870 hours per site depending on how far a site progresses through the site assessment process. Sites needing Pre-CERCLIS Screening and no other Superfund site assessment work will require an average of 44 hours per site, while sites progressing though all of the major phases of the site assessment process will require an average of 1,870 hours per site. EPA estimates 60 States, Indian Tribes, and U.S. Territories will likely respond, each averaging 14 actions per year. EPA further estimates the average hours per action will require 171 hours (based on historic data for the type of site assessment activities to be conducted). Thus, the burden for all respondents is estimated at 143,640 hours and approximately $10,903,301 each year (based on historic data on estimated costs per site assessment activity). 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: States, Indian Tribes, and U.S. Territories performing Superfund site evaluation activities.

Estimated Number of Respondents: 60.

Frequency of Response: One time; section 116(b) requires an HRS evaluation within four years of the site's entry into the EPA Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database.

Estimated Total Annual Hour Burden: 143,640 hours.

Estimated Total Annual Cost: $10,903,301.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Dated: June 14, 2004.

Charles H. Sutfin,

Acting Director, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Remedial Response.

[FR Doc. 04–13936 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7776–1]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, and policies related to the implementation of the SDWA.

DATES: Submit nominations via U.S. mail on or before August 31, 2004.

ADDRESSES: Address all nominations to Clare Donaher, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Clare Donaher, Designated Federal Officer, *donaher.clare@epa.gov*, or call 202–564–3787.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist EPA in addressing specific program issues. These workgroup meetings are held

approximately four times a year, typically, with two meetings by conference call.

The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. The SDWA requires that at least two members of the Council represent small, rural public water systems. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill the five vacancies with appointed terms ending on December 15, 2007.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Dated: June 15, 2004.

Nanci Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–13934 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0173; FRL–7365–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review a hazard and dose-response assessment for Dimethoate.

DATES: The meeting will be held on July 29 and 30, 2004, from 8:30 a.m. to approximately 5:00 p.m, eastern time.

Comments. For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before July 1, 2004.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments. Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and Special seating. To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0173; in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than early July 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When

a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0173. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0173. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. 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 hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0173. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0173.

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 copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0173 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although, requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed

under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, July 22, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, July 15, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Developmental neurotoxicity studies, veterinary pathology/animal studies (pup rearing issues), cholinesterase inhibition, toxicity adjustment factors, and dermal absorption. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before July 1, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the needs of the FIFRA SAP and includes consideration of such issues as adequately covering the areas of expertise (including the different scientific perspectives within each discipline) necessary to address the Agency's charge questions. In addition, ad hoc members of the FIFRA SAP must be available to fully participate in the review; they must not have any conflicts of interest or appearance of lack of impartiality; and they must be independent and unbiased with respect to the matter under review. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or agency or their employment by a Federal department or agency, except the EPA. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting more than 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also, shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4–years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review a hazard and dose-response assessment for dimethoate. As part of tolerance reassessment activities underway at EPA's Office of Pesticide Programs as mandated by the Food Quality Protection Act (1996), EPA is developing a Registration Eligibility Decision document for dimethoate, an organophosphate pesticide. The purpose of this SAP meeting is solicit comment on aspects of the dimethoate hazard and dose-response assessment. In particular,

the discussion will focus on the results from the developmental neurotoxicity and cross-fostering studies performed with dimethoate, the relative toxicity of dimethoate and its acetylcholinesterase-inhibiting metabolite, omethoate; and dermal absorption of dimethoate.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60–days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 14, 2004.

Joseph J. Merenda, Jr,

Director, Office of Science Coordination and Policy.

[FR Doc. 04–13937 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7775–9]

National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is announcing the first teleconference meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC). The purpose of this conference call is to provide a forum for the WSWG members to introduce themselves, to discuss the ground rules and standard operating procedures, and to develop an estimated time frame and approach to complete the WSWG charge. Any interested person or organization may attend or dial into the conference call (see the **FOR FURTHER INFORMATION CONTACT** section and the **SUPPLEMENTARY INFORMATION** section of this notice for more information).

DATES: The first WSWG conference call will take place from 3:30 p.m. to 5:30 p.m., Eastern standard time, on July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Please contact Marc Santora at *santora.marc@epa.gov* or call 202–564–1597 to register and receive pertinent details such as the telephone number and extension to participate in the conference call.

SUPPLEMENTARY INFORMATION: The WSWG encourages public participation. A limited number of additional phone lines may be available for members of the public that are outside of the Washington, DC metropolitan commuting area and are unable to attend in person. The Designated Federal Officer will reserve any additional teleconferencing lines that are available on a first-come, first-serve basis. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after the WSWG meeting. Written statements received prior to the meeting will be distributed to all members of the WSWG before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the WSWG members for their information. Any person needing special accommodations at this meeting, including wheelchair access, should contact the Designated Federal Officer, at the number or e-mail listed under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days before the meeting so that appropriate arrangements can be made.

Background

The EPA is designated as the lead Agency for the security of the nation's drinking water and wastewater sectors. The National Drinking Water Advisory Council was established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, and policies related to the implementation of the Safe Drinking Water Act. On February 10, 2004, NDWAC voted and approved to form the WSWG to address best security practices for drinking water and wastewater facilities (*i.e.*, the water sector) in becoming more secure against malevolent threats. The Agency is projecting three to five face-to-face meetings over the course of the next year in addition to conference calls and/or video conferencing on an as needed basis. After the WSWG completes the charge, a report out in terms of recommendations will be made to the full NDWAC. The full NDWAC will, in turn, make appropriate recommendations to the EPA.

Working Group Charge

The charge for the Water Security Working Group is to provide recommendations to the full NDWAC that: (1) Identify, compile, and characterize best security practices and policies for drinking water and wastewater utilities and provide an approach for considering and adopting these practices and policies at a utility level; (2) consider mechanisms to provide recognition and incentives that facilitate a broad and receptive response among the water sector to implement these best security practices and policies and make recommendations as appropriate; (3) consider mechanisms to measure the extent of implementation of these best security practices and policies, identify the impediments of their implementation, and make recommendations as appropriate.

Dated: June 15, 2004.

Nanci Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–13931 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7774–9]

Final Issuance of General NPDES Permits for Small Publicly Owned Treatment Works (POTWs) and Other Small Treatment Works Treating Domestic Sewage in Alaska (NPDES Permits Nos. AKG–57–0000, and AKG–57–1000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice of issuance of two general NPDES permits.

SUMMARY: On September 26, 2003, EPA proposed to issue general National Pollutant Discharge Elimination System (NPDES) permits for small POTWs and other small treatment works treating domestic sewage in Alaska pursuant to the provisions of the Clean Water Act (CWA) 33 U.S.C. 1251 *et seq.* One general permit is applicable to those facilities discharging to marine waters

(NPDES Permit Number AKG–57–1000) while the second general permit is applicable to facilities discharging to fresh waters (AKG–57–0000). There was a forty-five day public notice period during which written comments on the draft permits were submitted to EPA. During the comment period, EPA received fifteen comment letters on the general permits.

DATES: The general permits will be effective July 21, 2004.

ADDRESSES: Copies of the general permits and Response to Comments are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue OW–130, Seattle, WA 98101. Electronic requests may be mailed to: *washington.audrey@epa.gov* or *lidgard.michael@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the general permits, Fact Sheet and Response to Comments are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Michael Lidgard at (206) 553–1755. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *lidgard.michael@epa.gov*. These documents may also be found on the EPA Region 10 Web site at *www.epa.gov/r10earth/* then click on Water Quality, Permits (under NPDES) and then on recently issued permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order. On May 24, 2004, The State of Alaska, Department of Environmental Conservation (ADEC), certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act, and that the general permits are in compliance with the Standards of the Alaska Coastal Management Program.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA.

Dated: June 9, 2004.

Robert R. Robichaud,

Associate Director, Office of Water, Region 10.

[FR Doc. 04–13935 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7773–6]

Clean Water Act Section 303(d): Final Agency Action on 3 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 3 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club*, et al. v. *Clifford*, et al., No. LR–C–99–114. Documents from the administrative record files for the final 3 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/earth1r6/6wq/artmdl.htm*.

ADDRESSES: The administrative record files for these 3 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club*, et al. v. *Clifford*, et al., No. LR-C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA TAKES FINAL AGENCY ACTION ON 3 TMDLS

[By this notice EPA is taking final agency action on the following 3 TMDLs for waters located within the State of Arkansas]

Segment-reach	Waterbody name	Pollutant
08040201–80	Big Johnson Lake	Mercury in fish tissue.
08040204–27	Grays Lake	Mercury in fish tissue.
08040204	Monticello Lake	Mercury in fish tissue.

EPA requested the public to provide EPA with any significant data or information that may impact the 3 TMDLs at **Federal Register** notice 69 FR 19183 (April 12, 2004). No comments were received.

Dated: June 8, 2004.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 04–13686 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending); (2) Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing); (3) Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers), and (4) Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

DATES: Comments must be submitted on or before August 20, 2004.

ADDRESSES: Interested parties are invited to submit written comments to Thomas Nixon, Legal Division (202) 898–8766, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Thomas Nixon, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

OMB Number: 3064–0082.

Frequency of Response: On occasion.

Affected Public: State nonmember banks that regularly offer or extend consumer credit.

General Description of Collection: Regulation Z (12 CFR 226), issued by the Board of Governors of the Federal Reserve System, prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

Burden estimate	Number of respondents	Annual frequency	Response time	Annual burden hours
Subpart B				
Open-End Credit				
Initial Disclosures	4,941	1,150	[1] 1.5	142,054
Change in Terms	4,941	2,500	[1] 1	205,875
Periodic Statements	4,941	12	[2] 8	474,336
Error Resolution:				
Credit Cards	1,243	145	[1] 30	23,617
Other Reg. Z complaints	4,941	2	[1] 30	4,941
Credit & Charge Card Accounts—Advance disclosures	1,243	12	[2] 8	119,328
Home equity plans:				
Advance disclosure	3,404	790	[1] 1.5	67,229
Change in Terms	3,404	10	[1] 3	1,702
Subpart C				
Closed-end credit disclosures	4,941	2,472	[1] 6.5	1,323,199
Sections 226.16 and 226.24 Advertising	4,941	5	[1] 25	9,882
Subpart E—Pre-closing disclosure	115	250	[1] 3	1,437
Total				2,373,600

[1] Minutes.
[2] Hours.

2. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

OMB Number: 3064–0083.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in consumer leasing.

General Description of Collection: Regulation M (12 CFR 213), issued by the Board of Governors of the Federal Reserve System, implements the consumer leasing provisions of the Truth in Lending Act.

Estimated Number of Respondents: 1,755.

Estimated Time per Response: .75 hours.

Estimated average frequency of transactions per year: 100.

Total Annual Burden: 131,625 hours.

3. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers).

OMB Number: 3064–0084.

Frequency of Response: On occasion.

Affected Public: Any users of the electronic fund transfer system.

General Description of Collection: Regulation E (12 CFR 205), issued by the Board of Governors of the Federal Reserve System, establishes the rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services.

Burden estimate	Number of respondents	Annual frequency	Response time	Annual burden hours
Initial disclosures:				
Initial terms	5,318	250	[1] 1.5	33,238
Change in terms	5,318	340	[1] 1	30,135
Periodic disclosure	5,318	12	[2] 7	446,712

Burden estimate	Number of respondents	Annual frequency	Response time	Annual burden hours
Error resolution rules	5,318	8	[1]30	21,272
Total				531,357

[1] Minutes.
[2] Hours.

4. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

OMB Number: 3064–0085.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in credit transactions.

General Description of Collection: Regulation B (12 CFR 202), issued by the Board of Governors of the Federal Reserve System, prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application.

Burden estimate	Number of respondents	Frequency	Response time	Annual burden hours
Notice of action	5,318	1,715	[1]2.50	380,015
Credit history reporting	5,318	850	[1]2.00	150,677
Monitoring data	5,318	360	[1]0.50	15,954
Appraisal:				
Appraisal report upon request	5,318	190	[1]5.00	84,202
Notice of right to appraisal	5,318	1,650	[1]0.25	36,561
Self-testing:				
Recordkeeping of test	1,100	1	[2]2	2,200
Recordkeeping of corrective action	275	1	[2]8	2,200
Disclosure for optional self-test	1,100	2,500	[1]1	45,833
Total				717,642

[1] Minutes.
[2] Hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of June, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–13971 Filed 6–18–04; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 04–12]

Office of Thrift Supervision

[Docket No. 2004–27]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1189]

FEDERAL DEPOSIT INSURANCE CORPORATION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49873; File No. S7–22–04]

Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC), Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Securities and Exchange Commission (SEC).

ACTION: Request for comments; extension of comment period.

SUMMARY: On May 19, 2004, the OCC, OTS, Board, FDIC, and SEC (collectively, the Agencies) requested public comment on a proposed Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities (Interagency Statement) (69 FR 28980, May 19, 2004). The Agencies are extending the comment period on the Interagency Statement until July 19, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments should be received by July 19, 2004.

ADDRESSES:

OCC: You may submit comments, identified by Docket number 04–12, by any of the following methods:

E-mail address: *regs.comments@occ.treas.gov.*

Fax: (202) 874–4448.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public

Reference Room, Mail Stop 1–5, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Reference Room, MailStop 1–5, Washington, DC 20219. You may review the comments received by the OCC and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments received at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC You can make an appointment to inspect comments by calling (202) 874–5043.

Viewing Comments Electronically: You may request copies of comments received for a particular docket via e-mail or CD–ROM by contacting the OCC's Public Reference Room at *http://www.foia-pa@occ.treas.gov.*

OTS: You may submit comments, identified by No. 2004–27, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* regs.comments@ots.treas.gov. Please include No. 2004–27 in the subject line of the message, and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–27.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–27.

Instructions: All submissions received must include the agency name and document number. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Board: You may submit comments, identified by Docket No. OP–1189, by any of the following methods:

- *Board's Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http//www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: *comments@fdic.gov).* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

SEC: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/policy);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–22–04 on the subject line; or
- Use the Federal eRulemaking Portal *(http://www.regulations.gov).* Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–22–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/policy).* Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

OCC: Kathryn E. Dick, Deputy Comptroller, (202) 874–4660, Risk Evaluation, Grace E. Dailey, Deputy Comptroller, (202) 874–4610, Large Bank Supervision, Ellen Broadman, Director, (202) 874–5210, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: John C. Price, Jr., Director, Supervision Policy, Examinations and Supervision Policy, (202) 906–5745; Debbie Merkle, Project Manager, Credit Risk, Supervision Policy, (202) 906–5688; David A. Permut, Senior Attorney, Business Transactions Division, (202) 906–7505, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Board: Michael G. Martinson, Senior Adviser (202–452–3640), Walt H. Miles, Assistant Director (202) 452–5264, or Sabeth I. Siddique, Manager (202) 452–3861, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Managing Senior Counsel (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: William A. Stark, Associate Director, Capital Markets Branch, (202) 898–6972, Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SEC: Mary Ann Gadziala, Associate Director, Office of Compliance Inspections and Examinations, or Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Attorney Fellow, or Randall W. Roy, Special Counsel, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: On May 19, 2004, the Agencies requested comment on their Interagency Statement concerning the complex structured finance activities of financial institutions supervised by the Agencies (national and state banks; bank holding companies; federal and state savings associations; savings and loan holding companies; and SEC-registered broker-dealers and investment advisors). The Interagency Statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions. The Interagency Statement, among other things, provides that financial institutions should have effective policies and procedures in place to identify those complex structured finance transactions that may involve heightened reputational and legal risk, to ensure that these transactions receive enhanced scrutiny by the institution, and to ensure that the institution does not participate in illegal or inappropriate transactions.

Several trade associations that represent financial institutions have requested that the Agencies extend the public comment period for the Interagency Statement for an additional 30-day period. The trade associations have indicated that such an extension would enable them and their members to better analyze and address the substantive, operational and legal issues associated with the Interagency Statement

In light of these requests, the Agencies are providing the public additional time to comment on the proposed Interagency Statement.

You should submit your comments on the Interagency Statement by July 19, 2004.

Dated: June 16, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: June 16, 2004.

James E. Gilleran,

Director, Office of Thrift Supervision.

By order of the Board of Governors of the Federal Reserve System.

Dated: June 16, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 16th day of June, 2004.

Pursuant to the Order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the Securities and Exchange Commission.

Dated: June 16, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14052 Filed 6–18–04; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P; 8010–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, June 23, 2004. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION OF MEETING: *Final Rule Regarding Registration of Federal Home Loan Bank Securities.* Consideration of a final rule to require each Federal Home Loan Bank to register a class of its securities with the Securities and Exchange Commission under the provisions of section 12(g) of the Securities Exchange Act of 1934.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: June 16, 2004.

By the Federal Housing Finance Board.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 04–14030 Filed 6–16–04; 5:10 pm]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Combined Notice of Funding Availability for Programs To Improve Minority Health and Racial and Ethnic Disparities in Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

Funding Opportunity Titles: This notice of funding availability includes three programs for FY 2004: (1) Community Programs to Improve Minority Health; (2) Bilingual/Bicultural Service Demonstration Grant Program; and (3) HIV/AIDS Health Promotion and Education Program

Announcement Type: Initial Announcement of Availability of Funds

Catalog of Federal Domestic Assistance Numbers: (1) Community Programs to Improve Minority Health—93.137; (2) Bilingual/Bicultural Service Demonstration Program—93.105; and (3) HIV/AIDS Health Promotion and Education Program—93.004.

DATES: Application Availability Date: June 21, 2004; Letter of Intent: July 6, 2004; Application Deadline: August 5, 2004.

SUMMARY: This announcement is made by the Department of Health and Human Services (HHS or Department), Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a "One-Department" approach collaboratively with participating HHS agencies and programs (entities). The mission of the OMH is to improve the health of racial and ethnic minority populations through development of health policies and programs that will address health disparities and gaps. OMH serves as the focal point within the HHS for leadership, policy exchange, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. As part of a continuing HHS effort to improve the health and well being of racial and ethnic minorities, the Department announces availability of FY 2004

funding for the following three programs: Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, and HIV/AIDS Health Promotion and Education Program.

This is the first year that a single notice of funding availability has been issued for these three programs. In previous years, separate notices of funding availability were issued for each OMH program. The purpose of this single announcement is to make it easier for organizations such as community-based organizations, minority-serving organizations, faith based organizations, and tribal governments and organizations, who meet the eligibility criteria for each program, to identify and apply for FY 2004 OMH funding. As eligibility criteria vary for each program under this announcement, a single notice of funding availability may assist potential applicants to better identify the programs for which they can compete and to target proposals to the program(s) most suitable to the issues faced by their target population(s). This announcement should also assist eligible applicants to understand the range of issues that may be supported by the three programs and encourage collaborations among organizations that provide services to racial and ethnic minorities. Sections I (Funding Opportunities), II (Award Information), and III (Eligibility Information) contain program specific information for each of the programs included in this notice of funding availability. Sections IV (Application and Submission Information), V (Application Review Information), VI (Award Administration Information), and VII (Agency Contacts) contains common information that applies to all three programs identified in this notice of funding availability. Additional background information on each program may be found in Section VIII, Other Information.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: These programs are authorized under section 1707 of the Public Health Service Act, as amended.

Purpose:

1. The Community Programs To Improve Minority Health

A. *Purpose:* The Community Programs to Improve Minority Health program seeks to improve the health status of racial and ethnic minority populations through health promotion and disease risk reduction intervention programs. It is expected that this program will demonstrate the effectiveness of:

- Community-based programs in developing, implementing, and conducting projects which integrate community-based screening and outreach services;
- Linkages and/or referrals for access and treatment to racial and ethnic minorities in high-risk, low-income communities; and
- Addressing sociocultural, linguistic, and other barriers to health care on health care outcomes.

B. *Project Outcomes:* Applicants requesting support under the Community Programs to Improve Minority Health must address project outcomes that can decrease the targeted health disparity(ies) as demonstrated through any or all of the following:

- Reduction in high-risk behaviors;
- Adoption of health promoting behaviors;
- Connection to a continuum of care;
- Improved access to health care; and/or
- Increased utilization of preventive health care and treatment services.

C. *Project Requirements:* Each project funded under this demonstration must:

i. Address at least one, but no more than three, of the health areas identified in the next section (Health Areas to be Addressed).

ii. Identify problems, such as gaps in services; or issues, such as access to health care, affecting the targeted health area to be addressed by the proposed project.

iii. Identify existing resources in the targeted health area which will be linked to the proposed project.

iv. Implement an approach to address the problem(s).

v. For those applicants applying as a coalition, the coalition must be established prior to submission of the application. The coalition must consist of at least three discrete organizations (*i.e.*, community-based minority-serving organization, health care facility, and other community entity) and have the capacity to:

- Plan and coordinate services which reduce existing sociocultural and/or linguistic, and other barriers to health care; and
- Provide screening, outreach, health care, and enabling services to ensure that clients follow-up with treatment and treatment referrals.

A single signed agreement between the applicant organization and coalition member organizations must be submitted with the application. The agreement must clearly detail the roles and resources that each entity will bring to the project, and the financial responsibility of the applicant organization to the coalition member organizations. The document must also state the duration and terms of the agreement. The agreement must cover the entire project period and be signed by individuals with the authority to represent the organizations (*e.g.*, president, chief executive officer, executive director).

D. *Health Areas To Be Addressed:* Applicants for Community Programs to Improve Minority Health projects must address at least one, but no more than three, of the following eight health areas which are among the Department's priorities.

- Adult Immunizations.
- Asthma.
- Cancer.
- Diabetes.
- Heart Disease and Stroke.
- HIV.
- Infant Mortality.
- Obesity and Overweight.

2. The Bilingual/Bicultural Service Demonstration Program

A. *Purpose:* The Bilingual/Bicultural Service Demonstration Program seeks to improve and expand the capacity for linguistic and cultural competence of health care professionals and paraprofessionals working with limited English proficient (LEP) minority communities and improve the accessibility and utilization of health care services among LEP minority populations. It is expected that this program will demonstrate the effectiveness of programs that involve partnerships between community-based, minority-serving organizations and health care facilities in a collaborative effort to:

- Address cultural and linguistic barriers to effective health care service delivery; and
- Increase access to quality and comprehensive health care for LEP minority populations living in the United States.

B. *Project Outcomes:* Applicants requesting support for projects under the Bilingual/Bicultural Service Demonstration Program must address project outcomes that can increase access to quality health care among LEP minority populations as demonstrated through any or all of the following:

- Reduction in high-risk behaviors;
- Adoption of health promoting behaviors;
- Connection to a continuum of care;
- Increased numbers of interpreters and interpretation services provided;
- Increased patient knowledge on how best to access care and participate in treatment decisions;
- Increased health provider knowledge on health disparities, and

culturally and linguistically appropriate health care services; and/or

• Increased utilization of preventive health care and treatment services.

C. *Project Requirements:* Each project funded under the Bilingual/Bicultural Service Demonstration Program must:

i. Address at least one, but no more than three, of the health areas identified in the next section (Health Areas to be Addressed).

ii. Carry out activities to improve and expand the capacity of health care providers and other health care professionals to deliver culturally and linguistically appropriate health care services to the target population. Examples include training providers on culturally competent practices or training interpreters.

iii. Carry out activities to improve access to health care for the LEP minority population. Examples include developing or identifying culturally appropriate health education materials, or offering consumer education and training on available health services and ways to access services.

iv. Have an established, formal linkage between the community-based organization and a health care facility, prior to submission of an application. The linkage must involve two separate and distinct entities.

A single signed agreement between the applicant organization and the partner organization must be submitted with the application. The agreement must specify in detail the roles and resources that each entity will bring to the project, and the terms of the linkage. The linkage agreement must cover the entire project period. The document must be signed by individuals with the authority to represent the organization (*e.g.*, president, chief executive officer, executive director).

D. *Health Areas To Be Addressed:* Applicants for a Bilingual/Bicultural Service Demonstration Program project must address at least one, but no more than three, of the following 12 health areas:

- Cancer
- Child and Adult Immunization
- Diabetes
- Environmental Health
- Heart Disease and Stroke
- HIV/AIDS and Sexually Transmitted Diseases
- Maternal, Infant, and Child Health
- Mental Health
- Obesity and Overweight
- Oral Health
- Substance Abuse
- Tobacco Use

3. HIV/AIDS Health Promotion and Education Program

A. *Purpose:* The HIV/AIDS Health Promotion and Education Program seeks to improve the health status, relative to HIV/AIDS, of targeted minority populations by engaging national minority-serving organizations in educational and outreach efforts. It is expected that this program will demonstrate that the involvement of national minority-serving institutions in the development and implementation of national model HIV/AIDS programs can serve a vital role in effectively reaching and educating hardly reached minority populations affected by and/or infected with HIV/AIDS.

B. *Project Outcomes:* Applicants requesting support for projects under the HIV/AIDS Health Promotion and Education Program must address project outcomes that can decrease the targeted health disparity(ies) as demonstrated through any or all of the following:

• Reduction in high-risk behaviors;

• Adoption of health promoting behaviors;

• Increased knowledge of the target population about the impact of HIV/AIDS;

• Increased knowledge of methods, such as abstinence, by which the transmission of HIV/AIDS can be prevented;

• Increased counseling and testing services for hardly reached and high risk minority populations; connection of high risk individuals to a continuum of care; increased patient knowledge on how best to access care and participate in treatment decisions; and/or

• Improved access to health care for hardly reached and high risk minority populations.

C. *Project Requirements:* Each project funded under the HIV/AIDS Health Promotion and Education Program must:

i. Identify problems or issues (*e.g.*, gaps in services, access to health care) affecting the targeted minority population(s) to be addressed by the proposed project.

ii. Carry out activities to identify unmet needs of the targeted, at risk or hardly reached minority population(s).

iii. Implement an approach to address the problem(s) and needs.

D. *Federal Involvement:* The HIV/AIDS Health Promotion and Education Program is a cooperative agreement program. Cooperative agreements include significant Federal interaction with the recipient organization in the implementation of program activities. For this program, this interaction includes, but is not limited to:

• Oversight and clearance for the implementation, conduct, and assessment of project activities.

• Collaborative work with funding recipients to develop and implement evaluation strategies incorporating the required Uniform Data Set which is to be used to report program information.

• Review and approval of assessment and evaluation instruments and/or plans.

• Direction to funding recipients on the submission of project data to OMH.

• Coordination and communication between funding recipients and other national organizations.

• Serving in a liaison capacity between funding recipients and appropriate federal government agencies.

• Planning and conducting grantee meeting(s).

II. Award Information

1. The Community Programs To Improve Minority Health

Estimated Funds Available for Competition: $3,400,000.

Anticipated Number of Awards: 17 to 30.

Range of Awards: $100,000 to $200,000 per year.

Anticipated Start Date: September 1, 2004.

Budget Period Length: 12 months.

Period of Performance: 3 Years (September 1, 2004 to August 31, 2007).

Type of Award: Grant.

Type of Application Accepted: New.

2. The Bilingual/Bicultural Service Demonstration Program

Estimated Funds Available for Competition: $2,500,000.

Anticipated Number of Awards: 16 to 20.

Range of Awards: $75,000 to $150,000 per year.

Anticipated Start Date: September 1, 2004.

Budget Period Length: 12 months.

Period of Performance: 3 Years (September 1, 2004 to August 31, 2007).

Type of Award: Grant.

Type of Application Accepted: New.

3. HIV/AIDS Health Promotion and Education Program

Estimated Funds Available for Competition: $3,000,000.

Anticipated Number of Awards: 20 to 22.

Range of Awards: $100,000 to $150,000 per year.

Anticipated Start Date: September 1, 2004.

Budget Period Length: 12 months.

Period of Performance: 3 Years (September 1, 2004 to August 31, 2007).

Type of Award: Cooperative Agreement (see Section I for description of Federal Involvement).

Type of Application Accepted: New.

III. Eligibility Information

1. Eligible Applicants

A. The Community Programs To Improve Minority Health

To qualify for funding, an applicant must be a:

- Private nonprofit, community-based, minority-serving organization which addresses health or human services (*see* Definitions);
- Community coalition, consisting of at least three discrete organizations with a community-based, minority-serving organization (*see* Definitions) as the lead organization;
- Public (local or tribal government) community-based organization which addresses health or human services; or
- Historically Black College or University (HBCU), Hispanic Serving Institution (HSI), or Tribal College or University (TCU).

The OMH is continuing, through this FY 2004 notice of funding availability, to promote the utilization of community coalitions and grassroots organizations to develop and implement health education, health promotion, and disease risk reduction programs. To that end, those organizations previously funded, or eligible to be funded, under the OMH's Health Disparities to Improve Minority Health Grant Program are eligible to apply for funding under the FY 2004 Community Programs to Improve Minority Health program.

Faith-based organizations that meet the above criteria are also eligible to apply. Tribal organizations and local affiliates of national, State-wide or regional organizations that meet the definition of a community-based minority-serving organization are also eligible to apply.

National, State-wide, and regional organizations may not apply for these grants. As the focus of the program is at the local, grassroots level, OMH is looking for organizations that have ties to the local community. National, state-wide, and regional organizations operate on a broader scale and are not as likely to effectively access hardly reached minority populations in the specific, local neighborhoods and communities.

Funding Priority: A priority in funding will be given to applicants that have an established community coalition of at least three discrete organizations that include a community-based minority-serving organization; a health care facility such as a community health center, migrant health center, health department, or medical center to provide treatment services; and a community organization such as a social service agency, business entity, or civic association.

B. The Bilingual/Bicultural Service Demonstration Program

To qualify for funding, an applicant must be a:

- Private nonprofit, community-based, minority-serving organization which addresses health and human services for LEP minority populations (*see* Definitions);
- Public (local or tribal government) community-based organization which addresses health or human services; or
- Tribal entity which addresses health and human services.

In addition, all applicants must provide services to a targeted LEP minority community and have an established linkage which:

- Involves two separate and distinct entities, one of which must be a community-based organization and the other a health care facility.
- Is documented in writing as specified in the section on Project Requirements.

This linkage is the foundation of this demonstration program to address cultural and linguistic barriers to effective health care service delivery, and to increase access to quality and comprehensive health care for LEP minority populations living in the United States.

Faith-based organizations that meet the above criteria are also eligible to apply for funding. Local affiliates of national organizations which have an established link with a health care facility are also eligible to apply.

National, State-wide, and regional organizations, universities, and other schools of higher learning may not apply for the Bilingual/Bicultural Service Demonstration grants. As the focus of the program is at the local, grassroots level, OMH is looking for organizations that have ties to the local community. National, State-wide, and regional organizations operate on a broader scale are not as likely to effectively access hardly reached minority populations in the specific, local neighborhoods and communities. Universities and other schools of higher learning are similarly excluded.

The organization submitting the application will:

- Serve as the lead agency for the project, responsible for its implementation and management; and
- Serve as the fiscal agent for the Federal grant awarded.

C. HIV/AIDS Health Promotion and Education Program

To qualify for funding, an applicant must be a private, nonprofit national minority-serving organization (*see* Definitions) that addresses HIV/AIDS minority health and human services. Examples of national minority-serving organizations that may apply include, but are not limited to:

- Associations/organizations representing community health organizations serving minority populations;
- Associations/organizations that focus on minority health, education, leadership development, and/or community partnerships; and
- Minority-focused health professions associations/organizations.

Faith-based organizations that meet the above criteria are eligible to apply for these HIV/AIDS Health Promotion and Education cooperative agreements.

Eligible organizations must have the capacity and ability to conduct HIV/AIDS-focused programs and activities related to health promotion and education that can be implemented on a national level. Because the intent of this program is to address the HIV/AIDS epidemic at the national level, only organizations with a national reach are eligible to apply.

2. Cost Sharing or Matching

Matching funds are not required for the Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration, and HIV/AIDS Health Promotion and Education Programs.

3. Other

A Letter of Intent (LOI) is required prior to submission of applications. *See* section IV.2 for formatting and submission requirements for the LOI.

Organizations applying for funds under the Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration, and HIV/AIDS Health Promotion and Education programs must submit documentation of nonprofit status with their applications. If documentation is not provided, the application will be considered non-responsive and will not be entered into the review process. The organization will be notified that the application did not meet the submission requirements.

Any of following serves as acceptable proof of nonprofit status:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.

• A copy of a currently valid IRS tax exemption certificate.

• A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.

• Any of the above proof for a State or national organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

An organization may submit no more than one proposal for each of the three programs announced in this notice of funding availability. Organizations submitting more than one proposal for the same grant program will be deemed ineligible. The proposals will be returned without comment.

Organizations are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be obtained:

• At *http://www.omhrc.gov.*

• By writing to Ms. Karen Campbell, Director, OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the Office of Grants Management at (301) 594–0758. Please specify the OMH program(s) for which you are requesting an application kit.

2. Content and Form of Application Submission

A. Letter of Intent

A Letter of Intent (LOI) is required from all potential applicants for the purpose of planning the competitive review process. The narrative should be no more than one page, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. LOIs should include the following information: (1) Program announcement title and number; (2) program that the application is being submitted under (*e.g.*, Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, or HIV/AIDS Health Promotion and Education Program); (3) health areas to be addressed; and (4) name of the applicant agency or organization, the official contact person and that person's telephone number, fax number, and mailing and e-mail addresses. Do not include a description of your proposed project.

On or before July 6, 2004, submit the LOI to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. The LOI must be received by the OPHS Office of Grants Management by 5 p.m. e.d.t. on July 6, 2004. If an applicant does not submit an LOI by the established due date and time, the application will not be eligible for the review process.

B. Application

Applicants must use Grant Application PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0348–0043). Forms to be completed include the Face Page/Cover Page (SF424), Checklist, Budget Information Forms for Non-Construction Programs (SF424A), Assurances-Non-Construction Programs (SF424B), and Certifications (pages 17–19 in PHS 5161–1). In addition to the application forms, applicants must provide a project narrative.

The project narrative (including summary and appendices) should be no more than 45 pages (55 pages for currently funded grantees). Currently funded OMH grantees (*i.e.*, Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, and Health Disparities in Minority Health grantees, and cooperative agreement grantees with HIV/AIDS projects) *must* include a Progress Report (maximum of 10 pages) in the appendix.

The narrative must be printed on one side of 8½ by 11 inch white paper, with one-inch margins, and 12-point font. All pages must be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A). Do not staple or bind the application package. Use rubber bands or binder clips.

The narrative description of the project must contain the following:

i. Table of Contents: Include a Table of Contents with page numbers for each of the following sections.

ii. Project Summary: A project summary should be included that briefly describes key aspects of the Statement of Need, Objectives, Program Plan, Evaluation Plan, and Management Plan. The summary should be no more than 3 pages in length, double spaced.

iii. Statement of Need: Identify which of the health areas (up to 3) are being addressed (see Part I, Health Areas to be Addressed). Describe and document (with data) demographic information on the targeted geographic area, and the significance or prevalence of health problem(s) or issue(s) affecting the target minority group(s). Describe the minority group(s) targeted by the project (*e.g.*, race/ethnicity, age, gender, educational level/income). Describe the applicant organization's background, and the background/experience of the proposed linkage organization and rationale for inclusion in the project.

iv. Objectives: Include objectives stated in measurable terms and time frames for achievement.

v. Program Plan: Include a plan that clearly describes how the project will be carried out. Describe specific activities and strategies planned to achieve each objective. For each activity, describe how, when, where, by whom, and for whom the activity will be conducted. Describe any products to be developed by the project. Provide a time line chart.

vi. Evaluation Plan: Include a plan that identifies the expected results for each major objective and activity, and discuss the potential for replication. The description should include data collection and analysis methods, demographic data to be collected on project participants, process measures describing indicators to be used to monitor and measure progress toward achieving projected results by objectives, outcome measures which will show that the project has accomplished planned activities, and impact measures demonstrating achievement of the goal to positively affect health disparities.

vii. Management Plan: Provide a description of proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each is committing to the project. Provide a description of duties for proposed consultants. Discuss the applicant organization's experience in managing projects/activities, especially those targeting the population to be served. Include a chart of the

organization's structure, showing who reports to whom, and of the project's structure.

viii. Appendices: Include documentation and other supporting information in this section, including Memorandum of Understanding, Progress Report, and other relevant information. (Appendices count toward the narrative page limit.)

In addition to the project narrative, the application must contain a detailed budget justification (does not count toward the page limitation). The detailed budget justification must include narrative and computation of expenditures for each year in which grant support is requested. The budget request should include funds to attend an annual OMH grantee meeting by key project staff.

The complete application kit will provide instructions on the content of each of these sections.

Obtaining a Data Universal Numbering System number (DUNS): All applicants are required to obtain a DUNS number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OMH funds.

The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier of business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either of the following methods:

Telephone: 1–866–705–5711.

Web site: *https://eupdate.dnb.com/requestoptions.html.* Be sure to click on the link that reads, "DUNS Number Only" at the left hand, bottom corner of the screen to access the free registration page. Please note that registration via the Web site may take up to 30 business days to complete.

3. Submission Dates and Times

Letter of Intent Deadline Date: July 6, 2004.

Application Deadline Date: August 5, 2004.

Explanation of Deadlines: To receive consideration, Letters of Intent must be received by the OPHS Office of Grants Management by 5 p.m. e.d.t. on July 6, 2004. If an applicant does not submit a Letter of Intent prior to submitting an application, the application will not be eligible for review.

Grant applications must be received by the OPHS Office of Grants Management by 5 p.m. e.d.t. on August 5, 2004. OPHS will not acknowledge receipt of applications. Applications received after the exact date and time specified for receipt will not be accepted. The application due date requirement specified in this announcement supercedes the instructions in the PHS 5161–1. Applications submitted by facsimile transmission (fax) or any other electronic format will not be accepted. Applications which do not meet the deadline will be returned to the applicant unread.

Applications will be screened upon receipt. Applications that are not complete or that do not conform to, or address, the criteria of the applicable program will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

4. Intergovernmental Review

The Community Programs to Improve Minority Health and the Bilingual/Bicultural Service Demonstration Programs are subject to the requirements of Executive Order 12372 which allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. The application kits available under this notice will contain a list of states which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. The SPOC list is also available on the Internet at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.* Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OPHS Grants Management Officer. The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

The Community Programs to Improve Minority Health and the Bilingual/Bicultural Service Demonstration Grant Programs are subject to Public Health Systems Reporting Requirements. Under these requirements, community-based non-governmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OPHS.

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grant funds may be used to cover costs of:

- Personnel.
- Consultants.
- Equipment.
- Supplies (including screening and outreach supplies).
- Grant related travel (domestic only), including attendance at an annual OMH grantee meeting.
- Other grant related costs.

Grant funds may not be used for:

- Building alterations or renovations.
- Construction.
- Fund raising activities.
- Job training.
- Medical care, treatment or therapy.
- Political education and lobbying.
- Research studies involving human subjects.
- Vocational rehabilitation.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kits.

6. Other Submission Requirements

Applications may only be submitted in hard copy. Send an original, signed in blue ink, and two copies of the complete grant application to Ms. Karen Campbell, Grants Management Officer,

Office of Grants Management, Office of Public Health and Science, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications submitted by e-mail, facsimile transmission (fax) or any other electronic format will not be accepted.

V. Application Review Information

1. Criteria

The technical review of Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, and HIV/AIDS Health Promotion and Education Program applications will consider the following five generic factors.

A. Factor 1: Program Plan (35%)

- Appropriateness of proposed approach and specific activities for each objective.
- Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.
- Soundness of the established partnerships (*e.g.*, coalition, linkages).
- Likelihood of successful implementation of the project.

B. Factor 2: Evaluation (20%)

- Appropriateness of the proposed data collection, analysis and reporting procedures.
- Clarity of the intent and plans to document the activities and their outcomes.
- Potential for the proposed project to impact the health status of, and barriers to health care experienced by the targeted minority populations.
- Potential for replication of the project for similar target populations and communities.

C. Factor 3: Statement of Need (15%)

- Demonstrated knowledge of the problem at the national and/or local level as applicable.
- Significance and prevalence of the identified health problem(s) or health issue(s) in the proposed community and target population.
- Extent to which the applicant demonstrates access to the target community(ies), and whether it is well positioned and accepted within the community(ies) to be served.
- If applicable, demonstrated support and established linkage(s) in order to conduct the proposed model.
- Extent and documented outcome of past efforts and activities with the target population (Currently funded OMH grantees [*i.e.*, Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, and Health Disparities in Minority Health grantees, and cooperative agreement grantees with HIV/AIDS projects] *must* attach a progress report describing project accomplishments and outcomes.)

D. Factor 4: Objectives (15%)

- Merit of the objectives.
- Relevance to the program purpose, project outcomes and stated problem.
- Attainability of the objectives in the stated time frames.

E. Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for "to be hired" staff and consultants
—Proposed staff level of effort
—Management experience of the applicant
—The applicant's organizational structure

- Appropriateness of defined roles including staff reporting channels and that of any proposed contractors.
- Clear lines of authority among the proposed staff within and between participating organizations.

2. Review and Selection Process

Accepted Community Programs To Improve Minority Health, Bilingual/Bicultural Service Demonstration, and HIV/AIDS Health Promotion and Education Program applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Committee (ORC). Committee members are chosen for their expertise in minority health, health disparities, and their understanding of the unique health problems and related issues confronted by the racial and ethnic minority populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health who will take under consideration:

- The recommendations and ratings of the ORC
- Geographic and racial/ethnic distribution
- Health areas to be addressed
- Funding Priority

3. Anticipated Award Date

September 1, 2004.

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health.

Notification will be mailed to the Program Director/Principal Investigator identified in the application.

Unsuccessful applicants will receive a notification letter with the results of the review of their application from the Deputy Assistant Secretary for Minority Health.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting Requirements

A successful applicant under this notice will submit: (1) Semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program

Performance", 45 CFR Part 74–51–74.52, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Uniform Data Set: The Uniform Data Set (UDS) system is designed to assist in evaluating the effectiveness and impact of grant and cooperative agreement projects. All OMH grantees are required to report program information, using the Web-based UDS. Training will be provided to all new grantees (including cooperative agreement grantees) on the use of the UDS system, during the annual grantee meeting.

Grantees will be informed of the progress report due dates and means of submission. Instructions and report format will be provided prior to the required due date. The Annual Financial Status Report is due no later than 90 days after the close of each budget period. The final progress report and Financial Status Report are due 90 days after the end of the project period. Instructions and due dates will be provided prior to required submission.

VII. Agency Contacts

For questions on budget and business aspects of the application, contact Ms. Karen Campbell, Director, OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Ms. Campbell can be reached by telephone at (301) 594–0758.

For questions related to the Community Programs to Improve Minority Health, Bilingual/Bicultural Service Demonstration Program, and/or HIV/AIDS Health Promotion and Education Program or assistance in preparing a grant proposal, contact Ms. Cynthia Amis, Director, Division of Program Operations, Office of Minority Health, Tower Building, Suite 600, 1101 Wootton Parkway, Rockville, MD 20852. Ms. Amis can be reached by telephone at (301) 594–0769.

For additional technical assistance, contact the OMH Regional Minority Health Consultant for your region listed in your grant application kit.

For health information, call the OMH Resource Center (OMHRC) at 1–800–444–6472.

VIII. Other Information

1. Background

A. The Community Programs To Improve Minority Health

The mission of the OMH is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address disparities in health. Racial and ethnic minorities, as well as low income families and individuals in geographically isolated communities, suffer disproportionately from preventable chronic conditions and may experience poorer health outcomes than other Americans due to differences in access to health care and disparities in health care delivery. For example:

- In the U.S., rates of asthma deaths and hospitalizations have been decreasing; however, African Americans continue to have higher rates compared to whites. In 1999, the average age-adjusted asthma death rate for blacks was almost 39%, nearly 3 times that of whites (14%). Asthma also continues to be one of the leading causes of school absenteeism, limitations of activity, and disruption of family life in the U.S.[1]
- Cancer incidence and death rates vary by race, with blacks having a 10% higher cancer incidence rate and a 30% higher cancer death rate compared to whites, and lower cancer survival rates regardless of site or stage. Compared to whites, Hispanics have higher rates of cervical cancer; and Asians have higher rates of stomach and liver cancer.[2]
- American Indians, blacks and Hispanics have higher diabetes death rates, while blacks have a higher rate of serious complications from diabetes.[3]
- Mortality due to coronary heart disease is higher among blacks as compared with whites. Although high blood pressure, high cholesterol and smoking are the three most important risk factors for heart disease, Asian, Hispanic, and less educated adults are less likely to have their blood pressure monitored and their cholesterol checked.[4]
- Hispanics have higher incidence rates of AIDS compared to whites. While blacks make up 12% of the U.S. population, they account for 50% of the new HIV cases reported in year 2002; and deaths from HIV/AIDS are highest among black women age 25 to 44 and black men age 45 to 64.[5] [6]
- American Indian, black and Hawaiian mothers are more likely to have low birth weight infants compared to white mothers. With respect to mortality, black, Other Pacific Islander, American Indian and Alaska Native infants and infants of less educated mothers are more likely to die at birth than white infants.[7]
- In 1999, approximately 50% of black adults age 65 and over, and 55% of Hispanic adults in the same age category received influenza vaccines compared with 68% of whites.[8]
- The problem of obesity is greatest among black women (50%) and Mexican American women (40%) compared to white women (30%). Also, black and Mexican American adolescents ages 12 to 19 are more likely to be overweight (24%) than white adolescents (13%).[9]

In an effort to make a difference for those populations experiencing health disparities, The Department launched the *Closing the Health Gap Initiative*, targeting the following six health issue areas: infant mortality, cancer screening and management, cardiovascular disease and stroke, diabetes, HIV/AIDS, and child and adult immunizations. The Secretary of HHS, through the Healthy Lifestyles and Disease Prevention Initiative, is focusing efforts on obesity and overweight. In addition, asthma continues to be a Departmental priority. In support of these initiatives/priorities, the OMH is focusing its FY 2004 programs on the eight health issues identified above.

B. The Bilingual/Bicultural Service Demonstration Program

OMH is charged with carrying out programs to improve access to health care services for individuals with limited English proficiency, many of whom are members of racial or ethnic populations. OMH is committed to working with community-based organizations to improve and enhance access to quality and comprehensive health services for these populations. Limited English proficiency (LEP) and other barriers which inhibit interaction with health care providers or social service agencies, often result in delays or denial of care, and/or provision of inaccurate or incomplete health information to LEP minority individuals. To that end, OMH supports the Bilingual/ Bicultural Service Demonstration Program to build communication bridges and reduce the

[1] Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report Surveillance for Asthma—United States, 1980–1999. 51(SS01); 1–13. March 29, 2002.

[2] National Cancer Institute. "SEER Cancer Statistics Review 1975–2001."

[3] National Center for Health Statistics. Health, United States, 2003. Hyattsville, Maryland: 2003.

[4] Centers for Disease Control and Prevention. Data 2010: Healthy People 2010 Database. 2004.

[5] Centers for Disease Control and Prevention. HIV/AIDS Surveillance Report—U.S. HIV and AIDS cases reported through December 2002, Vol. 14.

[6] National Center for Health Statistics. Health, United States, 2003. Hyattsville, Maryland: 2003.

[7] *Ibid.*

[8] Centers for Disease Control and Prevention. National Health Interview Survey—1999.

[9] *National Health and Nutrition Examination Survey*, "Prevalence of Overweight and Obesity Among Adults: United States, 1999—2000," U.S. Department of Health and Human Services, Centers for Disease Control, National Center for Health Statistics, 2002.

linguistic, cultural and social barriers the LEP minority populations encounter when accessing health services.

According to the 2000 Census, more than 300 different languages are spoken in the United States, and 18% of the nation speak a language other than English at home. This percentage is an increase from the 1990 Census which reported that 14% of persons spoke a language other than English at home. In addition, the 2000 Census reported that 4.4 million households encompassing 11.9 million people are linguistically isolated, meaning that no person in the household speaks English "very well." This is a significant increase from 1990 which reported that 2.9 million households encompassing 7.7 million people were linguistically isolated.

To improve services for LEP minority populations, it is essential that health care providers, health care professionals, and other staff become better informed about the diverse linguistic, cultural and medical backgrounds of the clientele. Enhancement of cultural and linguistic competency among providers not only improves the ability of providers to care for diverse populations, but also allows patients to better navigate the health care system.

To insure that all people entering the health care system receive equitable and effective treatment in a culturally and linguistically appropriate manner, the OMH published the *National Standards on Culturally and Linguistically Appropriate Services (CLAS) in Health Care* (U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Minority Health. *National Standards for Culturally and Linguistically Appropriate Services in Health Care Final Report*, Washington, DC, March 2001). While these 14 standards are primarily directed at health care organizations, the principles and activities of culturally and linguistically appropriate services should be undertaken in partnership with communities being served. OMH encourages community-based minority-serving organizations to partner with health care facilities to implement activities addressing those CLAS standards that have applicability to the purposes of the Bilingual/Bicultural Service Demonstration Program. Potential applicants for the Bilingual/Bicultural Service Demonstration Program are encouraged to incorporate such activities into project plans. Additional information on CLAS standards may be found on the OMH Web site: *http://www.omhrc.gov/cultural.*

C. HIV/AIDS Health Promotion and Education Program

The *Census 2000 Brief*[10] reports the U.S. population as 281.4 million, with 36.4 million[11] Blacks or African Americans, or 12.9 percent; 35.3 million Hispanics, or 12.5 percent; approximately 12.8 million Asians/Native Hawaiians and Other Pacific Islanders, or 4.5 percent; and approximately 4 million American Indians/Alaska Natives or 1.5 percent of the total population. HIV/AIDS remains a disproportionate threat to minorities. As of December 31, 2002, the Centers for Disease Control and Prevention (CDC) received reports of 886,575 (cumulative) cases of persons with AIDS in the U.S.,[12] of whom 39 percent were Black or African American, and 18 percent were Hispanic.

Of the 43,950 AIDS cases reported to CDC during 2002, 43,792 were adult/adolescent and 158 were children (<13 years of age). For the adult/adolescent population, an estimated 76% were Black or African American, and 26% were Hispanic. Of the children reported with AIDS, an estimated 59 percent were Black non-Hispanic, and 19 percent were Hispanic.[13]

Through December 2002, the most common exposure category reported for AIDS cases among minority males was men who have sex with men; among the cumulative AIDS cases for males, 37% of Blacks, 42% of Hispanics, 70% of Asians and Pacific Islanders, and 55% of American Indian/Alaska Natives were in this exposure category.[14]

HIV infection among U.S. women has increased significantly over the last decade, especially in communities of color. Between 1985 and 1999, the proportion of all AIDS cases reported among adult and adolescent women more than tripled, from 7 to 23 percent. African American and Hispanic women account for more than three-fourths, or 82 percent, of the new HIV/AIDS cases reported among women in the U.S. Through December 2002, the most common exposure categories for AIDS cases among African American and Hispanic females were heterosexual contact (48%, Hispanic; 40%, African American) and injection drug use (38%, African American; 38%, Hispanic).[15]

The number of estimated deaths among persons with AIDS in 2002 represented a 14% decline since 1998; however, African Americans and Hispanics represented 52% and 19% of those deaths, respectively, compared to 28% for whites.[16]

The OMH is initiating the HIV/AIDS Health Promotion and Education program to support health promotion and education activities to reduce high risk behaviors, promote healthy behaviors, increase counseling and testing services, and improve access to health care for hardly reached or at-risk minority populations.

2. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov* and copies of the document may be downloaded. Copies of the Healthy People 2010: Volumes I and II can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD–ROM). Another reference is the *Healthy People 2000 Final Review—2001.* For 1 free copy of the *Healthy People 2010*, contact: The National Center for Health Statistics, Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782, or by telephone at (301) 458–4636. Ask for HHS Publication No. (PHS) 99–1256. This document may also be downloaded from: *http://www.heatlhypeople.gov.*

3. Definitions

For purposes of this grant program, the following definitions apply:

Community-Based Organizations—Private, nonprofit organizations *and* public organizations (local or tribal governments) that are representative of communities or significant segments of communities where the control and decisionmaking powers are located at the community level.

Community-Based, Minority-Serving Organization—A community-based organization that has a history of service to racial/ethnic minority populations. (*See* definition of *Minority Populations* below.)

Community Coalition—At least 3 discrete organizations and institutions

[10] U.S. Census Bureau, The Black Population: 2000—Census 2000 Brief, August 2001.

[11] This number includes individuals who self-reported as Black, or as Black and one or more other race on the Census 2000 questionnaire.

[12] HIV/AIDS Surveillance Report—U.S. HIV and AIDS cases reported through December 2002, Vol. 14.

[13] Centers for Disease Control and Prevention. HIV/AIDS Surveillance Report—U.S. HIV and AIDS Cases Reported Through December 2002, Vol. 14.

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

in a given community. The organizations work together on specific community concerns, and seek resolution of those concerns. A formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (*e.g.*, chief executive officer, executive director, president/chancellor) is required.

Cooperative Agreement—A financial assistance mechanism used in lieu of a grant when substantial Federal programmatic involvement with the recipient during performance is anticipated by the awarding office.

Cultural Competency—Having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors and needs presented by consumers and their communities.

Funding Priority—A factor(s) that causes a grant application to receive a fixed amount of extra rating points which may place that application ahead of others without the priority on a list of applicants recommended for funding by a review committee.

Health Care Facility—A private nonprofit or public facility that has an established record for providing comprehensive health care services to a targeted, racial/ethnic minority community.

A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center. Facilities providing only screening and referral activities are not included in this definition.

Limited-English-Proficient (LEP) Minority—People from *Minority Populations* (*see* definition below) with a primary language *other than* English. These individuals must communicate in their main language in order to participate effectively in and benefit from any aid, service or benefit provided by the health provider.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

National Minority-Serving Organization—A national non-profit organization whose mission focuses on issues affecting minority communities nationwide and that has a history of service to racial/ethnic minority populations.

Nonprofit Organizations—Corporations or associations, no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Proof of nonprofit status must be submitted by private nonprofit organizations with the application or, if previously filed with PHS, the applicant must state where and when the proof was submitting. (*See* Section III.3. Other, for acceptable evidence of nonprofit status.)

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery. Examples of sociocultural barriers include:

- Cultural differences between individuals and institutions;
- Cultural differences of beliefs about health and illness;
- Customs and lifestyles;
- Cultural differences in languages or nonverbal communication styles.

Dated: June 8, 2004.

Nathan Stinson,

Deputy Assistant Secretary for Minority Health.

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BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Applications for the National Community Centers of Excellence in Women's Health (CCOE) Program

Announcement Type: Competitive Cooperative Agreement—FY 2004 Initial announcement.

Funding Opportunity Number: Not applicable.

Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance number is 93.290.

Dates: To receive consideration applications must be received by the Office of Public Health and Science (OPHS) Grants Management Office no later than July 20, 2004, 5 p.m. eastern standard time.

Summary: The National Community Centers of Excellence in Women's Health (CCOE) program provides funding to community-based organizations to enhance their women's health program through the integration of the following six components: (1) Leadership development for women as health care consumers and providers, (2) training for lay, allied health, and professional health care providers that includes a rural health focus, (3) public education and outreach with special emphasis on outreach to Native American women and/or rural/frontier communities, (4) comprehensive health service delivery that includes gender and age-appropriate preventive services and allied health professionals as members of the comprehensive care team, (5) community-based research that uses the findings to improve the management and delivery of comprehensive, integrated care to all women, and (6) replication of the model in another community to improve health outcomes for underserved women. The CCOE program is not for the development of new programs or to fund direct service, but rather to *integrate*, coordinate, and strengthen linkages between activities/programs that are already underway in the community to reduce fragmentation in women's health services.

Under this announcement the Office on Women's Health (OWH) anticipates making, through the cooperative agreement grant mechanism, 2 to 4 new 5-year awards by September 30, 2004. Approximately $450,000 is available to make awards of up to $150,000 total cost (direct and indirect) for a 12-month budget period and $750,000 for the 5-year project period. Cost sharing and matching funds is not a requirement of this grant. The actual number of awards made will depend upon the quality of the applications received and the amount of funds available for the CCOE program. The government is not obligated to make any awards as a result of this announcement.

Eligible applicants are public or private nonprofit community-based hospitals, community health centers, and other community-based organizations serving underserved women. Community health centers funded under section 330 of the Public Health Service Act and faith-based organizations are also encouraged to apply. To increase the likelihood of funding a CCOE in Region VIII, in rural/frontier communities and in communities of Native American women, the OWH will award bonus points to applicants meeting these criteria. Application kits may be obtained from Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, telephone: (301) 594–0758, e-mail: *kcampbell@osophs.dhhs.gov.*

I. Funding Opportunity Description

Authority: This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–6(e). The primary purpose of the National Community Center of Excellence in Women's Health (CCOE) program is the

creation of "one-stop shopping" or "centers without walls" models of women's health care that is a convenient, user-friendly, interdisciplinary, comprehensive, and integrated care delivery system that enables women of all ages and racial/ethnic groups to receive quality services in a women-friendly, supportive environment. The Department of Health and Human Services (DHHS) Office on Women's Health (OWH) believes that this novel approach to women's health will help to eliminate many of the access barriers and continuity of care issues women encounter when seeking services as well as to reduce fragmentation of care.

The OWH hopes to fulfill this purpose by providing funds to community-based organizations to enhance their women's health program through the integration of the following *six components:* (1) Leadership development for women as health care consumers and providers, (2) training for lay, allied health, and professional health care providers that includes a rural health focus, (3) public education and outreach with special emphasis on outreach to Native American women and/or rural/frontier communities, (4) comprehensive health service delivery that includes gender and age-appropriate preventive services and allied health professionals as members of the comprehensive care team, (5) community-based research that uses the findings to improve the management and delivery of comprehensive, integrated care to all women, and (6) replication of the model in another community to improve health outcomes for underserved women. The CCOE program is not for the development of new programs or to fund direct service, but rather to *integrate,* coordinate, and strengthen linkages between activities/programs that are already underway in the community to reduce fragmentation in women's health services.

The proposed CCOE program must address women's health from a gender-based, women-centered, women-friendly, women-relevant, holistic, multi-disciplinary, cultural and community-based perspective. Information and services provided must be culturally and linguistically appropriate for the individuals for whom the information and services are intended. Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people to their lives. This definition of women's health encompasses mental, dental, and physical health and spans the life course.

The goals of the CCOE program are to:

1. Increase the number of health professionals, including allied health professionals, trained to work with underserved, Native American, and rural/frontier communities and to increase their leadership and advocacy skills.

1a. Increase the number of young women, especially Native Americans, Blacks, and Hispanics, who pursue health careers and increase the leadership skills and opportunities for women in the community.

2. Eliminate health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, or living in rural/frontier localities.

3. Reduce the fragmentation of women's health services and access barriers by using a framework that coordinates and integrates comprehensive health services. Comprehensive health services include gender and age-appropriate preventive services and allied health professionals on the service delivery team.

4. Increase the women's health knowledge base by involving the community in identifying and conducting research related to and responsive to the health needs and issues of concern to underserved women in the target community.

5. Empower underserved women as health care consumers and decision-makers.

A CCOE program must: (1) Develop and/or strengthen a framework to bring together a comprehensive array of services for women with an emphasis on service delivery to Native American women and/or rural/frontier communities; (2) develop promising strategies to train a cadre of health care providers that include allied health professionals and community health workers who are capable of addressing issues at the community level that impact underserved women's health needs; (3) promote leadership/career development for women in the health professions, including allied health professions and community health workers, and women/girls in the community; (4) enhance public education and outreach activities in women's health with an emphasis on gender-specific and age-appropriate prevention and/or reduction of illness or injuries that appear controllable through increased knowledge that leads to a modification of behavior; (5) participate in a national evaluation of the CCOE program; (6) conduct community-based research in women's health that uses the results to improve the services and care provided to women in the community; (7) evaluate their program; and (8) demonstrate an ability to foster the transfer of lessons learned to other communities interested in improvements in women's health. A CCOE program may develop outreach and education materials, training programs that include a focus on rural/frontier health and the effective use of allied health professionals in care delivery, and leadership development activities/materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community. In addition, the CCOE program must contribute to the development of a comprehensive national CCOE "how-to" manual by submitting a site-specific manual that is updated annually and describes the steps taken to implement each component of the CCOE program, a discussion of the effectiveness of the implementation strategy(ies) and how measured, and the impact of the program on the targeted community/population. A comprehensive outline for the manual has been prepared and will be given to successful applicants at the orientation meeting. A draft manual will be developed in FY 2004, using the information provided, and made available to other community-based organizations interested in establishing a CCOE program. The OWH plans to publish a final comprehensive "how-to" manual near the end of 2005.

At a minimum, each CCOE clinical care center (ccc) must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care that includes gender and age-appropriate preventive services for women. The CCOE clinical care center must have permanent signage and be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a clinical intake form, referral and tracking system, and procedures for identifying and counting the women served by the CCOE by specialty area and for tracking the cost of services provided to women who receive interdisciplinary care through the CCOE program. Sites must be able to differentiate the care provided to women counted as CCOE patients compared to non-CCOE patients.

II. Award Information

The CCOE program will be supported through the cooperative agreement mechanism. Using this mechanism, the OWH anticipates making 2 to 4 new 5-year awards in FY 2004. The anticipated start date for new awards is September 30, 2004, and the anticipated period of performance is September 30, 2004, through September 29, 2009. Approximately $450,000 is available to make awards of up to $150,000 total cost (direct and indirect) for a 12-month budget period and $750,000 for the 5-year project period. However, the actual number of awards made will depend upon the quality of the applications received and the amount of funds available for the CCOE program. Noncompeting continuation awards of up to $150,000 (total cost) per year will be made subject to satisfactory performance and availability of funds.

Under previous program announcements, the OWH funded three new programs in FY 2000, four new programs in FY 2001, and five new programs in FY 2003. A total of 12 programs have been funded.

The CCOE program is a collaborative effort between the OWH, the Office of Minority and Special Populations in the Bureau of Primary Health Care of the Health Resources and Services Administration, and the Office of Minority Health within the Office of Public Health and Science, DHHS. These offices will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities. The applicant shall:

1. Implement the CCOE model described in the application.
2. Develop implementation plans and replicate the CCOE model in another community.
3. Conduct an evaluation of their CCOE program.
4. Participate in the annual meetings of the CCOE Center Directors.
5. Participate in the development of a comprehensive national CCOE "How to" manual.
6. Participate in a national evaluation of the CCOE program following the guidance provided by the OWH contractor.
7. Design and implement a CCOE Web site within six months of receipt of the award that comply with Federal Web site development guidance.
8. Display permanent signage designating the facility as a National Community Center of Excellence in Women's Health.
9. Participate in special meetings and projects/funding opportunities identified and/or offerers by the OWH.
10. Adhere to all program requirements specified in the CCOE **Federal Register** notice, the Memorandum of Understanding, and the Notice of Grant Award.
11. Submit required progress, annual, and financial reports by the due dates stated in this announcement and the Notice of Grant Award.

The Federal government will:

1. Participate in at least two annual meetings with the CCOE Center Directors and Program Coordinators.
2. Participate in the development of a comprehensive national CCOE "How-to" manual.
3. Review and approve draft "How to" manuals.
4. Participate in a national evaluation of the CCOE programs using Guidance /measurements provided by the OWH contractor.
5. Review and concur with requested project modifications.
6. Review the design of CCOE Web sites.
7. Site visit CCOE facilities.
8. Review all quarterly, annual, and final progress reports.
9. Conduct an orientation meeting for the new CCOEs within the first month of funding.
10. Facilitate review and clearance of all Center publications to insure adherence to DHHS policies.
11. Revise implementation plan for and approve the replication sites.

The DHHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010 and the HealthyUS Initiative. Emphasis will be placed on aligning CCOE activities and programs with the DHHS Secretary's four priority areas—heart disease, cancer, diabetes, and HIV/AIDS—and with the Healthy People 2010: Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, or living in rural localities. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* Another reference is the Healthy People 2000 Review—1998–99. One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 (DHHS Publication No. (PHS) 99–1256). This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.* Also, Steps to a HealthierUS is a bold new initiative from the Department that advances the goal of helping Americans live longer, better, and healthier lives.

To help implement the HealthierUS initiative, the Department launched the Steps to a HealthierUS program. It lays out DHHS priorities and programs for Steps to a HealthierUS, focusing attention on the importance of prevention and promising approaches for promoting healthy environments.

III. Eligibility Information

Eligible Applicants. The CCOE applicant must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Programs that will be implemented in medically underserved areas, enterprise communities, and empowerment zones as well as community health centers funded under section 330 of the Public Health Service Act and faith-based organizations are encouraged to apply. Native American tribal organizations meeting these eligibility criteria are also encouraged to apply.

All applicants receiving section 330 funding must identify themselves as recipients of these funds in the Background section of the application and by checking the appropriate response on the OWH Project Profile form. Community entities/organizations, including faith-based organizations, that have alliances, partnerships, networks with, or other affiliations with an academic health center are also eligible to apply for a CCOE grant as long as the community entity/organization has a leading management role in the activity and maintains control of all funding. Academic health centers and State, county, and local health departments are not eligible for funding under this announcement.

Cost Sharing or Matching Funds. Cost sharing, matching funds, and cost participation is not a requirement of this grant.

Other. Preference will be given to:

1. Applicants located in DHHS Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming),
2. Organizations located in rural and/or frontier communities, and
3. Organizations serving significant numbers of Native American women.

To increase the likelihood of funding a CCOE in Region VIII, in rural/frontier communities, and in communities that serve a significant number of Native American women, the OWH will award bonus points to applicants meeting these criteria. The bonus points available are shown below:

Rural/Frontier site or population—10 points
DHHS Region VIII applicants—5 points
Native American population—5 points

To be considered eligible for review, applications must be received by the Office of Public Health and Science (OPHS), Office of Grants Management by 5 p.m. on July 20, 2004. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The

application due date requirement in this announcement supercedes the instructions in the PHS 5161–1. Applications submitted by facsimile transmission (FAX) or any other electronic format are ineligible for review and will not be accepted. Applications that do not meet the deadline will be considered ineligible and will be returned to the applicant unread.

Applicants are required to submit an original ink-signed and dated application and 2 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8 ½" × 11" white paper, using at least a 12 point font, and contain 1" margins all around. Applications not adhering to these guidelines may not be reviewed.

Applications will be screened upon receipt. Those that are judged to be incomplete or arrive after the deadline will be returned without review or comment. Applications that exceed the requested amount of $150,000 for a twelve-month budget period and $750,000 for the five-year project period may also be returned without review or comment.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits may be requested by calling (301) 594–0758 or writing to Ms. Karen Campbell, Director, Office of Public Health and Science (OPHS) Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.*

2. *Content and Format of Application and Submission:* At a minimum, each application for a cooperative agreement grant funded under this CCOE announcement must:

• Present a plan to integrate all six components of the CCOE program by the end of the first year of funding, although only four components have to be in place at the time the application is submitted. The four established components (public education and outreach, leadership development, comprehensive health services, and one selected by the applicant) must be clearly identified in the proposal. Applicants are encouraged to be creative in suggesting ways to increase integration among the CCOE components.

• Develop a CCOE advisory board or ensure that their already established advisory board is included in the decision-making process for CCOE program development, identification of community-based research questions, and formulation of CCOE policies. If the role of the established advisory board is expanded to include the CCOE program, then the applicants should also ensure that the advisory board includes representative(s) from the CCOE program and its community partner organizations. CCOE advisory board members and their organizational affiliation must be clearly identified in the proposal.

• Be a sustainable organization with an established network of partners capable of providing coordinated and integrated women's health services in the targeted community. The network of partner organizations must have the capability to coordinate and provide comprehensive, seamless health services for women and empower them with community-based women's health research information that addresses issues of particular concern to the women, teaching/training opportunities in women's health, leadership opportunities in health for community women, and community outreach/education activities in women's health to improve the health status of women in the community. The partners and their roles and responsibilities to the CCOE must be clearly identified in the application. The applicant will need to define the components of comprehensive care, demonstrate that they are culturally, linguistically, and gender and age appropriate, and show that they have a clear and sustainable framework for providing those services.

• Have an established clinical care center/facility, an operating public education/outreach program, and a leadership development plan. A time line and plans for phasing in the remaining CCOE components, except replication, by the end of Year 1 must be described in detail in the application.

• Demonstrate the ways in which the organization and the care that are coordinated through its partners are gender and age appropriate, women-focused, women-friendly, women-relevant, and sensitive to the importance of patient/provider communication/relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment and use allied health professionals in the delivery of care.

• Detail/specify the roles and resources/services that each partner organization bring to the program, the duration and terms of agreement as confirmed by a signed agreement between the applicant organization and each partner, and describe how the partner organizations will operate within the CCOE structure. The partnership agreement(s) must name the individual who will work with the CCOE program, describe their function, and state their qualifications. The documents, specific to each organization (form letters are not acceptable), must be signed by individuals with the authority to represent and bind the organization (*e.g.*, president, chief executive officer, executive director, or other similarly situated individual) and submitted as part of the grant application.

• Describe in detail plans for the local evaluation of the CCOE program and when and how information obtained from the evaluation will be used to enhance the CCOE program. The applicant must also indicate their willingness to participate in a national evaluation of the CCOE program to be conducted under the leadership of the OWH contractor.

• Describe in detail the women's health research agenda, the planned community-based research and the research methodology/procedure. Applicants may: (a) Propose original patient-oriented research; (b) enter into a formal agreement with institutions conducting population-based research to facilitate women's entry into clinical trial(s)/patient-oriented research; (c) participate in the national evaluation of the CCOE program (required of all awardees); (d) link with organizations conducting community-based research; and/or (e) propose other original/creative research projects. To satisfy the community-based research component of the CCOE program, all applicants must have a women's health research agenda and undertake at least two of the research activities listed above. However, if a CCOE proposes to conduct original research and participate in the national evaluation of the CCOE program, these two activities will satisfy the community-based research component.

3. *Format and Limitations of Application:* Applicants are required to submit an original ink-signed and dated application and 2 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8 ½" x 11" white paper, using at least a 12

point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of *25* double-spaced pages, excluding the appendices. The original and each copy must be stapled and/or otherwise *securely bound*. The application should be organized in accordance with the format presented in the Program Guidelines. An outline for the minimum information to be included in the "Project Narrative" section is presented below. The content requirements for the Project Narrative portion of the application are divided into five sections and are described below within each Factor. Applicants must pay particular attention to structuring the narrative to respond clearly and fully to each review Factor and associated criteria. Applications not adhering to these guidelines may not be reviewed.

I. Background
- A. Local CCOE goals and purpose(s)
- B. Section 330 funding
- C. Local CCOE program objectives
- 1. Tied to program goal(s)
- 2. Measurable with time frame
- 3. Elements identified in Factor 5: Objectives
- D. CCOE organization charts that include partners and a discussion of the resources being contributed by the CCOE, partners, personnel and their expertise and how their involvement will help achieve the CCOE program goals

II. Implementation Plan (Approach to the establishment of the CCOE program)
- A. Four components in place, integration plans with a timetable for phasing in the other two components
- B. Partnerships and referral system/follow up
- C. Community-based research
- D. Plans for sustaining the CCOE
- E. National CCOE "how-to" manual
- F. Elements identified in Factor 1: Implementation Plan

III. Management Plan
- A. Key project staff, their resumes, and a staffing chart for budgeted staff
- B. To-be-hired staff and their qualifications
- C. Staff responsibilities
- D. Management experience of the lead agency and partners as related to their role in the CCOE program
- E. Succession planning and cross-training of responsibilities
- F. CCOE Advisory board
- G. Elements identified in Factor 2: Management Plan

IV. Local CCOE Evaluation Plan
- A. Purpose
- B. Design/methodology
- C. Use of results to enhance programs
- D. Elements identified in Factor 3: Evaluation Plan

V. Technical Assistance/Replication Strategy
- A. Identification of replication site
- B. Reason for selection of replication site
- C. Time line for phasing in and integrating components
- D. Technical Assistance plans/strategies
- E. Elements identified in Factor 4: Technical Assistance

Appendices
- A. Memorandums of Agreement/ Understanding/Partnership Letters
- B. Required Forms (Assurance of Compliance Form, etc.)
- C. Key Staff Resumes
- D. Charts/Tables (Partners, advisory board, services, population demographics, components, etc.)
- E. Other attachments

Use of Funds: A majority of the funds from the CCOE award must be used to support staff and efforts aimed at coordinating and integrating the six components of the CCOE program. The Center Director, or the person responsible for the day-to-day management of the CCOE program, must devote at least a 75 percent level of effort to the program. Funds may also be used to transfer the lessons learned/ successful strategies from the CCOE program (technical assistance) through activities such as showcasing the Center at meetings and workshops; providing direct technical assistance to other communities; and providing technical assistance to allied health and health professionals, directly or through their professional organizations, interested in working with underserved women in the community. These may include either process-based lessons (*i.e.*, How to bring multiple community partners together) or outcomes-based lessons (*i.e.*, How to increase diabetes screening and control through improved outreach, education, and treatment).

4. *Replication of Model:* The CCOE is also required to replicate its model in an organization that is not an entity of the parent grant organization. The replication site should be identified at the time the application is submitted to the OWH. A Memorandum of Understanding (MOU), signed by an individual authorized to commit the organization to serve as a replication site, with a timeline for the complete replication of the CCOE model, should also be included in the application. As an alternative, a letter of commitment from 1–2 organizations agreeing to serve as a replication site, if the final CCOE model is compatible with their organization's mission and infrastructure, is also an acceptable means of satisfying the replication requirement.

Activities to replicate the model must be underway in Year 2 of the grant and completed by the end of Year 3. The entire integrated CCOE model—all components except technical assistance and replication—must be in place at the replication site by the end of Year 3. One approach to the replication of the CCOE model may be to start the process with the most developed component and phase in the other components. Another approach may be to begin with a component that will help address an identified need of the replication site. The OWH encourages the development of a replication strategy that will be most effective based on the needs and resources of the CCOE and the replication site.

The OWH also encourages the selection of a community-based organization that has an on-going or prior relationship with the CCOE to facilitate the replication of the model and recommends that at least one representative from the CCOE participate in the planning meetings of the replication site and vice-versa. However, the selection of new community entities as replication sites is acceptable, if the applicant believes the site has the infrastructure and base components necessary to accommodate the CCOE model.

To successfully implement the CCOE model, the replication site must have, at a minimum, a stable infrastructure and the commitment of the leadership. Below are additional characteristics/ criteria of an eligible replication site:

(a) Must be a community entity.

(b) Must provide comprehensive interdisciplinary primary care and has already demonstrated some evidence of commitment to women-focused, women-friendly care.

(c) Must have several CCOE components in place or at least there must be the ability to implement all components.

(d) Must not be an academic health center/academic institution.

(e) Must be financially viable with a strong funding base.

Funds may be used for personnel, consultants, supplies (including screening, education, and outreach supplies), and grant related travel. Funds may *not* be used for construction, building alterations, equipment, medical treatment, or renovations. All budget requests must be justified fully in terms of the proposed CCOE goals and objectives and include an itemized computational explanation/breakout of how costs were determined.

5. *Meetings:* The CCOE Center Directors will meet twice a year. The first meeting will be held in the Washington metropolitan area and the second meeting may be held on-site at one of the CCOEs. The CCOE's budget should include a request for funds to pay for the travel, lodging, and meals for the two Center Directors' meetings. The first meeting is usually held between mid-November and mid-December and

the second Center Directors' meeting is usually held in May.

Center Directors are encouraged to bring their Program Coordinators to these meetings and should include their travel cost in the CCOE budget.

In the first year of the award, the new CCOE Center Directors and Program Coordinators are required to attend an orientation meeting that will be held in the Washington metropolitan area on October 28, 2004. The CCOE's budget should also include a request for funds for 2 participants (the CCOE Center Director and Program Coordinator) to attend this meeting.

6. *Submission Date and Time:* To be considered for review, applications must be received by the Office of Public Health and Science (OPHS), Office of Grants Management by 5 p.m. Eastern Standard Time on July 20, 2004. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for orderly processing. The application due date requirement in this announcement supercedes the instructions in the PHS 5161–1. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications not received by the deadline will be considered late and ineligible for consideration. They will be returned to the applicant unread.

Applications will be screened upon receipt. Those that are judged to be incomplete or arrive after the deadline will be returned without review or comment. Applications that exceed the requested amount of $150,000 for a twelve-month budget period and $750,000 for the five-year project period may also be returned without review or comment. Applicants that are judged to be in compliance will be notified via the PHS–3038–1 Application Receipt Record included in the grant application kit. Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, community service delivery, community outreach, health education, community-based research, and community leadership development and evaluation. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of training, leadership/career development, public education and outreach, comprehensive services that include gender and age-appropriate preventive services, community-based research, technical assistance to other communities and replication of the model. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit that may be obtained from Ms. Karen Campbell, Director, Office of Public Health and Science Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852 and to the definitions provided in this notice.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of the grant application should be directed in writing to Ms. Barbara James, CCOE Program Director, Office on Women's Health, Division of Program Management, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *bjames1@osophs.dhhs.gov*. Technical assistance on budget and business aspects of the application may be obtained from Ms. Karen Campbell, OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, telephone: (301) 594–0758.

Applications should be submitted to: Ms. Karen Campbell, Director, Office of Public Health and Science (OPHS) Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

7. *Intergovernmental Review:* This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprized on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. The due date for State process recommendations is 60 days after the application deadline. The OWH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OWH.

8. *Funding Restrictions:* Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations or to purchase food.

9. *Other Submission Requirements:* Beginning October 1, 2003, all applicants are required to obtain a Data Universal Numbering System (DUNS) number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OWH funds. The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier of business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either of the following methods: Telephone: 1–866–705–5711; Web site: *https://www.dnb.com/product/eupdate/requestOptions.html*.

Be sure to click on the link that reads, "DUNS Number Only" at the right hand, bottom corner of the screen to access the free registration page. Please note that registration via the Web site

may take up to 30 business days to complete.

V. Application Review Information

Review Criteria: The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—30 Points

This section must discuss:

1. Appropriateness of the existing community resources and linkages established to deliver coordinated, comprehensive women's services to meet the requirements of the CCOE program. Describe allied health professionals that will be affiliated with the program and their role in service delivery.

2. Appropriateness of proposed approach, component integration, and specific activities described to address each element of the National Community Centers of Excellence in Women's Health program including: (a) Training for professional, allied health, and lay health care workers serving underserved women and rural/frontier communities, (b) leadership/career development for women providers, and Native American, Black, and Hispanic women/girls in the community, (c) outreach and education, (d) comprehensive women's health services that include gender and age-appropriate preventive services, (e) community-based research that involves the community in substantive roles/ways, and (f) replication of the CCOE model. Although only four components of the CCOE (comprehensive health services, public education and outreach with an emphasis on outreach to Native American women, leadership development, and one selected by the applicant) have to be in place/operational at the time the application is submitted, the applicant must discuss/describe the resources available to support each component, time lines and plans for phasing in the remaining components, and the relationship of each integrated component to the overall goals and objectives of the CCOE program.

3. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

4. Willingness to participate in the national CCOE evaluation.

5. Willingness to contribute to the development of a comprehensive national CCOE "how-to" manual.

Factor 2: Management Plan—25 Points

Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff or requirements for "to be hired" staff; proposed staff level of effort; management experience of the lead agency; and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the CCOE program, diversity of the CCOE staff as it relates to and reflects the community and populations served, integration of allied health professionals into the CCOE program, and integration of the advisory board into the CCOE activities. Detailed position descriptions, resumes of key staff, and a staffing chart should be included in the appendix. The management plan should also describe succession planning for key personnel and cross training of responsibilities. Thoughtful succession planning and cross training of responsibilities should contribute to the sustainability of the program and provide promotion potential.

Factor 3: Evaluation Plan—15 Points

A clear statement of program goal(s) and thoroughness, feasibility and appropriateness of the local CCOE evaluation design, data collection plan, analysis of results, and procedures to determine if the program goals are met. A clear statement of willingness to participate actively in the national CCOE evaluation.

Factor 4: Technical Assistance/Replication of the Model—10 Points

This section should include plans for the replication of the CCOE model in a similar population and/or community. The plan must include justification for the community selected and a detailed discussion of how the applicant will replicate their model in the community. Appropriate MOUs or Letters of Intent should support assertions made in this section. Technical assistance activities to be undertaken by the CCOE, target audience, and purpose of the activity should be described.

Factor 5: Objectives—10 Points

Merit of the objectives outlined by the applicant to address the CCOE program discussed in the program goals section in a way relevant to the targeted community needs and available resources. Objectives must be measurable and attainable within a stated time frame.

Factor 6: Background—10 Points

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed local community and target population of underserved women; demonstrated support and established linkages in place to operate a fully functional CCOE program; demonstrated access to medically underserved women, including Native American women; and documented past efforts/activities outcome with underserved women. Clear description of the CCOE target population including total population, percent women, race/ethnicity data, and age distribution. Suggested tables to be used to report these data are included in the Program Guidance/Application Kit.

Review and Selection Process: Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, community service delivery, community outreach, health education, community-based research, and community leadership development and evaluation. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of training, leadership/career development, public education and outreach, comprehensive services that include gender and age-appropriate preventive services, community-based research, technical assistance to other communities and replication of the model.

Funding decisions will be made by the OWH, and will take into consideration the recommendations and ratings of the review panel, program needs, geographic location, stated preferences, and the recommendations of DHHS Regional Women's Health Coordinators (RWHC). A pre-award site visit, conducted by DHHS RWHCs, will be scheduled prior to the award of a grant with all applicants with scores in the funding range. The purpose of the pre-award site visit will be to assess the applicant's readiness to implement a CCOE program. The OWH plans to conduct the pre-award site visits during the week of August 16, 2004.

To increase the likelihood of funding a CCOE in Region VIII, in rural/frontier communities, and in communities that serve a significant number of Native American women, the OWH will award bonus points to applicants meeting these criteria. The bonus points available are shown below:

Rural/Frontier site or population—10 points
DHHS Region VIII applicants—5 points
Native American population—5 points

VI. Award Administration Information

1. *Award Notices:* Within two weeks of the review of all applications, all

applicants will receive a letter stating whether they are likely to be or have not been approved for funding. For those likely to be funded, the letter is not an authorization to begin performance of grant activities. Applicants selected for funding support will receive a Notice of Grant Award signed by the grants officer. This is the authorizing document and it will be sent electronically and followed up with a mailed copy. Pre-award costs are not supported.

2. *Administrative and National Policy Requirements:* (1) Requests that require prior approval from the awarding office (*see* Chapter 8, PHS Grants Policy Statement) must be submitted in writing to the GMO. Only responses signed by the GMO are to be considered valid. Grantees who take action on the basis of responses from other officials do so at their own risk. Such responses will not be considered binding by or upon the OWH. (2) Responses to reporting requirements, conditions, and requests for post-award amendments must be mailed to the attention and address of the Grants Management Specialist indicated below in "Contacts." All correspondence requires the signature of an authorized business official and/or the project director. Failure to follow this guidance will result in a delay in responding to your correspondence. (3) The DHHS Appropriations Act requires that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made. (4) The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the issuance shall clearly state the percentage and dollar amount of the total costs of the program or project that will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources. (5) A notice in response to the President's Welfare-to-Work Initiative was published in the **Federal Register** on May 16, 1997. This initiative is designed to facilitate and encourage grantees to hire welfare recipients and to provide additional training and/or mentoring as needed. The text of the notice is available electronically on the OMB home page at *http://www.whitehouse.gov/wh/eop/omb.*

3. *Reporting:* In addition to those listed above, a successful applicant will submit quarterly and annual progress reports that includes a summary of the local CCOE evaluation and a discussion of steps taken to implement each component of the CCOE program and the impact of the program on the targeted community/population, an annual Financial Status Report, a final Progress Report, a final Financial Status Report, and a technical assistance documentation report (How-To manual) in the format established by the OWH, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance," 45 CFR part 74, subpart J and part 92. The purpose of the quarterly and annual progress reports is to provide accurate and timely program information to program managers and to respond to Congressional, Departmental, and public requests for information about the CCOE program. An original and two copies of the quarterly progress report must be submitted by January 10, April 10, July 10, and August 15. If these dates fall on a Saturday or Sunday, the report will be due the following Monday. The last quarterly report will serve as the annual progress report and must describe all project activities for the entire year. The annual progress report must be submitted by August 15 of each year and will serve as the non-competing continuation application. Therefore, this report must also include the budget request for the next grant year, with appropriate justification, and be submitted using Form PHS 5161.

VII. Agency Contact(s)

For application kits and information on budget and business aspects of the application, please contact: Ms. Karen Campbell, Director, OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD 20857. Telephone: (301) 594–0758. E-mail: *kcampbell@osophs.dhhs.gov.*

Questions regarding programmatic information and/or requests for technical assistance in the preparation of the grant application should be directed in writing to Ms. Barbara James, Director, National Community Centers of Excellence in Women's Health Program, 5600 Fishers Lane, Room 16A–55, Rockville, MD 20859. Telephone: (301) 443–1402. E-mail: *bjames1@osophs.dhhs.gov.*

VIII. Other Information

Twelve (12) CCOE programs are currently funded by the OWH. Information about these programs may be found at the following Web site: *http://www.4woman.gov/owh/CCOE/index.htm.*

**The Government is not obligated to make any awards as a result of this announcement.

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided: *Clinical Care Center:* At a minimum, each CCOE clinical care center (ccc) must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care that includes gender and age-appropriate preventive services for women. The CCOE clinical care center must have permanent signage and be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a clinical intake form, referral and tracking system, and procedures for identifying and counting the women served by the CCOE by specialty area and for tracking the cost of services provided to women who receive interdisciplinary care through the CCOE program. Site must be able to differentiate the care provided to women counted as CCOE patients compared to non-CCOE patients.

Community-based: The locus of control and decision-making powers is located at the community level, representing the service area of the community or a significant segment of the community.

Community-based organization: Public and private, nonprofit organizations that are representative of communities or significant segments of communities.

Community-based research: Community members work with researchers to help determine research issues, shape the research process/objectives, and bring research results back to the community. Community members' participation maximizes the potential for exchange in knowledge and implementation of research findings. The shared goal is to maintain scientific integrity in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes but is not limited to programs reimbursed through the Federally

Qualified Health Centers mechanism, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services including gender and age-appropriate preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services, and physical activity); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, social referral, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate support that enable better coordination of women's health resources and help underserved women to navigate systems to obtain the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended. Additional information on cultural competency is available at the following Web site: *http://www.aoa.dhhs.gov/May2001/factsheets/Cultural-Competency.htm*.

Cultural perspective: Recognizes that culture, language, and country of origin have an important and significant impact on the health perceptions and health behaviors that produce a variety of health outcomes.

Enabling services: Services that help women access health care, such as transportation, parking vouchers, translation, child care, and case management.

Frontier Area: Areas with low population density that is usually fewer than 6–7 persons per square mile.

Gender-based Care: Highlights inequalities between men and women in access to resources to promote and protect health, in responses from the health sector, and in the ability to exercise the right to quality health care.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. Healthy People 2010 identify the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate Healthy People 2010 into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople*.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes dental, mental, as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity (6 CCOE components) that touch women's health, including clinical services, research, health training, public health outreach and education, leadership development for women, and technical assistance. The goal of this approach is to unite the strengths of each of these areas, and create a more informed, less fragmented, and efficient system of care for underserved women that can be replicated in other populations and communities.

Lifespan: Recognizes that women have different health and psychosocial needs as they encounter transitions across their lives and that the positive and negative effects of health and health behaviors are cumulative across a woman's life.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, dental health, etc.

Rural Community: All territory, population, and housing units located outside of urban areas and urban cluster.

Social Role: Recognizes that women routinely perform multiple, overlapping social roles that require continuous multi-tasking.

Sustainability: An organization's or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded from a CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: poverty, ethnicity and culture, mental or physical state, housing status, geographic location, language, age, and lack of health insurance/under-insured.

Women-centered/women-focused: Addressing the needs and concerns of women (women-relevant) in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women, not for women. Women clients are considered active partners in their own health and wellness.

Dated: June 9, 2004.

Wanda K. Jones.

Deputy Assistant Secretary for Health (Women's Health), Office of Public Health and Science.

[FR Doc. 04–13894 Filed 6–18–04; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families, with the authority to redelegate to the Commissioner, Administration on Children, Youth and Families, which may be further redelegated, the authority vested in the Secretary of Health and Human Services to administer the Abstinence Education Program under Title V, section 510 of

the Social Security Act, and as amended, hereafter.

This delegation supersedes all previous delegations of authority to administer the Abstinence Education Program under Title V, section 510 of the Social Security Act. Except as provided above, the existing delegations of authority to officials within the Health Resources and Services Administration concerning Title V of the Social Security Act are unaffected.

This delegation shall be exercised under the Department's existing delegation and policy on regulations, and under financial and administrative requirements applicable to all Administration for Children and Families authorities.

I have ratified any actions taken by the Assistant Secretary for Children and Families, or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective immediately.

Dated: June 9, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–13895 Filed 6–18–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): BECAUSE Kids Count (Building and Enhancing Community Alliances United for Safety and Empowerment), Program Announcement Number 04142

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): BECAUSE Kids Count (Building and Enhancing Community Alliances United for Safety and Empowerment), Program Announcement Number 04142.

Times and Dates: 4 p.m.–5:30 p.m., July 15, 2004 (Open), 9 a.m.–4:30 p.m., July 16, 2004 (Closed).

Place: Sheraton Buckhead, 3405 Lenox Road, NE, Atlanta, GA 30326, Telephone 404.261.9250.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04142.

For Further Information Contact: La Tanya Butler, Deputy Branch Chief, Program Implementation Branch, DVP/NCIPC, 4770 Buford Highway, NE, MS–K60, Atlanta, GA 30310, Telephone 770.488.4653.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 15, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–13913 Filed 6–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0254]

Possible Barriers to the Availability of Medical Devices Intended to Treat or Diagnose Diseases and Conditions that Affect Children; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH), is requesting comments concerning the possible barriers to the availability of medical devices intended to treat or diagnose diseases and conditions that affect children. This action is being taken to assist the agency in preparing a report to Congress required by the Medical Devices Technical Corrections Act of 2004 (MDTCA).

DATES: Submit written or electronic comments by August 20, 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: Joanne Less, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION: The President signed MDTCA (Public Law 108–214) into law on April 1, 2004. Section 3 of the MDTCA was added to address potential difficulties in bringing pediatric devices to market. Over the last few months, several professional organizations representing pediatric interests expressed concern about the availability of safe and effective devices intended for this population. Representatives from CDRH and the Office of Pediatric Therapeutics met with these organizations to explore the issue. The agency has also received anecdotal reports suggesting there is an unmet need in the pediatric population, but additional information is needed to assess the accuracy of these reports.

By October 1, 2004, the new law requires FDA to submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report addressing the "barriers to the availability of devices intended for treatment or diagnosis of diseases and conditions that affect children." The law also states that the report must include "any recommendations of the Secretary of Health and Human Services for changes to existing statutory authority, regulations, or agency policy or practice to encourage the invention and development of such devices."

Through this notice, FDA is soliciting comments that will help the agency draft its report to Congress under section 3 of MDTCA. In particular, FDA seeks input in response to the following questions:

1. What are the unmet medical device needs in the pediatric population (neonates, infants, children, and adolescents)? Are they focused in certain medical specialties and/or pediatric subpopulations?

2. What are the possible barriers to the development of new pediatric devices? Are there regulatory hurdles? Clinical hindrances? Economic issues? Legal issues?

3. What could FDA do to facilitate the development of devices intended for the pediatric population? Are there changes to the law, regulation, or premarket process that would encourage clinical investigators, sponsors, and manufacturers to pursue clinical trials and/or marketing of pediatric devices?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic

comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–13872 Filed 6–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2004

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2004 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Legislation, effective July 1, 2001, allows IHS facilities to file Medicare claims with the carrier for payment for physician services.

Inpatient Hospital per Diem Rate (Excludes Physician Services) Calendar Year 2004	
Lower 48 States	$1,512
Alaska	$1,837
Outpatient per Visit Rate (Excluding Medicare) Calendar Year 2004	
Lower 48 States.	
Alaska	$402
Outpatient per Visit Rate (Medicare) Calendar Year 2004	
Lower 48 States.	
Alaska	$367
Medicare Part B Inpatient Ancillary per Diem Rate Calendar Year 2004	
Lower 48 States	$307
Alaska	$638

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2004 Rates

Consistent with previous annual rate revisions, the Calendar Year 2004 rates will be effective for services provided on/or after January 1, 2004, to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: February 3, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

Editorial Note: This document was received by the Office of the Federal Register on June 15, 2004.

[FR Doc. 04–13892 Filed 6–18–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Multi-Ethnic Study of Atherosclerosis (Mesa) Event Surveillance

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), 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: Multi-Ethnic Study of Atherosclerosis (MESA) Event Surveillance. Type of Information Request: Renewal (OMB No. 0925–0493). Need and Use of Information Collection: The study, MESA, will identify and quantify factors associated with the presence and progression of subclinical cardiovascular disease (CVD)—that is, atherosclerosis and other forms of CVD that have not produced signs and symptoms. The findings will provide important information on subclinical CVD in individuals of different ethnic backgrounds and provide information for studies on new interventions to prevent CVD. The aspects of the study that concern direct participant evaluation received a clinical exemption from OMB clearance (CE–99–11–08) in April 2000. OMB clearance is being sought for the contact of physicians and participant proxies to obtain information about clinical CVD events that participants experience during the follow-up period. Frequency of response: Once per CVD event. Affected public: Individuals. Types of Respondents: Physicians and selected proxies of individuals recruited for MESA. The annual reporting burden is as follows: Estimated Number of Respondents: 555; Estimated Number of Responses per respondent: 1.0; and Estimated Total Annual Burden Hours Requested: 42.

There are no capital, operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Physicians	279	1.0	0.20	19
Participant proxies	276	1.0	0.25	23
Total	555	1.0	0.225	42

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 will have practical utility; (2) The accuracy of the agency's estimate of 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 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 more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Diane Bild, Division of Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC #7938, Bethesda, MD, 20892–7938, or call non-toll-free number (301) 435–0457, or e-mail your request, including your address to: *bildd@nhlbi.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: June 9, 2004.

Peter Savage,

Director, DECA, NHLBI, National Institutes of Health.

[FR Doc. 04–13888 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibodies (MAbs) Define Human Cytochrome P450 Drug Metabolism

Harry V. Gelboin *et al.* (NCI)

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

The application of the invention reported herein will be useful for reducing the incidence of adverse drug reactions (ADR) causing serious toxicity and mortality from certain drugs and toxicity from drug-drug interactions (DDI). The MAb system will be useful in the search for new drugs in Drug Discovery. The system engages the use of specific inhibitory monoclonal antibodies (MAbs) to identify, measure and quantitate the role of each human Cytochrome P450 in the metabolism of drugs, NCEs (new chemical entities) or xenobiotics that can be toxic to the human population. Hybridoma clones have been isolated that produce MAbs uniquely specific to human P450s 1A1, 1A2, 2A6, 2C8, 2C9, 2C9*2, 2C19, 2C family (8,9,18,19), 2D6, 2E1, and 3A4/5. The MAbs are highly inhibitory (80–90%) to the enzyme activity of the target P450 and thus the amount of inhibition of the metabolism of the substrate drug incubated with human liver microsomes defines the maximum contribution of the target P450 to the metabolism of the drug or other substrate. The MAbs also immunoblot the target P450 permitting the identification of the target P450 in cells and tissues. In stark contrast to other complex commonly used analytic systems that are selective, the MAb system is specific to the target P450 and is the basis for an extraordinary simple in vitro methodology. The microsome-MAb system (in vitro) defines the contribution of the target P450 to the metabolism of the substrate and identifies substrates metabolized by a single or multiple P450s and P450s catalyzing alternate metabolic pathways. Substrates metabolized by a single P450 or through a specific metabolic route can be used as a marker probe (in vivo) for examining the role of different P450 isoforms in the metabolism of drugs. They are also used for individual phenotyping for studying the genetic potential for individual drug metabolism. Additional applications include the study of polymorphic P450s to identify the metabolic consequences of the absence of a polymorphic P450 in an individual. The MAbs, listed below, are present in ascites fluid and are generally useful for all of the procedures described above. Some are also available in purified form.

INHIBITORY MONOCLONAL ANTIBODIES (MABS) TO HUMAN LIVER CYTOCHROME P450S

Human P450	Monoclonal antibody (MAb clone #)	DHHS reference No.
1A1	1–7–1	B–043–1994/0
1A2	*26–7–5	E–122–1998/0
2A6	*151–45–4	E–150–1998/0
2B6	*49–10–20	B–043–1994/1
2C8, 9, 18, 19	1–68–11	B–043–1994/0
2C8	*281–1–1	E–077–1999/0
2C9*1,*2,*3	1763–15–5	E–077–1999/0
2C9*2	1292–2–3	E–077–1999/0
2C19	1–7–4–8	E–200–2001/0
2D6	*512–1–8 50–1–3	E–046–1997/0
2E1	1–73–18	E–185–1995/0
3A4/5	3–29–9	E–185–1995/0

*Also Immunoblots.

Additionally, the following MAbs are non-inhibitory, but yield an Immunoblot:

Human P450	Monoclonal antibody (MAb clone #)	DHHS reference No.
2E1	2–106–12	E–185–1995/(
3A4	275–1–2	E–185–1995/(

These MAbs are further described in the following research articles:

Gelboin HV, Krausz KW, Gonzalez FJ, and Yang TJ (1999). Inhibitory Monoclonal Antibodies to Human Cytochrome P450 Enzymes: A New Avenue for Drug Discovery. Trends Pharmacol Sci 20(11):432–438.

Gelboin HV, Shou M, Goldfarb I, Yang TJ and Krausz KW (1998). Monoclonal Antibodies to Cytochrome P450 in Methods in Molecular Biology: Cytochrome P450 Protocols. (IR Phillips and EA Shephard, eds) pp 227–237, Humana Press Inc., Totowa, New Jersey.

Yang TJ, Krausz KW, Sai Y, Gonzalez FJ and Gelboin HV (1999). Eight Inhibitory Monoclonal Antibodies Define the Role of Individual P450s in Human Liver Microsomal Diazepam, 7-Ethoxycoumarin and Imipramine Metabolism. Drug Metab Dispos 27: 102–109.

Yang TJ, Sai Y, Krausz KW, Gonzalez FJ and Gelboin HV (1998a). Inhibitory Monoclonal Antibodies to Human Cytochrome P450 1A2: Analysis of Phenacetin o-Deethylation in Human Liver. Pharmacogenetics 8:375–382.

Sai Y, Yang TJ, Krausz KW, Gonzalez FJ and Gelboin HV (1999). An Inhibitory Monoclonal Antibody to Human Cytochrome P450 2A6 Defines its Role in the Metabolism of coumarin, 7-ethoxycoumarin and 4-nitroanisole in Human Liver. Pharmacogenetics 9:229–237.

Yang TJ, Krausz KW, Shou M, Yang SK, Buters JTM, Gonzalez FJ and Gelboin HV (1998b). Inhibitory Monoclonal Antibody to Human Cytochrome P450 2B6. Biochem Pharmacol 55:1633–1640.

Krausz KW, Goldfarb I, Yang TJ, Gonzalez FJ, and Gelboin HV (2000). An Inhibitory Monoclonal Antibody to Human Cytochrome P450 that Specifically Binds and Inhibits P450 2C9II, an Allelic Variant of P450 2C9 Having a Single Amino Acid Change Arg144 Cys. Xenobiotica 30:619–625.

Krausz KW, Goldfarb I, Buters JTM, Yang TJ, Gonzalez FJ, and Gelboin HV (2001). Monoclonal Antibodies Specific and Inhibitory to Human Cytochromes P450 2C8, 2C9, and 2C19. Drug Metab Dispos 29: 1410–1423.

Krausz KW., Yang TJ., Shou M, Gonzalez FJ and Gelboin, HV (1997). Inhibitory Monoclonal Antibodies to Human Cytochrome P450 2D6. Biochem Pharmocol. 54:15–17.

Gelboin HV, Krausz KW, Shou M, Gonzalez FJ and Yang TJ (1997). A Monoclonal Antibody Inhibitory to Human P450 2D6: A Paradigm for Use in Combinatorial Determination of Individual P450 Role in Specific Drug Tissue Metabolism. Pharmacogenetics 7:469–477.

Gelboin HV, Goldfarb I, Krausz KW, Grogan J, Korzekwa KR, Gonzalez FJ and Shou M (1996). Inhibitory and Noninhibitory Monoclonal Antibodies to Human Cytochrome P450 2E1. Chem Res Toxicl. 9:1023–1030.

Gelboin HV, Krausz KW, Goldfarb I, Buters JTM, Yang SK, Gonzalez FJ, Korzekwa KR and Shou M (1995). Inhibitory and Non Inhibitory Monoclonal Antibodies to Human Cytochrome P450 3A3/4. Biochem Pharmacol 50:1841–1850.

Dated: June 5, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–13890 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Human Genome Research Institute Special Emphasis Panel; ENCODE RFA Review.

Date: June 22–23, 2004.

Time: June 22, 2004, 6:30 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Bethesda, MD.

Time: June 23, 2004, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Bethesda, MD.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 14, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13880 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 04–59, Review of F32s.

Date: June 15, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K,

National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 04–56, Review of R03s.

Date: July 8, 2004.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 04–60, Review of Supplemental R01.

Date: July 13, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., Rm. 4AN44, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 04–49, Review of R21s.

Date: July 26, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892 (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 14, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13881 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Career Enhancement Award for Stem Cell Research.

Date: June 24, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Telephone–Room 757, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Epidemiology of Interstitial Cystitis..

Date: July 20, 2004.

Time: 8:45 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13882 Filed 6–18–04; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Child Health and Human Development Council, June 10, 2004, 8:30 a.m. to June 11, 2004, 1 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 17, 2004, 69 FR 27935–27936.

The meeting will be held on June 10, 2004 from 8:30 a.m. to adjournment. The meeting is partially Closed to the public.

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13884 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed 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 Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD (20)—R21 Application Review.

Date: June 24, 2004.

Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, NIAAA/NIH—Fishers Building, 5635 Fishers Lane, 3045, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sathasiva B. Kandasamy, PhD. Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@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 Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD(21)—R21 Application Review.
Date: June 24, 2004.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health NIAAA/NIH—Fishers Building, 5635 Fishers Lane, 3045, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office Of Scientific Affairs, National Institute on Alcohol, Abuse And Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13885 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Curriculum Development Award In Interdisciplinary Research.
Date: July 15–16, 2004.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Rebecca H. Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13886 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee MBRS Review Subcommittee B.
Date: July 12–13, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Shiva P Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12C, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos.93–375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initatives, National Institutes of Health, HHS)

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13887 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Influenza Viruses.
Date: June 18, 2004.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200,

MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pre and Post Surgery Anxiety Disorders.

Date: June 28, 2004.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mother-Infant Interaction.

Date: June 28, 2004.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Pain and Coping Behavior.

Date: June 30, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fungal Pathogenesis.

Date: July 6, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tera Bounds, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3015–D, MSC 7808, Bethesda, MD 20892, 301–435–2306, *bounds@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts for NSAA–02.

Date: July 6, 2004.

Time: 4 p.m. to 6. p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BCHI (50): Biomedical Computing and Health Informatics.

Date: July 7, 2004.

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: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 7–8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW. Washington, DC 20007.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Quiescence/G0 in Yeast Program Project.

Date: July 7, 2004.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022 *ehrenspg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myocardial Remodeling.

Date: July 7, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NSCF Conflict.

Date: July 7, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BCHI (10): Biomedical Computing and Health Informatics.

Date: July 7–9, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Parasite Vectors.

Date: July 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation.

Date: July 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.

Date: July 8–9, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Hotel Embassy Ro1, 2015 Massachusetts Avenue, NW., Washington, DC 20036.
Contact Person: Abraham P. Bautista, MS, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HRQOL Roadmap Statistical Centers.
Date: July 8, 2004.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Deborah L. Young-Hyman, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7759, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; V.E.P.
Date: July 8–9, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7808, Bethesda, MD 20892, (301) 402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.
Date: July 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR Health Behavior Interventions.
Date: July 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20004.
Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemistry/Biophysics SBIR/STTR Panel.
Date: July 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 SBIB–G 03 SAT Member Conflict.
Date: July 8, 2004.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul F. Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435–1176, *parakkap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 ONC–J (03)M: Studies on Bone Marrow Transplantation.
Date: July 8, 2004.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Autism and Social Functioning.
Date: July 8, 2004.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gender and Hypertension.
Date: July 8, 2004.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator (SRA Interm), Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemoprevention of Skin Cancer.
Date: July 8, 2004.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Biology Member Conflict.
Date: July 8, 2004.
Time: 3:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13883 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human-Bovine Reassortant Rotavirus Vaccine

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the U.S., Europe, and Canada only to practice the invention embodied in U.S. Serial Number 60/094,425, filed July 28, 1998, PCT filed (PCT/US99/

17036) on July 27, 1999, and National Stage filed in China, India, Korea, Australia, Canada, Europe, Japan, Brazil and the U.S., entitled "Multivalent Human-Bovine Rotavirus Vaccine" (DHHS ref. E–015–1998/0) to Aridis, LLC, having a place of business in Portola Valley, California. The patent rights in these inventions have been assigned to the United States of America.

This Notice replaces a **Federal Register** document previously published on Tuesday, June 8, 2004, 69 FR 32036.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 20, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *anos@od.nih.gov;* Telephone: (301) 435–5515; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

This technology describes multivalent immunogenic compositions comprising at least four human-bovine reassortant rotaviruses, where the gene encoding VP7 protein from G1, G2, G3, or G4 human rotavirus strain is inserted into a bovine rotavirus backbone. These VP7 serotypes represent the clinically most important human rotavirus serotypes, which depends on VP4 and VP7 proteins, both found in the viral capsid and both of which independently induce neutralizing antibodies. Additionally, human-bovine reassortants for VP7 serotypes G5 and G9 and a bovine-bovine reassortant for VP7 G10 serotype are mentioned. Each of these reassortants is monovalent, and administered as a multivalent mixture. Compared to other human-bovine rotavirus reassortants, the compositions described in this technology induce an immunological response at significantly lower dosage than other human-bovine rotavirus reassortants (which required 10–100 times the dose of human-rhesus reassortants) and does not result in a low-grade, transient fever.

The field of use may be limited to development of human-bovine reassortant rotavirus vaccines.

The licensed territory will be exclusive in the U.S., Canada, and Europe.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

June 14, 2004.

Mark L. Rohrbaugh,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–13891 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences; The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel Report on the Developmental and Reproductive Toxicity of Acrylamide: Notice of Availability and Request for Public Comments

Summary: Notice is hereby given of the availability on June 30, 2004, of the Expert Panel Report on the Developmental and Reproductive Toxicity of Acrylamide. This report includes the summaries and conclusions of the expert panel's evaluation of the scientific data for potential reproductive and/or developmental hazards associated with exposure to acrylamide. The CERHR held this expert panel meeting May 17–19, 2004. CERHR is seeking public comment on this report and additional information about recent, relevant toxicology or human exposure studies. The CERHR requests that all comments and other information be submitted to the CERHR at the address below by August 16, 2004.

Availability of Reports

This expert panel report will be available by June 30, 2004, on the CERHR Web site (*http://cerhr.niehs.nih.gov*) and in printed copy or compact disc by contacting the CERHR [P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: (919) 541–3455; fax: (919) 316–4511; or e-mail: *shelby@niehs.nih.gov*].

Request for Public Comments

The CERHR invites public comments on this expert panel report and input regarding any recent, relevant toxicology or human exposure studies. The CERHR requests that all comments and other information be submitted to the CERHR at the address above by August 16, 2004.

All public comments received by the date above will be reviewed and included in the final NTP–CERHR monograph on acrylamide to be prepared by NTP staff. The NTP–CERHR monograph will include the NTP brief, expert panel report, and all public comments received on the report. The brief will provide the NTP's interpretation of the potential for adverse reproductive and/or developmental effects to humans from exposure to acrylamide. The NTP–CERHR monograph will be sent to appropriate federal agencies and will be available to the public and the scientific community on the CERHR Web site, in hardcopy, or on compact disc.

Background

Acrylamide is used in the production of polyacrylamide, which is used in water treatment, pulp and paper production, mineral processing, and scientific research. Polyacrylamide is used in the synthesis of dyes, adhesives, contact lenses, soil conditioners, cosmetics and skin creams, food packaging materials, and permanent press fabrics. Acrylamide has been shown to induce neurotoxicity in highly exposed workers and in cases of acute poisoning. In animal studies, exposure to acrylamide has been shown to cause cancer and adverse effects on reproduction and fetal development. The CERHR selected acrylamide for expert panel evaluation because of (1) recent public concern for human exposures through its presence in some starchy foods cooked at high temperatures (*e.g.*, French fries and potato chips) and (2) availability of data on human exposure, bioavailability, and reproductive toxicity.

A 14-member expert panel composed of scientists from the federal government, universities, and private companies conducted an evaluation of the reproductive and developmental toxicities of acrylamide [**Federal Register** Vol. 69, No. 34, pages 7977–7978, February 2004]. The panel did not evaluate potential cancer hazards associated with exposure to acrylamide.

Public deliberations by the panel took place May 17–19, 2004, at the Holiday Inn Old Town Select in Alexandria, Virginia. Following the May meeting, the draft expert panel report was revised to incorporate the panel's conclusions and subsequently reviewed by Acrylamide Expert Panel, NTP scientists, and CERHR personnel.

Additional Information About CERHR

The NTP and the NIEHS established the NTP CERHR in June 1998 [**Federal Register** Vol. 63, No. 239, page 68782, December 1998]. The purpose of the CERHR is to provide scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Further information on the CERHR's chemical review process, including how to nominate chemicals for evaluation and scientists for the expert registry, can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting the CERHR directly (see address above). The CERHR Web site also has information on various environmental exposures and their potential to affect fertility, pregnancy, and child development and links to other resources for public health information.

Dated: June 10, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–13889 Filed 6–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2004–18058]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U. S. merchant marine.

DATES: Applications should reach us on or before August 30, 2004.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Please submit applications to the same address.

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet at *http://dms.dot.gov/search/searchFormSimple.cfm* under the docket number [USCG–2004–18058]. The application form is also available on the Internet at *http://www.uscg.mil/hq/g-m/advisory/app.pdf*. You may also obtain an application by calling Mr. Mark Gould at (202) 267–6890; by e-mailing him at *mgould@comdt.uscg.mil;* by faxing him at (202) 267–4570; or by writing him at the location in **ADDRESSES** above.

MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Environmental Protection, on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

MERPAC meets normally twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific tasks as required.

The Coast Guard will consider applications for seven positions that expire or become vacant in January 2005. It needs applicants with one or more of the following backgrounds to fill the positions:

(a) Shipping company representative;
(b) Licensed deck officer;
(c) Pilot;
(d) Licensed engineering officer;
(e) Unlicensed member of the deck department;
(f) Marine educator affiliated with state or federal maritime academies; and
(g) Marine educator affiliated with a training institution other than state or federal maritime academies.

Each member serves for a term of three years. MERPAC members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: June 14, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–13976 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17615]

Enforcement of SOLAS Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard is issuing this notice to inform U.S. flag vessels in foreign ports that should be meeting International Convention for Safety of Life at Sea, 1974, (SOLAS), requirements, that we intend to more strictly and consistently enforce our regulations requiring SOLAS compliance. This enforcement notice is intended to warn such vessels to take steps to come into compliance and avoid the consequences of non-compliance.

DATES: Effective June 21, 2004 Comments and related material must reach the Docket Management Facility on or before September 20, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17615 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*
(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.
(3) Fax: 202–493–2251.
(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Lieutenant Commander Martin Walker, Project Manager, Office of Compliance (G–MOC–1), U.S. Coast Guard Headquarters, telephone 202–267–1047. If you have questions on viewing or submitting material to the docket, call

Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On April 6, 2004, we published a notice entitled "Interpretation of International Voyage for Security Regulations" (69 FR 17927) to clarify how we will interpret a security regulation (33 CFR 104.297) requiring U.S. flag vessels on international voyages to comply with the International Ship and Port Facility Security Code (ISPS) of the International Convention for Safety of Life at Sea, 1974, (SOLAS). Enforcement of the new SOLAS ship security requirements cannot be separated from the longstanding obligation of the U.S. to ensure compliance with SOLAS ship safety requirements by U.S. flag vessels engaged on international voyages.

It is in the best interest of marine safety and security to apply all SOLAS standards consistently. To this end, the Coast Guard is publishing this Notice of Policy to avoid potential misunderstandings in how we will enforce longstanding SOLAS safety requirements as we begin implementation of the new SOLAS security requirements.

The notice we published on April 6, 2004, entitled "Interpretation of International Voyage for Security Regulations" (69 FR 17927) did not change the definition of "international voyage", either in our regulations or in SOLAS. It said, in part, that, each voyage of a U.S. vessel originates in United States waters, regardless of when the voyage actually began.

Considering this interpretation of voyage, a U.S. flag vessel that has ever been in U.S. waters, which operates from a foreign port, is on an international voyage that originated at some time from a U.S. port. Therefore, all U.S. flag vessels that meet the applicability standards of SOLAS, and operate in foreign countries, will be required to comply with ISPS by July 1, 2004. Additionally, during the period of ISPS implementation, if we discover U.S. flag vessels operating on international voyages that are not SOLAS safety compliant—that is, vessels that do not have all appropriate SOLAS documentation—we will require those vessels to meet all applicable requirements to obtain those documents.

Some vessels, however, will not be affected by this interpretation of the term "voyage." Vessels that received a SOLAS exemption certificate (SOLAS Chapter 1, Regulation 4(a)) granting permission from the Coast Guard to make a single voyage from the United States to a foreign country, and then operated solely within the waters of that foreign country are, at this time, not being required by the Coast Guard to be SOLAS safety compliant. Nonetheless, we can make no assurance that other parties to the SOLAS Convention will accept this continuing interpretation and may take port state action as they deem appropriate. Vessels in this situation will not be affected by the Coast Guard's interpretation of the term "voyage." However, the Coast Guard is considering a regulation change for the future, which may apply SOLAS safety requirements to these vessels, but will not do so without notice and an opportunity for comment. Owners or operators of vessels of this description, or of other vessels deserving special consideration, should contact the cognizant Officer in Charge, Marine Inspection (OCMI) so that the OCMI may consider the facts and circumstances related to those particular vessels.

By way of example, we consider U.S. vessels in foreign waters that fit the following descriptions to be on an international voyage. Thus, owners and operators of these vessels that meet the applicability standards of SOLAS, and operate in foreign countries, should not inadvertently believe they are exempt, either from the safety or security requirements of SOLAS.

1. Vessels that did not previously receive a SOLAS exemption certificate (SOLAS Chapter 1, Regulation 4(a)) granting permission from the Coast Guard to make a single voyage from the United States to a foreign country, even though they may now be operating solely within the waters of a foreign country.

2. Vessels that have engaged in any voyage from their country of operation, to a port in another country, without complying with all applicable SOLAS requirements.

3. Vessels that failed to operate within the conditions or any other specific requirements of a SOLAS exemption certificate previously issued by the Coast Guard.

Each of the scenarios in "1" thru "3" above, describe vessels that are on an international voyage. Thus, once within the waters of a foreign country, those vessels have been, and are, required to comply with all applicable SOLAS safety requirements.

Comments and Viewing Documents Referenced in this Notice

If you wish to submit comments regarding this notice, please send them to the Docket Management Facility at the address under **ADDRESSES**. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use 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, and identify the docket number (USCG–2004–17615). You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments: To view comments, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Dated: June 10, 2004.

T. H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–13981 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2004–17674]

Coast Guard Inspection and Certification of Permanently Moored Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Coast Guard seeks comments on our proposed policy that, beginning January 1, 2006, the Coast Guard will no longer inspect gaming vessels that are permanently moored vessels (PMVs). We are issuing this notice to inform the public and affected State legislatures that we intend to more strictly and consistently enforce our long-standing policies regarding the inspection and certification of PMVs and, beginning January 1, 2006, will no longer issue a Certificate of Inspection to any vessel that is considered "substantially a land structure." This notice is expected to affect gaming, casino, or other vessels that are designed and constructed to go into PMV operations to satisfy a state requirement for obtaining a gaming license.

DATES: Comments must reach the Coast Guard on or before September 20, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17674 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed policy, contact Lieutenant Commander Nussbaumer of the Coast Guard's Office of Compliance, telephone 202–267–2978. For questions on viewing, or submitting material to, the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Comments and Viewing Documents Referenced in This Notice

We encourage you to comment on this notice. If you wish to do so, please send your comment and any related materials to the Docket Management Facility at the address under **ADDRESSES.** All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use 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, and identify the docket number (USCG–2004–17674). 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.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and History of Policy

The Coast Guard inspects passenger vessels and promulgates regulations on the inspections of these vessels under authority from Congress, 46 U.S.C. 3301 and 3306. Our regulations, for example 46 CFR 70.05–1, exclude certain vessels from inspection requirements while they are laid up or in other situations when they are not capable of navigating.

The Coast Guard Marine Safety Manual, Volume II, Section B, Chapter 4.I (available at *http://www.uscg.mil/hq/g-m/nmc/pubs/msm/vol2.htm*) defines "permanently moored vessels" (PMVs) as vessels that are removed from navigation and are not inspected by the Coast Guard. Examples of PMVs include showboats, theaters, hotels, gaming sites, restaurants, museums, and business offices on a barge.

Initially, gaming vessels were designed and operated as traditional vessels that got underway on a regular basis. More recently, however, many gaming vessels have changed their operation and now remain permanently moored. Some are sited within a fixed and secured impoundment, and are structurally connected to shoreside hotel accommodations, land-based water and electrical sources, and sewage pipes. Some vessels that currently possess a valid Certificate of Inspection issued by the U.S. Coast Guard either cannot get underway or can do so only with great difficulty.

Under state law, some gaming vessels must have a Coast Guard COI to obtain and maintain a gaming license. For example, the State of Louisiana permits gaming activities on riverboats and defines "riverboat" as a vessel that carries a valid Coast Guard COI, 27 Louisiana Rev. Stat. §§ 44 & 70.

For many years, we have responded to requests of gaming vessels for Certificates of Inspection (COI) and have issued a COI if the vessel meets requirements in 46 CFR chapter I—either in subchapter H for passenger vessels or subchapter K for small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers—or the equivalent alternative vessel standards in Navigation and Vessel Inspection Circular (NVIC) 8–93.

Current Circumstances

The Coast Guard has recently received a design proposal for a new generation of gaming waterborne structures intended to be built as PMVs. This new design far exceeds the parameters envisioned by vessel regulatory standards. The design places a vessel inside a permanent impoundment or cofferdam. And in this new-generation design proposal, the structural fire protection standards related to means of escape, safe refuge and dimensions of spaces onboard more closely align with shoreside structures than with requirements in 46 CFR chapter I, subchapters K and H, or the equivalent

alternative vessel standards in Navigation and Vessel Inspection Circular (NVIC) 8–93.

While PMVs are not required to have COIs, in the past the Coast Guard has voluntarily inspected vessel designs that were in fact PMVs. As previously noted, the evolving nature of gaming vessels has resulted in PMVs that are more like a building than a vessel, and are physically restricted from navigating on waterways. In the face of this development, we must reiterate our policies with regard to PMVs and clarify our future intent toward these structures.

Maintaining a valid COI requires expenditure of both Coast Guard resources for inspections and vessel owner resources for complying with Coast Guard regulations. Whether they get underway or not, vessels with a U.S. Coast Guard COI must remain in full compliance with Coast Guard regulations.

Proposed Policy

Under our proposed policy, starting January 1, 2006, the Coast Guard will no longer issue COIs to PMVs and we will no longer inspect PMVs that currently have a COI.

The Coast Guard will notify all PMVs that currently have a COI and cognizant State and local authorities that this proposed policy would affect them. We have proposed the January 1, 2006 date for terminating inspections of these PMVs to allow for the transition of safety oversight from the Coast Guard to local authorities. By continuing our voluntary inspections through December 31, 2005, we provide PMV owners, with current COIs, time to arrange for inspections by state or local authorities to ensure their PMV is in compliance with state and local regulations that may be applicable in the absence of inspections by the Coast Guard.

Dated: June 10, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–13975 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: June 11, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Benton, Boone, Carroll, Cass, Clinton, Dubois, Floyd, Fountain, Fulton, Gibson, Grant, Hamilton, Hancock, Harrison, Hendricks, Howard, Jackson, Jefferson, Johnson, Lawrence, Martin, Montgomery, Morgan, Orange, Perry, Pike, Scott, Shelby, Spencer, Tippecanoe, Vanderburgh, Wabash, Warren, Warrick, and White Counties for Individual Assistance.

All counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13905 Filed 6–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1521–DR]

Louisiana; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1521–DR), dated June 8, 2004, and related determinations.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms and flooding on May 12–19, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for

a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Acadia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Landry, St. Martin, and West Baton Rouge Parishes for Individual Assistance.

Acadia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Landry, St. Martin, and West Baton Rouge Parishes in the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13904 Filed 6–18–04; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1515–DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1515–DR), dated May 5, 2004, and related determinations.

EFFECTIVE DATE: June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2004:

Bottineau, Burke, Mountrail, Renville, Towner, and Ward Counties for Public Assistance. All counties and the Tribal Reservations of the Three Affiliated Tribes, Spirit Lake Tribe, Standing Rock Sioux Tribe (that portion of the reservation that lies within the State of North Dakota), and the Turtle Mountain Band of the Chippewa in the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13906 Filed 6–18–04; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–REP–10–WA–1]

Washington Emergency Preparedness and Response Plans for the Columbia Generating Station

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

ACTION: Finding and Determination.

SUMMARY: FEMA gives notice of approval of the State of Washington and local Radiological Emergency Preparedness and Response Plans specific to the Columbia Generating Station site.

DATES: This certification and approval are effective as of April 28, 2004.

FOR FURTHER INFORMATION CONTACT: Regional Director, FEMA Region X, 130 228th Street, SW., Bothell, WA 98021–9796. Please refer to Docket No. FEMA-REP–10–WA–1.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Emergency Management Agency (FEMA) regulations, 44 CFR part 350, the State of Washington originally submitted the Emergency Response and Preparedness Plans specific to the Columbia Generating Station site, located in Benton County, Washington, to the Regional Director of FEMA Region X for review and approval on June 12, 2002. During the review of the site-specific offsite Radiological Emergency Preparedness and Response Plans, the FEMA Region X Regional Assistance Committee identified several planning issues which required correction prior to a recommendation of formal plan approval under 44 CFR part 350. During the FEMA Headquarters review process, several issues were identified which were referred back to FEMA Region X for clarification. Subsequently, on January 23, 2004, the FEMA Region X Director forwarded his evaluation of the offsite Radiological Emergency Preparedness and Response Plans and a recommendation for formal approval, in accordance with Section 350.11 of FEMA's regulations. Included in this evaluation was a review of the Columbia Generating Station's offsite radiological emergency preparedness exercise conducted September 17–18, 2003, in accordance with 44 CFR 350.9 of FEMA regulations, and a report of the Public Meeting conducted on September 15, 2000, in accordance with 44 CFR 350.10 of FEMA's regulations.

Based on the evaluation and recommendation for approval by the FEMA Region X Director and the review by the headquarters staff, in accordance with 44 CFR 350.12 of FEMA's regulations, I find and determine that the State of Washington and local Radiological Emergency Preparedness and Response Plans specific to the Columbia Generating Station site are adequate to protect the health and safety of the public living in the vicinity of the site by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that the plans are capable of being implemented.

On June 17, 1994, FEMA previously approved the prompt alert and notification system installed and

operational around the Columbia Generating Station, in accordance with the criteria of NUREG–0654/FEMA–REP–1, Rev. 1, Appendix 3, and FEMA–REP–10, "Guide for The Evaluation of Alert and Notification Systems for Nuclear Power Plants." FEMA will continue to review the status of the offsite Radiological Emergency Response and Preparedness Plans specific to the Columbia Generating Station site in accordance with 44 CFR 350.13 of FEMA's regulations.

Dated: June 14, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness & Response, Department of Homeland Security.

[FR Doc. 04–13903 Filed 6–18–04; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Restoration Plan and Environmental Assessment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) and the State of Vermont, announces the release for public review of the draft Restoration Plan and Environmental Assessment (RP/EA) for the Burgess Brothers, Inc. and Tansitor Electronics, Inc. Superfund Sites. The RP/EA describes the Trustees' proposal to restore natural resources injured as a result of the release of hazardous substances from the Sites.

DATES: Written comments must be submitted on or before June 30, 2004.

ADDRESSES: Requests for copies of the RP/EA may be made to: U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.

Written comments or materials regarding the RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kenneth Munney or Molly B. Sperduto, Environmental Contaminants Program, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.

Interested parties may also call 603–223–2541 for further information.

SUPPLEMENTARY INFORMATION: The Burgess Brothers, Inc. and the Tansitor Electronics Inc. Superfund Sites are located in the Hoosic River drainage in Bennington and Woodford, Vermont. Hazardous waste products from the manufacture of batteries, primarily lead sludge, and other refuse were deposited at the Burgess Site until 1976. Contamination, erosion and remedial activities resulted in the permanent destruction of approximately 0.6 acres of palustrine emergent and forested wetland habitat. In 1999, the United States of America and the State of Vermont settled claims for natural resource damages associated with the Burgess Site under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.

At the Tansitor Site, approximately 1,100 feet of stream were contaminated with silver and other metals due to waste disposal activities. In 1998, the United States of America and the State of Vermont settled claims for natural resource damages associated with the Tansitor Site.

Settlement proceeds from the two Superfund Sites will be used to compensate for loss of natural resources under trusteeship of the DOI and the State of Vermont. A combined restoration initiative is proposed to allow for a larger, more effective and meaningful resource restoration.

The RP/EA is being released in accordance with the CERCLA of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11, and the National Environmental Policy Act (NEPA). It is intended to describe the Trustees' proposals to restore natural resources injured at the Sites and evaluate the potential impacts of each.

The RP/EA describes a number of habitat restoration and protection alternatives and discusses the environmental consequences of each. Restoration efforts which have the greatest potential to restore wetlands and streams and the services those resources provide to wildlife are preferred. Based on an evaluation of the various restoration alternatives, the restoration of degraded wetland and upland habitat at an inactive gravel pit is proposed. This alternative maximizes the benefit to wildlife, restoring approximately 2 acres of wetlands and associated downstream habitat and at least 7 acres of upland grassland habitat.

Interested members of the public are invited to review and comment on the RP/EA. Copies of the RP/EA are available for review at the Service's New England Field Office in Concord, New Hampshire (70 Commercial Street, Suite 300, Concord, New Hampshire). Additionally, the RP/EA will be available for review at the Service's Web site (*http://northeast.fws.gov/nh/neforevi.html*) and at the Bennington Free Library. Written comments will be considered and addressed in the final RP/EA at the conclusion of the restoration planning process.

Author: The primary author of this notice is Molly Sperduto, U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.

Authority: The authority for this action is the CERCLA of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), and the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: May 28, 2004.

Marvin E. Moriarty,

Regional Director, Region 5, U.S. Fish and Wildlife Service, U.S. Department of the Interior.

[FR Doc. 04–13914 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgement of the Golden Hill Paugussett Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is hereby given that the Principal Deputy Assistant Secretary—Indian Affairs (PD AS–IA) declines to acknowledge a group known as the Golden Hill Paugussett Tribe (GHP), c/o Mr. Aurelius H. Piper, Jr., Suite 236, 1440 Whalley Avenue, New Haven, Connecticut 06515, as an Indian tribe within the meaning of Federal law. This notice is based on a final determination that the petitioning group does not satisfy all seven of the criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c), and (e), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective 90 days from publication of this notice, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: Under delegated authority, the Secretary of the Department of the Interior (Secretary) ordered, through the Assistant Secretary-Indian Affairs (AS–IA), the PD AS–IA "to execute all documents, including regulations and other **Federal Register** notices, and perform all other duties relating to Federal recognition of Native American tribes." Pursuant to this order, the PD AS–IA makes the determination regarding the petitioner's status, as defined in the acknowledgment regulations as one of the duties delegated by the Secretary to the AS–IA (209 Department Manual 8), and from the AS–IA to the PD AS–IA (Secretarial Order No. 3252).

A notice of a proposed finding (PF) to decline to acknowledge the GHP was published in the **Federal Register** January 29, 2003 (68 FR 4507). That notice was based on a determination that the GHP petitioner did not satisfy all seven of the mandatory criteria set forth in 25 CFR 83.7, specifically criteria 83.7(b), (c), and (e), and, therefore, did not meet the requirements for a government-to-government relationship with the United States.

The available evidence for the PF showed that the GHP petitioner and its antecedents met criteria 83.7(a) for identification since 1900, 83.7(d) for providing a governing document, 83.7(f) for not being members of an acknowledged Indian tribe, and 83.7(g) for not being the subject of legislation terminating or forbidding the Federal relationship.

The PF concluded that the petitioner did not meet the requirements for criterion 83.7(b), that community continuously exist from historical times to the present because there was insufficient evidence provided that community existed for the GHP since 1823. The PF also concluded that the evidence was insufficient to demonstrate that the GHP met criterion 83.7(c), that the petitioner did not demonstrate political influence within the group since 1802. Further, the PF concluded that the State of Connecticut (State) had recognized a Golden Hill entity from colonial times to the present, but found that the particular State recognition of the GHP group combined with limited direct evidence for community and political process was not sufficient to demonstrate that criteria 83.7(b) and (c). Finally, the PF concluded there was insufficient evidence to demonstrate the petitioner met criterion 83.7(e), descent from a historical tribe or from tribes that had combined and functioned as a single autonomous political entity.

This final determination (FD) follows a review of the petitioner and third-party comments on the PF. The GHP petitioner submitted no response to the third-party public comments. This FD reviewed the evidence considered for the PF, and evaluated that evidence in the light of the new documentation and arguments received from the petitioner and third parties.

Criterion 83.7(a) requires that the petitioner demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900. The PF concluded that from 1900 to the present, the petitioner and its claimed antecedent group, generally called the "Golden Hill Indians" until the mid-1970's, and the "Golden Hill Paugussett" since that time, had regularly been identified as an Indian entity. The PF, however, determined that the identifications applied only to the Golden Hill entity that the State recognized, which comprises a small portion (33 percent) of the petitioner's current membership. The available identifications did not pertain to the portion (63 percent) of the group, added in 1999, which claims descent from a historical Turkey Hill entity and that the petitioner contends was always a part of the historical Golden Hill entity. Four percent of the group's membership is of unknown ancestry. For criteria 83.7(b) and 83.7(c), the available record for the PF did not demonstrate that a Golden Hill group and a Turkey Hill group had ever combined and functioned as a single autonomous political entity. For the purposes of criterion 83.7(a), none of the available evidence for the PF showed that any outside observer at any time since 1900 identified a combined group of Golden Hill and Turkey Hill Indians as a single Indian entity. Also, the available evidence for the PF did not identify the existence of a separate Turkey Hill group as an American Indian entity on a substantially continuous basis since 1900.

The GHP petitioner and third parties submitted no new evidence of identifications for criterion 83.7(a). In its comments, the petitioner asserts that the historical Turkey Hill Indians and the petitioner's claimed Golden Hill antecedents were one entity since colonial times, and that, therefore, identifications of the State-recognized Golden Hill entity apply to the portion of the group, added in 1999, claiming descent from a Turkey Hill entity. In its comments, the State argues that there is no evidence of identifications for a combined Turkey Hill and Golden Hill entity since 1900.

As previously stated, since 1900, one of the petitioner's claimed antecedent groups, the State-recognized Golden Hill entity, has regularly been identified as an Indian entity. Yet, these available identifications apply only to the State-recognized Golden Hill entity, which comprises only a small portion (33 percent) of the petitioner's current membership. The available identifications do not pertain to the now predominant part (63 percent) of the group, the Tinney line added in 1999, which claims descent from a historical Turkey Hill entity. The available evidence does not show that external observers identified a separate Turkey Hill entity, or a Turkey Hill group that amalgamated with the State-recognized Golden Hill entity, on a substantially continuous basis since 1900. More specifically, no available evidence is found in the records that external sources identified the Tinney line as part of the State-recognized Golden Hill entity between 1900 and 1998.

These facts, which call into question the nature of the GHP petitioner's current makeup, require the reevaluation of the PF's conclusion for criterion 83.7(a). The GHP petitioner has not demonstrated the external identifications of a State-recognized Golden Hill entity applied to the petitioner's components as a whole on a substantially continuous basis since 1900. Thus, this FD reverses the conclusion of the PF, and now finds that the GHP petitioner does not meet the requirements of criterion 83.7(a).

Criterion 83.7(b) requires the GHP petitioner to demonstrate that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF concluded that only the portion of the petitioner's membership claiming descent from the historical Golden Hill Indians, and not the portion claiming descent from the historical Turkey Hill, had met criterion 83.7(b) up to 1823, when the State-appointed overseer took the last known census of the historical Golden Hill group. For the time since, GHP did not provide for the PF sufficient evidence to establish that a predominant portion of the group comprised a distinct, continuous community. Between 1824 and around 1850, the historical group lost its social cohesion and ceased to exist as a distinct community. For the period roughly from 1850 to 1973, the available evidence for the PF indicated the group was little more than a small family composed of individuals who claimed descent from the historical Golden Hill group. For the period since 1973, when the group expanded somewhat in membership, there was insufficient

evidence for the PF that a predominant portion of its membership had significant social interaction. Most evidence of social community for the modern period was limited to a small group of members, at times only a few individuals, who were closely related.

Regarding the portion of the GHP petitioner that claimed descent from a Turkey Hill entity, the PF concluded that the families at the Turkey Hill reservation evolved from the historical Paugussett proper, while those living at the Golden Hill reservation were originally part of the historical Pequannock, a separate tribe. The colonial (and later State) authorities viewed and identified the historical Turkey Hill as a separate entity from the Golden Hill reservation. There was insufficient evidence for the PF of consistent interactions and significant social relationships between the historical Turkey Hill and Golden Hill groups after the establishment of their reservations in the 1600's. The PF encouraged the petitioner to submit evidence that demonstrated such interactions and relationships, or to demonstrate the amalgamation of the two groups. Similarly, the evidence for the PF did not demonstrate that the historical Golden Hill exercised any political influence or authority over the historical Turkey Hill group, or vice versa. The evidence did not show the two groups functioning as a single autonomous political entity. The PF encouraged the petitioner to submit evidence of political amalgamation.

In its comments, the GHP petitioner submitted a report that claims the tribes of the lower Housatonic River were part of a "Greater Wappinger Confederacy" during the colonial period. The petitioner contends that the membership of these tribes in this confederacy demonstrated that the historical Golden Hill Indians and the historical Turkey Hill Indians were one entity. The FD finds that the available evidence does not demonstrate that this "Greater Wappinger Confederacy" containing the lower Housatonic River tribes existed or that the historical Golden Hill Indians of Fairfield County and the historical Turkey Hill Indians of New Haven County existed together as one tribe during the colonial period. Nor does the evidence indicate the Golden Hill and Turkey Hill were part of a "Paugussett" confederacy or single nation or tribe. Further, the evidence presented for the existence of this "Greater Wappinger Confederacy" does not demonstrate the existence of significant social interaction between the historical Golden Hill and the historical Turkey Hill during the colonial period following the creation of their separate reservations in the 17th century. This FD affirms the conclusions of the PF that there was insufficient evidence that the historical Golden Hill and Turkey Hill were a community or separate communities that amalgamated.

An analysis of the evidence for both the PF and the FD, particularly various State documents dating from 1791 to 1910, indicates that the historical, State-recognized Turkey Hill Indians ceased to exist socially and politically around 1825–1826, after the sale of their reservation in Orange (New Haven County), Connecticut. The available evidence indicates that Connecticut did not maintain a continuous relationship or a State-recognized reservation with a Turkey Hill group after that time. Afterwards, the State dealt only sporadically with individuals identified in State documents as Turkey Hill descendants. There is no available evidence to show that after 1825 the historical Turkey Hill had any significant social interaction with itself, or a Golden Hill group, or that the State ever recognized a combined Turkey Hill and Golden Hill entity. Thus, the activities of individuals identified as Turkey Hill Indians in State documents from 1791 to 1910 do not demonstrate community during those years.

The GHP petitioner submitted a report that asserts to demonstrate the existence of a "tribal society" of "Paugussett Indians" called "Little Liberia" in the south end of Bridgeport, Connecticut, during the 19th century, to show the continued existence of a distinct community among its claimed antecedents during the 19th century. The available evidence does not support this claim. The available evidence does not demonstrate the "Little Liberia" neighborhood of 19th century Bridgeport was a Golden Hill, Turkey Hill, "Paugussett," or Indian community, or that it contained such an entity within its boundaries. The evidence shows it was a community of African Americans, composed mainly of former slaves and migrants from rural Connecticut or the southern states, a few of whom might have had Indian ancestry. The available evidence shows that this community was established in the 1820's largely by and for African Americans and not Native Americans.

The Federal acknowledgement regulations require that the evidence for criterion 83.7(b) demonstrate that a predominant portion of the petitioning group comprises a distinct community and has existed as a community since historical times. Under 83.1, the regulations define community as "any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers." The evidence submitted is insufficient to demonstrate that "Little Liberia" was a community antecedent to the GHP petitioner. Therefore, evidence of social relationships interaction in Bridgeport's "Little Liberia" in the 19th century and later does not demonstrate community for the GHP petitioner.

The GHP petitioner submitted information on a man named Joel Freeman, a prominent member of the "Little Liberia" community. The petitioner maintains that this man links the Bridgeport community and the Turkey Hill Indians of Derby. However, the petitioner has submitted no evidence to demonstrate that the "Joel Freeman" of the "Little Liberia" community was the same "Joel Freeman" listed as an heir-at-law of the Indian John Howd (an Indian associated with the Naugatuck reservation in Derby, Connecticut). No other documentation has been presented to link "Joel Freeman" to any other Turkey Hill, Naugatuck or Paugussett Indians.

The GHP petitioner also has not been able to demonstrate that the claimed Tinney family descends from either the Turkey Hill Indians or the descendants of John Howd, or that the Tinney descendants were a separate Indian entity that amalgamated with the Golden Hill or were part of the GHP prior to 1999. Further, the GHP petitioner has not demonstrated that this family interacted with or maintained contact with the Golden Hill descendants throughout the 20th century. With the exception of one Tinney descendant mentioned in the organization's documents during the early 1970's (who identified himself at the time as a "Pequot" rather than as a "Golden Hill Paugussett"), there is no evidence that any other members of the Tinney family associated with the GHP group until 1999. Finally, the documentation submitted by the State in its comments regarding the Turkey Hill descendants provides evidence contrary to the arguments advanced by the GHP petitioner regarding the descent of the Tinney family. The GHP petitioner did not submit any response to the State's documentation, although some of the archival material contradicts the claims made in the GHP petitioner's submission.

The GHP petitioner has not addressed specific concerns raised in the PF regarding community during the 19th

and 20th centuries with sufficient evidence. The petitioner submitted a number of Oral History Questionnaires to OFA without context, explanation, or analysis. The petitioner also did not include any new probative interviews in this submission.

The GHP petitioner submitted documentation for criterion 83.7(b) that does not demonstrate community among the portion of the group claiming descent from the historic Golden Hill Indians after 1823, or the portion claiming descent from the historic Turkey Hill Indians at any time after 1825. The GHP petitioner did not provide evidence that shows community among a combined Golden Hill/Turkey Hill entity at any time. The evidence submitted regarding the "Little Liberia" community is not supported with acceptable evidence and does not demonstrate community for "Paugussett" or other Indians antecedent to the petitioner. The evidence submitted for the 20th century does not show community among either group of descendants until the 1970's, and then only for the Sherman descendants (the portion of the petitioner claiming descent from the Golden Hill Indians). With the exception of one person (Fred Tinney), the two portions of the petitioner did not demonstrate any interaction until 1999, when the Tinney descendants enrolled with the GHP. Even for the period after their enrollment in 1999, the petitioner has provided insufficient evidence of significant levels of interaction with to demonstrate community. This FD affirms the conclusion of the PF that the petitioner does not meet criterion 83.7(b) since 1823. Thus, the GHP petitioner does not meet criterion 83.7(b) from historical times to the present.

Criterion 83.7(c) requires the petitioner to demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The PF concluded that only the portion of the GHP petitioner claiming descent from the historical Golden Hill, and not the portion claiming decent from the Turkey Hill, met criterion 83.7(c) up to 1802, when the overseer sold the last sections of the State reservation with the historical Golden Hill group's approval. The GHP petitioner did not provide sufficient evidence to meet the criterion since 1802. Further, from 1824 to around 1850, the available evidence for the PF indicated the historical Golden Hill's known survivors lost political influence. From the early 1850's to around 1973, the available evidence for the PF did not indicate there was an Indian entity or individuals who functioned as leaders within a group political process. Since 1973, the available evidence for the PF indicated the leadership was limited to a small number of family-appointed leaders, or part of a small family group, but that evidence was not sufficient to demonstrate bilateral relationships with the rest of the membership.

The GHP petitioner's comments objecting to the PF's findings that the Golden Hill and Turkey Hill were separate political and social entities are discussed under criterion 83.7(b). In summary, since the historical Turkey Hill and historical Golden Hill were separate entities, evidence of political influence within one entity does not provide evidence for the other.

The petitioner has submitted very little documentation in its comments in support of criterion 83.7(c). Some of the new assertions regarding leadership, such as those concerning Joel Freeman and the "Little Liberia" community, are based on incomplete or invalid documentation. Other contentions, such as the "chieftainships" of two men named Rensselaer Pease and George Freeman, are not supported by documentation. However, documentation submitted by the State has provided evidence that negates claims made by the petitioner that the Turkey Hill Indians and/or the John Howd descendents were subject to any leadership from the Golden Hill descendants; in fact, two of the three named and documented Turkey Hill descendants stated in 1910 that the Turkey Hill tribe had long since ceased to exist as a political entity and made no mention of the Golden Hill descendants.

The GHP petitioner presented additional evidence for the 20th century that is not sufficient to answer the questions posed by the PF. The GHP petitioner has reiterated that a woman named Ethel Sherman acted as a "tribal" leader, but has not submitted any evidence in its comments demonstrating that she advocated for any members of the group other than her own children or grandchildren. The GHP petitioner has not submitted evidence to demonstrate that the GHP group supported or was aware of a 1933 "ceremony" where Ethel Sherman is reported to have assumed the title of "chieftess." The 1934 notice of a "meeting" held by Ethel Sherman is insufficient to demonstrate any political authority because it gives no additional information about what may have occurred or who may have attended.

The GHP petitioner submitted other documentation regarding leadership under Aurelius Piper Sr. after 1973 and Aurelius Piper Jr. after 1993. This evidence is insufficient also to indicate a bilateral relationship between the group's members. Little indication of input from the group's membership on issues of importance to the group is found in this evidence. The GHP petitioner submitted documentation that is substantively the same as it had included in previous submissions, and contained little new information regarding this time period.

The GHP petitioner also has not provided any new information regarding the Tinney descendants. There is little to no information for any Tinney descendants other than one member's brief period of involvement with the group during the 1970's, which was described in the PF. Further, the available evidence does not demonstrate involvement of the Tinney family in the political processes of the group since their enrollment in 1999. Finally, the petitioner has not been able to explain with the available evidence the absence of the Tinney descendants in the group prior to the late 1990's. For the above reasons, this FD affirms the conclusion of the PF that the petitioner does not meet criterion 83.7(c) since 1802.

The PF concluded that the Colony and later State recognized a Golden Hill entity from colonial times to the present. Yet, the PF also concluded that the particular relationship of the State to the GHP group, in combination with the limited direct evidence for community and political process that was still so limited, was not sufficient evidence to demonstrate that criteria 83.7(b) and (c) were met. The Department has issued two decisions that have significant bearing on the role of continuous State recognition and its use as evidence with regard to political influence to satisfy the requirements of criterion 83.7(c). In the Historical Eastern Pequot (HEP) FD, issued in June 2002, the Department determined that the existence of a continuous relationship between the State and the HEP provided evidence, when considered with other available evidence for a historical time period, to satisfy the requirements of criteria 83.7(b) and (c).

In the Schaghticoke (STN) FD, issued January 28, 2004, the Department further defined the evidentiary value of continuous State recognition. In STN, the petitioner presented substantial evidence of political influence and social community. However, the STN petitioner did not have direct documentary evidence regarding political influence for two significant time periods (1820–1840 and 1892–1936). The STN petitioner did have a continuous relationship with the State,

and met criterion 83.7(b). In the STN FD, the Department determined that an active, continuous relationship between a State and a petitioning group could itself constitute evidence sufficient to satisfy the requirements of criterion 83.7(c) under these circumstances.

Whether a State's continuous recognition of a tribe and the resulting political relationship constitute evidence sufficient to satisfy the requirements of section 83.7(c) depends on the specific facts presented by the petitioner. In the case of GHP, the petitioner has enjoyed a continuous relationship with the State from colonial times to the present. The historical Golden Hill tribe first occupied one reservation set aside by the State in 1639, which was sold in 1802. GHP later occupied another reservation set aside by the State in 1933, which was quit-claimed to the State by William Sherman in 1886. Overseers have been appointed by the State to manage Golden Hill accounts.

The existence of a continuous State relationship can constitute evidence because it is at its core a recognition that a group exists as a political entity. But the nature of the State's recognition is as important as the historical, factual basis of a petition submitted by a group. Here, the continuous State relationship with the GHP is not as vigorous as the relationships documented in the FD's for the HEP and STN. Here also, the documentary evidence is not sufficient for a significantly longer period of time than in either the HEP or STN case. In fact, there is little evidence of political influence since 1802, or social community since 1823 to the present. Without more evidence of social and or political influence, a finding that the continuous State relationship itself is sufficient to satisfy criterion 83.7(c) from 1802 to the present, a period of 202 years cannot be supported.

This is not to say that a continuous State relationship cannot be evidence in itself for criterion 83.7(c). As in STN, where significant documentary records acted as evidentiary bookends, the State's relationship can be sufficient evidence of the petitioning group's political existence when criterion 83.7(b) is met. Thus, the State's continuous recognition of a group can mean that the group is a political entity. However, at some point, a political entity must exist and function on its own, through its membership. Where an entity exercises political influence some autonomous political activity over its members must exist. In the case of GHP, there is scant evidence of autonomous political influence over its members after 1802. Without more substantial evidence of political activity since then, the continuous State relationship cannot substitute.

Criterion 83.7(d) requires the petitioner to provide a copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures. The GHP meets the requirements of criterion 83.7(d) because it submitted a copy of its 2003 constitution that included a description of its membership criteria.

Criterion 83.7(e) requires the petitioner to demonstrate that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity, and that the petitioner submit a complete list of its membership. The GHP petitioner submitted a membership list dated January 2004 containing the names, birth dates, residential addresses, and maiden names of 108 individuals (one name was duplicated, making 109 on the original list). The list was separately certified by four of the five GHP council members on January 23, 2004. This list comprises the GHP's base membership roll and its present membership for Federal purposes.

Twenty-seven individuals (25 percent of the membership) descend from William Sherman (1825–1886) and his wife Nancy Hopkins (1832–1903): including 4 members (4 percent) who descend from their daughter Caroline (Sherman) Bosley (1865–1927), and 23 members (21 percent) who descend from their granddaughter Ethel (Sherman) Piper Baldwin (1893–1993), daughter of George William Sherman (1862–1938). The petitioner claims that William Sherman was a descendant of the historical Golden Hill Indians. The GHP has not submitted sufficient evidence to demonstrate by a reasonable likelihood of the validity of the facts that William Sherman, his wife, or any of his descendants descend from a member or members of the historical Golden Hill tribe or from historical tribes that combined and functioned as a single autonomous political entity. The petitioner has not submitted sufficient documentation to connect William Sherman to the historical Golden Hill Indians listed on the State overseer's 1823 census or any other State documents in the available evidence that identified the Golden Hill group.

Nine individuals (8 percent of the membership) descend from John Henry Burnie (a.k.a. Ernest H. Sherman) (1907–1945) and his wife Florence Irene Loper (1908–1985). The GHP petitioner claims that John Henry Burnie (a.k.a. Ernest H. Sherman) was a great-grandson of William Sherman and his wife Nancy Hopkins, through their son George William Sherman (1862–1938) and his wife Harriet Curtis (?–1904), and through George's son Edward L. Sherman (1888–1974) and his wife Eva Hungerford (dates unknown). However, the available evidence indicates that John Henry Burnie (a.k.a. Ernest H. Sherman) was the son of Eva Hungerford and another man, possibly James Hubbard, and was not the son of Edward L. Sherman. The petitioner has not submitted sufficient evidence to demonstrate by a reasonable likelihood of the facts that John Henry Burnie (a.k.a. Ernest H. Sherman), his wife, or any of his descendants descend from William Sherman, from George William Sherman, from Edward L. Sherman, or from a member or members of the historical Golden Hill tribe or from historical tribes which combined and functioned as a single autonomous political entity.

Sixty-eight individuals (63 percent of the membership) descend from Mary Louise Allen (1870–1965) and her husband Charles William Tinney (1866–1926). The petitioner asserted that Mary Louise Allen was a descendant of the historical Turkey Hill Indians. However, the GHP has not submitted sufficient evidence to demonstrate by a reasonable likelihood of the validity of the facts that Mary Louise Allen descends from the historical Turkey Hill Indians. In its comments, the State submitted court documents from 1909–1910 indicating that neither of Mary Louise Allen's parents, Levi Allen (1795–1865) and Delia (Myrick/Merrick) Phillips (1797–1890), was a descendant of the historical Turkey Hill tribe. In addition, the available evidence does not demonstrate that the historical Golden Hill Indians and the historical Turkey Hill Indians ever combined and functioned as a single autonomous political entity.

Finally, four individuals (4 percent of the membership) are of unknown ancestry. The petitioner did not submit evidence to connect these individuals genealogically with any of the above-named groups of descendants.

The GHP did not provide evidence acceptable to the Secretary to demonstrate the reasonable likelihood of the validity of the facts that any of the 108 individuals on the January 2004 GHP membership list descend from the historical Golden Hill Tribe or from historical Indian tribes that combined and functioned as a single autonomous

political entity. Therefore, the conclusion in the PF, that the GHP do not meet criterion 83.7(e), is affirmed.

Criterion 83.7(f) requires the petitioner demonstrate that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. The available evidence does not demonstrate that any members of the GHP are enrolled with any federally acknowledged North American Indian tribe. Neither the petitioner nor the interested parties provided further comments or evidence pertaining to this criterion. Therefore, the conclusion in the PF that the GHP meets criterion 83.7(f) is confirmed.

Criterion 83.7(g) requires the petitioner demonstrate that it is not the subject of congressional legislation expressly terminating or forbidding the Federal relationship. There has been no Federal termination legislation regarding the GHP. Neither the GHP nor the interested parties provided further comments or evidence pertaining to this criterion. Therefore, the conclusion in the PF that the GHP meets criterion 83.7(g) is affirmed.

Under Section 83.10(m), the PD AS–IA is required to decline to acknowledge that a petitioner is an Indian tribe if the petitioner fails to satisfy any one of the seven mandatory criteria for Federal acknowledgment. The GHP petitioner did not submit evidence sufficient to meet criteria 83.7(a), (b), (c), and (e), and, therefore, does not satisfy the requirements to be acknowledged as an Indian tribe in order to establish a government-to-government relationship with the United States.

This determination is final and will become effective 90 days from publication of this notice, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). These requests must be received no later than 90 days after publication of the PD AS-IA's determination in the **Federal Register** (section 83.11(a)(2)).

Dated: June 14, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary–Indian Affairs.

[FR Doc. 04–13871 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–03–1610–PA]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for five members of its District Advisory Council to serve the 2005–2007 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations must be postmarked by Tuesday, August 31, 2004. The three-year term would begin January 1, 2005. The five positions to be filled include:

—One nonrenewable resources representative (mining interests)
—One recreation representative
—One wildlife representative
—Two public-at-large representatives

ADDRESSES: Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: Mr. Doran Sanchez, BLM California Desert District External Affairs (909) 697–5220.

SUPPLEMENTARY INFORMATION: The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11.5 million acres of public land in southern California. The Council meets in formal session two to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties. Members serve three-year terms and may be nominated for reappointment for an additional three-year term.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires the council to be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 10.4 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon that person's education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (909) 697–5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late February or early March.

Dated: May 20, 2004.

Linda Hansen,

District Manager.

[FR Doc. 04–13907 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Plan Amendment to the California Desert Conservation Area Plan of 1980 and an Environmental Assessment (EA) To Evaluate Incorporation of the Management Areas and Research Area Identified in the Flat-Tailed Horned Lizard Rangewide Management Strategy, 2003 Revision, an Arizona-California Conservation Strategy (Strategy) Into Bureau of Land Management's California Desert Area Land Use Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Bureau of Land Management (BLM) will prepare a plan amendment to the California Desert Conservation Area Plan of 1980 and an Environmental Assessment (EA) to evaluate incorporation of the Management Areas and Research Area identified in the Flat-tailed Horned Lizard Rangewide Management Strategy, 2003 Revision, An Arizona-California Conservation Strategy (Strategy) into BLM's California Desert Area land use plan.

DATES: BLM will accept written and electronic comments on the scope of the plan amendment until August 5, 2004.

ADDRESSES: You may submit comments by the following methods:

Written: Gary Taylor, BLM Strategy Plan Amendment and EA, 1661 South 4th Street, El Centro, CA 92243.

Electronic: *gtaylor@ca.blm.gov.*

FOR FURTHER INFORMATION, CONTACT: For general information, including information on how to comment, you may contact Gary Taylor, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA or phone (760) 768–4400.

SUPPLEMENTARY INFORMATION: Individual respondents may request confidentiality. If you wish BLM to withhold your name or street address, except for the city or town, from public view or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. We will honor requests to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Background Information: BLM's El Centro Field Office is one 13 participants in the conservation Strategy. BLM has signed the 2003 Strategy as well as the previous 1997 Strategy. Because the Strategy requires a formal designation of the flat-tailed horned lizard (FTHL) Management Areas (MAs) and Research Area (RA), BLM proposes to evaluate formally incorporating the MAs and RA into BLM's CDCA Plan.

The Strategy identifies and prioritizes numerous planning actions. Planning Actions 1.2, 1.3, 1.4, and 1.6 specifically identify the action to designate and complete the NEPA process for the East Mesa FTHL MA, West Mesa FTHL MA, the Yuha Desert FTHL MA, and Ocotillo Wells FTHL RA as shown in Figures 5–7, 9 in the Strategy. The Management Implementation Schedule identifies these planning actions as "Priority 1: An action that must be taken in the near term to conserve the species and prevent irreversible population declines." Because the Strategy is clear on the exact locations and boundaries for the MAs this plan amendment and EA will evaluate the East Mesa FTHL MA, West Mesa FTHL MA, the Yuha Desert FTHL MA and the Ocotillo Wells RA as described in the Strategy. BLM has considered changing the boundaries of the MAs and the RA, but has decided to limit the scope of this plan amendment and EA to evaluating the Strategy as signed in 1997 and 2003.

The Plan amendment and EA will identify the preferred action as adopting the 3 MAs and one RA as identified in the Strategy. The EA will also address the no-action alternative of not adopting the MAs and the RA. The no-action alternative will not result in a Plan Amendment. Under the no-action alternative, BLM will continue to apply the Strategy to projects on a case by case basis, but would not formally adopt the MAs and the RA.

As currently envisioned, the Plan amendment and EA will include the resource disciplines listed: wildlife and wildlife habitat including, vegetation, wilderness, ACECs, recreation, social, economic and demographics. The Plan amendment and EA will also address the direct, indirect, and cumulative impacts associated with the Strategy.

The BLM anticipates that the plan amendment process will be completed in approximately four months. Additional opportunities for public involvement, including a schedule of any public meetings, will be announced separately from this notice.

Lynette Elser,

Acting Field Manager.

[FR Doc. 04–13908 Filed 6–18–04: 8:45 am]

BILLING CODE 1610–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–04–1610–DO]

Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the Ukiah Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Field Office in Ukiah, California, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the public lands and resources under its jurisdiction. This notice initiates the public scoping process. Public scoping meetings, to identify relevant issues, will be announced in advance through BLM's Web site and in local news media.

DATES: Public meetings will be held throughout the planned scoping and preparation period. In order to ensure local community participation and input, open houses will be held in locations most closely affiliated with the public lands in the planning area. All public meetings will be announced through local news media, newsletters, and the BLM Web site *http://www.ca.blm.gov/ukiah* at least 15 days prior to the event.

ADDRESSES: You may submit comments by August 5, 2004 by any of the following methods:

- Web site: *http://www.ca.blm.gov/ukiah*
- Email: *ca340@ca.blm.gov*
- Fax: 707–468–4027
- Mail: 2550 N. State Street, Ukiah, CA 95482–3023

Documents pertinent to this proposal may be examined at the Ukiah Field Office, which is located at the mailing address listed above. Comments, including names and street addresses of respondents will be available for public review at the Ukiah Field Office during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays, and may be published as part of the EIS.

Individual respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. BLM will not accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact David Fatch, 2550 N. State St., Ukiah, CA 95482, (707) 468–4053; email *dfatch@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The geographic area includes the public land in the State of California within the counties of Marin, Solano, Sonoma, Mendocino (south of the city of Willits), Lake, Napa, Yolo, Colusa, Contra Costa, Sacramento, and Glenn. This planning activity encompasses approximately 300,000 surface acres and an additional 214,000 sub-surface (mineral estate) of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. Comments on issues and planning criteria can be submitted in writing to the BLM at any of the public scoping meetings, or they may be submitted to the BLM at the addresses listed above. To be most helpful, formal scoping comments should be submitted within 15 days after the last public meeting, although comments will be accepted throughout the creation of the Draft RMP/EIS. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views expressed. Individuals who provide written comments may request confidentiality. If you wish to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The changing needs and interests of the public necessitate a revision to the land use plans covering the Ukiah Field Office area. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They are:

- Natural & Cultural Resources—How do we best protect and manage the natural and cultural resources on the public lands?
- Public Uses—How should public uses and activities be managed?
- Community Interlock—How do we integrate public land management with other agency and community plans?

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include rangeland management, minerals and geology, recreation, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

Dated: May 14, 2004.

Gary Sharpe,

Associate Field Manager, Ukiah Field Office.

[FR Doc. 04–13909 Filed 6–16–04; 11:08 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; CC–014233, CC–015743]

Notice of Opening Order of Reconveyed Land, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice opens approximately 120 acres of reconveyed land to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Barbara Kehrberg, Winnemucca Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca Nevada 89445 (775) 623–1500.

SUPPLEMENTARY INFORMATION: The lands described below were reconveyed to the United States on July 11, 1929, and March 31, 1916. The parcels were never opened to entry and have had a defacto withdrawal in effect since the time of reconveyance.

Mount Diablo Meridian, Nevada

CC–014233:
T. 28 N., R. 34 E.,
Sec. 1: SE¼SE¼.
CC–015743:
T. 27 N., R. 34 E.,
Sec. 13: S½S½NE¼, N½N½SE¼.

The areas described contain 120.00 acres, more or less.

At 10 a.m. on July 21, 2004, the above described land will be open to appropriation under the public land laws and mining laws, subject to valid existing rights and any other segregations of record.

Appropriation of any of the land described in this order under the public land laws and general mining laws prior to the date and time of restoration is unauthorized.

Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in the disputes between rival locators over possessory rights because Congress has provided for such determination in local courts.

Dated: May 3, 2004.

Terry A. Reed,

Field Manager, Winnemucca.

[FR Doc. 04–13911 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; NEV–060209, N–36084, N–36102, N–1647]

Notice of Termination of Segregative Effect and Opening Order for Lands Reconveyed to the United States by Private Exchange, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice terminates the segregative effect of lands reconveyed to the United States by private exchange, and opens the land to appropriation under the public land laws, including mineral leasing laws, material disposal

laws, and general mining laws, subject to valid existing rights.

EFFECTIVE DATE: June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Barbara Kehrberg, Winnemucca Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca Nevada 89445 (775) 623–1500.

SUPPLEMENTARY INFORMATION: The following lands were reconveyed to the United States by private exchange under Section 8 of the Taylor Grazing Act of June 28, 1934. These lands are all located in the Mount Diablo Meridian, Nevada.

NEV–060209

T. 46 N., R. 35.E.,
Sec. 23: SE¼SE¼;
Sec. 24: S½SW¼, SW¼SE¼;
Sec. 25: NW¼NE¼.

N–36084

T. 47 N., R. 36 E.,
Sec. 1: S½NW¼, SE¼SE¼;
Sec. 2: SE¼NE¼, NE¼SW¼;
Sec. 3: SE¼NE¼.

N–36102

T. 35 N., R. 40 E.,
Sec. 3: Lots 3 and 4, S½NW¼, NW¼SW¼.

N–1647

T. 35 N., R. 38 E.,
Sec. 16: NE¼NW¼, E½SW¼, NW¼SW¼, S½SE¼, N½SE¼.

The total area described aggregates 1,159.56 acres.

The segregation no longer serves any purpose; accordingly, pursuant to the Act of June 28, 1934, as amended, at 10 a.m. on July 21, 2004 the above described land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

The above described lands will become open to the mineral leasing laws, material disposal laws, and location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time restoration is not authorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. State law governs activities necessary to locate and initiate a right of possession unless the state law conflicts with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights because the Mining law states that such disputes must be settled in local courts.

Dated: May 3, 2004.

Terry A. Reed,

Field Manager, Winnemucca.

[FR Doc. 04–13973 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–04–1430–ES; AZA–23804, AZA–32208]

Notice of Realty Recreation and Public Purposes (R&PP) Act Classification: Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Yavapai County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

The following described lands, located in the town of Black Canyon City, Yavapai County, Arizona, and containing approximately 93.64 acres, have been found suitable for lease or conveyance to the Yavapai County Board of Supervisors for park expansion, and to the Black Canyon City Fire Department for a community fire station:

Gila and Salt River Meridian, Arizona

T. 8 N., R. 2 E.,
Section 9, Lot 6;
Section 10, W½NW¼NE¼NW¼, W½SW¼NE¼NW¼, E½NE¼NW¼NW¼, E½W½NE¼NW¼NW¼, E½SE¼NW¼NW¼, E½W½SE¼NW¼NW¼, SW¼NW¼

The lease or conveyance would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights for a 1,266-foot road easement granted under RS–2477 to the Yavapai County Engineer by right-of-way number AZA–00543.

5. Those rights for a transmission line granted to the Arizona Public Service Company by right-of-way number AZA–06014.

6. Those rights for a telephone/telegraph line granted to the Qwest Corporation by right-of-way number AZA–06273.

FOR FURTHER INFORMATION CONTACT: Jo Ann Goodlow, BLM Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, (623) 580–5548.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance, or classification of the lands to the Field Manager, Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the park expansion for Yavapai County Board of Supervisors, and the community fire station for the Black Canyon City Fire Department. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: May 12, 2004.

Teresa A. Raml,

Field Manager.

[FR Doc. 04–13910 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement for Hunting on the Cape Cod National Seashore

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) will prepare an Environmental Impact Statement (EIS) assessing current hunting policy and potential alternative policies for effects on natural resources, user conflicts, socioeconomics, and social aspects of the Cape Cod National Seashore (CACO). The NPS will solicit public and agency comments regarding the proposed alternatives and the preferred alternative. The NPS will prepare a draft and a final EIS prior to preparing a Record of Decision (ROD).

DATES: The NPS, in conjunction with an interdisciplinary team of scientists, proposes the following general schedule to make the public aware of the timing of the public commenting periods. Through June 2004, the NPS will conduct scoping meetings to solicit public and regulatory agency comments, to inform the public of the EIS, and to produce a final scoping report. Concurrently, the NPS and its interdisciplinary team will conduct studies, some of which are ongoing, to assess the consequences of the proposed alternatives. The NPS anticipates issuing a draft EIS in December 2004 for further public and agency comment during January–February 2005. Consideration of those comments and the results of any additional studies will be used to prepare a final EIS, which is anticipated to be issued in May 2005. A ROD will be prepared documenting the NPS decision, which is scheduled for August 2005.

ADDRESSES: Written comments should be addressed to Superintendent, Cape Cod National Seashore, 99 Marconi Station Site Road, Wellfleet, MA 02667. Comments may also be electronically mailed to *nancy_finley@nps.gov* (please note that there is an underscore "_" between the first and last names). The draft and final EIS documents and the ROD will be made available on the CACO Web site at *http://www.nps.gov/caco/pphtml/documents.html*. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address. The public is advised that individual names and addresses may be included as part of the public record.

FOR FURTHER INFORMATION CONTACT: Nancy Finley, Chief of Natural Resources Management (see address above) at 508–349–3785.

SUPPLEMENTARY INFORMATION:

Background

Regulatory and Management Background of Hunting in CACO

The legislation that created CACO (Pub. L. 87–126, Section 7c) authorizes the Secretary of the Interior to permit hunting and to prepare hunting regulations, subject to consultation with any other government agency having authority over hunting activities.

Current Hunting Policy

Hunting has been a part of the fabric of life on Cape Cod for years. Traditional hunting experiences include waterfowl, white-tailed deer (*Odocoileus virginianus*), and small game hunting. Hunting for a variety of species is allowed on CACO in conformance with federal, state, and CACO regulationsand other migratory game bird hunting regulations, while the Massachusetts Division of Fish and Wildlife (MDFW) sets deer and small game hunting regulations. State regulations restrict hunting and possession of a loaded weapon within 500 feet of any building and within 150 feet of an established bicycle trail. Other selected areas are closed to hunting for safety or ecological reasons. All hunting is prohibited from March 1 through August 31 of each year. Ring-necked pheasants (Phasianus colchicus) are stocked by the MDFW in selected areas on CACO for hunting. This stocking program has been ongoing since the 1940's.

Hunting Policy and NEPA Compliance

The CACO hunting policy was challenged by some citizens' groups regarding compliance with NEPA (the National Environmental Policy Act of 1969). The general hunting program is ongoing, but the pheasant stocking program was enjoined by court order. The effects of both of these programs on ecological parameters, hunter use, and socioeconomics will be studied and considered under a variety of alternatives during the EIS process.

Proposed Action

The NPS is preparing an EIS and is in the process of soliciting agency and public comments, completing several studies on the effects of hunting on various parameters, and analyzing various proposed hunting policy alternatives.

Possible Alternatives

The NPS will consider several alternatives regarding the hunting policies at CACO. These alternatives will be determined through the public and agency input or the scoping process. The No Action alternative, retaining current hunting management practices, is a requirement of NEPA and will be included in the EIS.

The Scoping Process

The hunting program at Cape Cod National Seashore has been the subject of community discussion for some time. Aspects of hunting programs have been evaluated in the park's General Management Plan (GMP) and were subject to comment during the EIS for the GMP (1998). The hunting program was challenged by citizens' groups, and this challenge in court precipitated public comment and a public meeting March 21, 2001. An information meeting was conducted on May 11, 2004, where the community was informed about the park's hunting program. This input will be carried forward in the public scoping and will be considered as part of the public input.

The NPS and the interdisciplinary team will schedule one public scoping meeting, which will be given advanced public notice. During this meeting the public will have the opportunity to provide comments on the proposed alternatives, studies, and NEPA process. The public will also have the opportunity to hear from the NPS and the interdisciplinary team regarding the purpose of the EIS, background relating to the alternatives, the CACO mission statement, hunting policy, cooperation with other agencies, and details of the ongoing studies. Other informal meetings will be held during the public scoping period to give the community the opportunity for more direct interaction with NPS on the issue. These public scoping meetings will be announced locally and in the Boston area through the news media and on the park's Web site.

Authority

The EIS is being prepared to comply with NEPA (42 U.S.C. 4332(2)(C)) and regulations issued by the President's Council on Environmental Quality (40 CFR Parts 1500–1508).

Dated: June 15, 2004.

Bernard C. Fagan,

Deputy Chief, National Park Service Office of Policy.

[FR Doc. 04–13922 Filed 6–18–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Commercial Services Plan and Final Environmental Impact Statement, Glacier National Park, MT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Final Commercial Services Plan, Glacier National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service announces the availability of the Final Environmental Impact Statement for the Final Commercial Services Plan, Glacier National Park, Montana.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: The Final Commercial Services Plan and Final Environmental Impact Statement will be available for public inspection in the office of the Mick Holm, Superintendent, Glacier National Park, West Glacier, MT 59936 (406) 888–7901, on the Internet at *http://www.nps.gov/glac* under Management Documents, and at the following locations.

Glacier National Park, Hudson Bay District Office, St. Mary, MT 59417, (406) 732–7707.
Project Management Office, Glacier National Park, West Glacier, MT 59936, (406) 888–7972.
Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, PO Box 25287, Denver, CO 80225–0287, (303) 969–2851 or 2377.
Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington DC 20240, (202) 208–6843.
Bozeman Public Library, 220 East Lamme, Bozeman, MT 59715.
Browning Public Library, PO Box 550, Browning, MT 59417.
Butte County Library, 226 W. Broadway, Butte, MT 59701.
Cardston Public Library, 25 3rd Avenue West, Cardston, Alberta Canada TOK OKO.
Choteau Public Library, 17 North Main Avenue, Choteau, MT 59422.
Columbia Falls Branch Library, 120 6th Street West, Columbia Falls, MT 59912.
Cut Bank Library, 21 1st Avenue SE, Cut Bank, MT 59427.
Flathead County Library, 247 1st Avenue East, Kalispell, MT 59901.
Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401.
Lethbridge Public Library, 810–5 Avenue South, Lethbridge, Alberta, Canada T1J 4C4.
Lewis and Clark Library, 120 South Last Chance Gulch, Helena, MT 59624.
Missoula Public Library, 301 East Main, Missoula, MT 59802.
Parmly Billings Library, 501 North Broadway, Billings, MT 59101.
Pincher Creek Municipal Library, 895 Main Street, Pincher Creek, Alberta, Canada TOK 1WO.
Waterton Lakes National Park, Park Administration Building, 215 Mountain View Road, Alberta, Canada TOK 2MO.
Whitefish Branch Library, 9 Spokane Avenue, Whitefish, MT 59937.

FOR FURTHER INFORMATION CONTACT: Mary Riddle, Glacier National Park, 406–888–7898.

Dated: April 29, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–13923 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–HX–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces three public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App.2).

DATES: Thursday, September 9, 2004, at 7 p.m.

ADDRESSES: Grey Towers National Historical Landmark, U.S. Route 6, Milford, Pennsylvania 18337.

The agenda will include reports from Citizen Advisory Commission members including Commission committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

DATES: Saturday, November 13, 2004, at 9 a.m.

ADDRESSES: New Jersey District Office, Route 615, Walpack Center, New Jersey 07881.

The agenda will include reports from Citizen Advisory Commission members including Commission committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

DATES: Thursday, January 13, 2005, at 7 p.m.

ADDRESSES: Bushkill Meeting Hall, U.S. Route 209, Bushkill, Pennsylvania 18324.

The agenda will include reports from Citizen Advisory Commission members including Commission committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–588–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: May 13, 2004.

John J. Donahue,

Superintendent.

[FR Doc. 04–13924 Filed 6–18–04; 8:45 am]

BILLING CODE 4312–J6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from an unknown location along the Missouri River near Chamberlain, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

According to museum records, human remains representing a minimum of one female individual were removed at an unknown date from an unknown site probably along the Missouri River in Brule or Lyman County near Chamberlain, SD. The museum has no other information regarding the removal of the human remains. At an unknown date and by unknown means, the human remains arrived at the Sioux Trading Post located in Chamberlain, SD. In 1964, Mary W.A. Crane and Francis V. Crane obtained the human remains from the Sioux Trading Post. In 1983, the Cranes donated the human remains to the museum, which accessioned the human remains into the collection the same year. No known individual was identified. No associated funerary objects are present.

The human remains were identified as Native American by physical anthropologists at the museum. A hand-written note accompanying the human remains identifies the human remains as Arikara from the Precontact period. The interment most likely dates to between A.D. 1100 and 1820. Archeological, ethnohistoric, and ethnographic sources confirm the presence of Arikara people in central South Dakota near Chamberlain during the Prehistoric, Protohistoric, and Historic periods. The Arikara were the most numerous Native American group along the Missouri River in South Dakota from about A.D. 1100 until sometime after 1800 when the Arikara were driven north into present-day North Dakota by the Sioux. In North Dakota, the Arikara joined with the Hidatsa and Mandan tribes and today are known as the Three Affiliated Tribes of the Berthold Reservation, North Dakota.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identy that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ella Maria Ray, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205 telephone (303) 370–6056, before July 21, 2004. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Three Affiliated Tribes of the Fort Bethold Reservation, North Dakota that this notice has been published.

Dated: May 7, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–13928 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–50–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Field Museum of Natural History, Chicago, IL, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.8 (f). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in the notice.

The 19 cultural items are 18 carved charms and 1 carved baton.

In the following list, origin, collection, and acquisition information is derived from museum records. The first charm (catalog number 14300), identified as Tlingit and acquired in Alaska, is ivory with incised details representing a monster. The second charm (catalog number 14301), acquired in Alaska, is bone with a perforation on the top, depicts two heads of a monster, and has incised details and perforations as part of the design. The third charm (catalog number 14303), collected in Alaska, is ivory with incised details and depicts an animal or monster. The fourth charm (catalog number 14306), identified as from the Northwest Coast, is ivory inlaid with abalone with a perforation for suspending. The fifth charm (catalog number 14308), identified as Tlingit from Chilcot, AK, is ivory with incised details and inlaid with abalone shell depicting a frog. The sixth charm (catalog number 14310), identified as Tlingit and collected in Alaska, is ivory with a perforation, and is carved in the shape of an animal's head with human faces carved beneath its ear. The seventh charm (catalog number 14311), identified as Tlingit from Alaska, is ivory depicting a fish with a man on his back face upward, and is perforated at the tail. The eighth charm (catalog number 14316), identified as Tlingit from the Northwest Coast, is ivory with incised and relief details, is perforated near the center of its back, and depicts a land otter holding a human. The ninth charm (catalog number 14317), identified as from the Northwest Coast, is ivory and depicts an animal that has a mask on its belly and a brass eyelet attached to its back. The 10th charm (catalog number 14319), collected in Alaska, is a bear tooth carved in the shape of a fish. The mouth of the fish is wide open and there are four curved lines at each corner of the mouth. The fish is perforated on the dorsal fin. The 11th charm (catalog number 14321), identified as from

Alaska, is a sea lion's tooth carved to represent a sculpin and has a perforation on the top of the sculpin's back. The 12th charm (catalog number 14324), collected in Alaska, is a bear's tooth with incised details and a perforation near its center. The 13th charm (catalog number 14326), identified as Tlingit and acquired in Alaska, is a totemic carving on a bear's tooth with a perforation at one end. The 14th charm or hairpin (catalog number 14332), identified as Tlingit, is ivory carved in the shape of a hawk and a man, and is inlaid with abalone shell and has incised designs. The 15th charm (catalog number 14334), identified as from Alaska, is a bear's tooth with incised designs. The 16th charm (catalog number 14338), identified as Tlingit, is ivory with incised designs and depicts a land otter. One eye of the land otter is inlaid with abalone. The 17th charm (catalog number 14339), identified as from the Northwest Coast, is ivory and depicts a mythical sea monster devouring a man. The U-shaped sculpture depicts a man's head and arms protruding from the mouth of a serpent-like monster. The 18th charm (catalog number 268759) is ivory inlaid with abalone, and depicts a raven figure with a kneeling human and reclining bird figure on top. The baton (catalog number 14394), identified as Tlingit, is wood carved at one end to depict the head of an animal.

At an unknown date, Edward E. Ayer acquired 17 of the charms and the 1 baton. In 1894, Mr. Ayer donated one charm to the Field Museum of Natural History (catalog number 14308) and it was accessioned into the museum's collection in the same year (accession number 141). In 1896, Mr. Ayer donated 16 charms and the 1 baton to the Field Museum of Natural History and they were accessioned into the museum's collection in the same year (accession number 112). Museum records do not indicate how Mr. Ayer acquired the cultural items.

At an unknown date, Mr. and Mrs. Theodore W. Van Zelst acquired one charm (catalog number 268759). In 1978, Mr. and Mrs. Van Zelst donated the charm to the Field Museum of Natural History and it was accessioned into the museum's collection in the same year (accession number 3389). Museum records do not indicate how Mr. and Mrs. Van Zelst acquired the cultural object.

The cultural affiliation of the cultural items is Tlingit as indicated by museum records and by consultation evidence presented by the Central Council of the Tlingit & Haida Indian Tribes. Museum records variously identify the cultural items as Tlingit, from the Northwest Coast, or collected in Alaska. Consultation evidence and ethnographic literature indicate that the cultural items were removed from specific burial sites of Native American individuals, and that cultural items of this type were used only by the ixt' (shaman) of the Tlingit, and usually were placed with the deceased shaman in above-ground burials.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 19 unassociated funerary objects and the Central Council of the Tlingit & Haida Indian Tribes.

Officials of the Field Museum of Natural History assert that, pursuant to 25 U.S.C. 3001 (13), the museum has right of possession of the 19 unassociated funerary objects. Officials of the Field Museum of Natural History recognize the significance of the 19 unassociated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes and have reached an agreement with the Central Council of the Tlingit & Haida Indian Tribes that allows the museum to return the 19 unassociated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes voluntarily pursuant to the compromise of claim provisions of the museum's repatriation policy.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jonathan Haas, MacArthur Curator of the Americas, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7829, before July 21, 2004. Repatriation of the unassociated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: May 11, 2004

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–13926 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from the Gila Valley in Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

In 1934, human remains representing a minimum of three individuals were removed from the Gila Valley in Arizona, by Dr. George Woodbury and others. The human remains were donated to the Peabody Museum of Archaeology and Ethnology by the Gila Pueblo Foundation through Dr. Woodbury in the same year. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the individuals are Native American. Museum documentation describes the human remains as "modern Papago," the group that is known today as the O'odham people.

Given such a specific cultural designation, the interments likely date to the Historic or contemporary period, from the late 17th to the early 20th century. Oral tradition and historical documentation indicate that the Gila Valley in Arizona is within the aboriginal and historic homeland of the O'odham people during the Historic period. The present-day groups representing the O'odham people are the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before July 21, 2004. Repatriation of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'Odham Nation of Arizona that this notice has been published.

Dated: May 11, 2004

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–13925 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Sandoval County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1935, human remains representing a minimum of two individuals were removed from an unknown site northwest of Albuquerque, Sandoval County, NM, by Gordon Vivian. The remains were donated to the Peabody Museum of Archaeology and Ethnology by Clyde Kluckhohn in the same year. No known individuals were identified. No associated funerary objects are present.

The interments most likely date to the Historic period (post-A.D. 1540). Museum documentation describes the human remains as "Navajo" and states that they were found beneath the ground level of a hogan in "Valle Citos on the Puerco," probably Vallecito del Rio Puerco, which is located in Sandoval County, 60 to 65 miles northwest of Albuquerque, NM. Based on the specific cultural attribution and the geographical information, the Peabody Museum of Archaeology and Ethnology has determined that the human remains are most likely those of Navajo individuals. The present-day group representing the Navajo people is the Navajo Nation, Arizona, New Mexico & Utah.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before July 21, 2004. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for

notifying the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 10, 2004

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–13929 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The University Museum, University of Arkansas, Fayetteville, AR. The human remains were removed from an unknown site presumed to be in Alaska.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Arkansas professional staff in consultation with representatives of the Bering Straits Foundation, a nonprofit organization representing the interests of the Bering Straits Native Corporation. Representatives of the Bristol Bay Native Corporation; Calista Corporation; Koniag, Inc.; NANA Regional Corporation; and North Slope Borough, a governmental organization that represents the interests of Arctic Slope Regional Corporation, were also invited to consult but did not participate.

At an unknown date, human remains representing one individual were recovered from an unknown site presumed to be in Alaska. The human remains had become part of the University of Arkansas collection by 1960. The human remains consist of a skull and lower jaw of an approximately 20- to 34–year-old male. A catalog card identifies the human remains as an "skimo skull."

Eskimo, a term of uncertain derivation, was widely used to refer to Inupiaq- and Yup'ik-speaking Alaska Native populations of northern and western Alaska. Today, Alaska Natives are represented at the local level by village councils and corporations and at the regional level by regional corporations. The regional corporations with sizeable Inupiaq and Yup'ik populations are the Arctic Slope Regional Corporation; Bering Straits Native Corporation; Bristol Bay Native Corporation; Calista Corporation; Koniag, Inc.; and NANA Regional Corporation.

Officials of the University of Arkansas have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of Arkansas also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Arctic Slope Regional Corporation; Bering Straits Native Corporation; Bristol Bay Native Corporation; Calista Corporation; Koniag, Inc.; and NANA Regional Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Mary Suter, Curator of Collections, The University Museum, University of Arkansas, Museum Building, Fayetteville, AR 72701, telephone (479) 575–3456, before July 21, 2004. Repatriation of the human remains to the Arctic Slope Regional Corporation; Bering Straits Native Corporation; Bristol Bay Native Corporation; Calista Corporation; Koniag, Inc.; and NANA Regional Corporation may proceed after that date if no additional claimants come forward.

The University of Arkansas is responsible for notifying the Arctic Slope Regional Corporation; Bering Straits Foundation; Bering Straits Native Corporation; Bristol Bay Native Corporation; Calista Corporation; Koniag, Inc.; NANA Reugional Corporation; and North Slope Borough that this notice has been published.

Dated: May 11, 2004

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–13927 Filed 6–18–04; 8:45 am]

BILLING CODE 4310–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Second Review)]

Chloropicrin From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on chloropicrin from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Blair Cantfil (202–205–1888 or *Blair.Cantfil@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 9638, March 1, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 1, 2004, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 2004 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (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 Fed. Reg. 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 review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13970 Filed 6–18–04; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Arvesta Corp.; Ashta Chemicals, Inc.; Niklor Chemical Co., Inc.; and Trinity Manufacturing, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–014]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: June 28, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1082–1083 (Preliminary) (Chlorinated Isocyanurates from China and Spain)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on June 28, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 6, 2004.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 17, 2004.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14101 Filed 6–17–04; 1:10 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Special Agent Medical Preplacement.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 73, page 20038 on April 15, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 21, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Special Agent Medical Preplacement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 2300.10. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The form is used by a special agent who is applying for a position has specific medical standards. The information collected is used to determine the medical suitability to qualify for a position that has specific medical standards and physical requirements. The information will also be used to make a recommendation on either hiring or not hiring an applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated that 300 respondents, who will complete the form within approximately a 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 225 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 15, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–13919 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: application for federal firearms license (collector of curios and relics).

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 73, page 20038 on April 15, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 21, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Federal Firearms License (Collector of Curios and Relics).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 7CR (5310.16). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The form is used to determine the eligibility of the applicant to engage in certain operations (firearms classified as curios or relics to facilitate a personal collection), to determine whether the operations will be in conformity with Federal laws and regulations. The form has been revised to include the option to pay the fee for the license by credit card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated that 7,300 respondents, who will complete the form within approximately 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,825 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building,

Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 15, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–13920 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on April 7, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Digital Subscriber Line Forum ("DSL") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Digital Broadcast, Grand-Saconnex, Geneva, SWITZERLAND; AIMS (INT), Dunfermline, Fife, UNITED KINGDOM; Carrier Access Corporation, Roanoke, VA; Caspian Networks, San Jose, CA; Ellacoya Networks, Merrimack, NH; Forschungszentrum Telekommunikation Wein (FTW), Wien, AUSTRIA; Matav, Budapest, HUNGARY; P-Cube Inc., Sunnyvale, CA; TNO Telecom, Delft, THE NETHERLANDS; and Foxconn, Taipei Hsien, TAIWAN, have been added as parties to this venture. Also, 1–800 FAST DSL, La Jolla, CA; 4i2i, Bucksburn, Aberdeen, UNITED KINGDOM; Abocom, Miao-Lih Hsuan, TAIWAN; ACACIA, Saint-Peray, FRANCE; AccFast Technology Corp., Hsinchu, TAIWAN; ARESCOM, INC., Fremont, CA; ASTRI, Tsimshatsui, Kowloon, HONG KONG; AT&T Laboratories, Florham Park, NJ; Aztech Systems, Sinagpore, SINGAPORE; BI Technologies, Fullerton, CA; BroadMAX Technologies, Industry, CA; Cesky Telecom, Praha 3, CZECH REPUBLIC; Cidco Communications Corporation, Morgan Hill, CA; Delta Networks, Taipei, TAIWAN; DrayTek Corp., Hsinchu, TAIWAN; Efficient Networks, Dallas, TX; ETI, Noerresundby, DENMARK; Gatespace AB, Goteborg, SWEDEN; Harris Corporation, Camarillo, CA; Incognito Software, Vancouver, British Columbia, CANADA; Infratel Communications, Huntingdon Valley, PA; ITI Limited, Bangalore, Karataka, INDIA; Lite-On Technology, Chung-Ho 235, Taipei Hsien, TAIWAN; Next Level Communications, Jersey City, NJ; NextGenTel, Bergen, NORWAY; NTT Corporation, Chiba-shi, JAPAN; Panasonic Communications, Tokyo, JAPAN; PCCW Limited, Quarry Bay, HONG KONG; Pine-net, Broken Bow, OK; Rad Data Communications, Tel Aviv, ISRAEL; Sagem Group, Paris, FRANCE; Sumida, San Diego, CA; Sun Microsystems, Palo Alto, CA; Suttle, Eden Prairie, MN; Telefonica CTC Chile, Santiago, CHILE; Teradyne, Deerfield, IL; TUV Rheinland of N.A., Pleasanton, CA; US Robotics, Schaumburg, IL; Valo Inc., Petaluma, CA; Xilinx, San Jose, CA; and Zyxel Communications, Anaheim, CA, have been dropped as parties to this venture.

Globespan Virata, Cambridge, UNITED KINGDOM, has merged into Conexant, Red Bank, NJ.

KI Consulting & Solutions, Rudsjoterassen, SWEDEN, is now called TietoEnator, Haninge, SWEDEN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on December 31, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 24, 2004 (69 FR 8483).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13875 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Forum

Notice is hereby given that, on April 13, 2004, pursuant to section (a) of the National Cooperative Research and Production act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cable & Wireless, Bracknell, UNITED KINGDOM; Ericsson, Rijen, THE NETHERLANDS; and Teledata Networks, Herzliya, ISRAEL, have been added as parties to this venture. Also, Italtel, Settimo Milanese, ITALY; NG Technologies, Richardson, TX; and ZTE Corporation, Guangdong, PEOPLE'S REPUBLIC OF CHINA, have been dropped as parties to this ventures.

Santera Systems, Plano, TX, has changed its name to Tekelec, Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on July 28, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 15, 2003 (68 FR 48941).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13879 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Open Devicenet Vendor Association, Inc.

Notice is hereby given that, on may 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open DeviceNet Vendor Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust

plaintiffs to actual damages under specified circumstances. Specifically, Moxa Networking Co. Ltd., Taipei, TAIWAN; Microwave Data Systems, Rochester, NY; and Agilicom, Tours, FRANCE have been added as parties to this venture. Also, Qualiflow, Montpellier, FRANCE; Cosmotechs Co., Ltd., Kanagawa, JAPAN; Scientific Technologies, Inc., Fremont, CA; Mencom Corporation, Gainesville, GA; ABB Welding Systems AB, Laxa, SWEDEN; TR Controls, London, Ontario, CANADA; Wonderware Cooperation, Lebanon, OH; and Control Technology Incorporated, Knoxville, TN have been dropped as parties to this venture. The following members have changed their names: SST Division of Woodhead Canada to Woodhead Software & Electronics, Waterloo, Ontario, CANADA; Applicom International to Woodhead Software & Electronics, Waterloo, Ontario, CANADA; Cutler-Hammer, Inc. to Eaton Electrical Inc., Philadelphia, PA; and Hirschmann Electronics to Hirschmann Electronics GmbH & Co., Pine Brook, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open DeviceNet Vendor Association, Inc. intends to file additional written notification disclosing all changes in membership.

On June 21, 1995, Open DeviceNet Vendor Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on December 31, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 24, 2004 (69 FR 8483).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13876 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby give that, on May 25, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, John Kariuki (individual member), Tempe, AZ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on July 22, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 29, 2003 (68 FR 52056).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13878 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Service Creation Community (SCC)

Notice is hereby given that, on May 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Service Creation Community (SCC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenture, Dallas, TX; Airespace, San Jose, CA; Bridgewater Systems, Ottowa, Ontario, CANADA; British Telecommunications, Billericay, Essex, UNITED KINGDOM; Current Analysis, Sterling, VA; Epicenter, San Clemente, CA; Goldman, Sachs, & Co., New York, NY; InStat/MDR, Scottsdale, AZ; IP Infusion, San Jose, CA; Juniper Networks, Sunnyvale, CA; LSI Logic Storage Systems, Inc., Wichita, KS; Maranti Networks, San Jose, CA; MeTV Networks, Summerland, CA; Micromuse Inc., San Francisco, CA; Microsoft Corporation, Redmond, WA; Net.com, Fremont, CA; Oracle, St. Louis, MO; PacketExchange, London, UNITED KINGDOM; Sandial Systems, Portsmouth, NH; Siemens, Boca Raton, FL; Telechoice, Dallas, TX; Tony Fisch Consulting, Los Angeles, CA; Wandl Inc., Bound Brook, NJ; Welsh Development Agency, Cardiff, UNITED KINGDOM; and Yipes, San Francisco, CA have been added as parties to this venture. Also, ADC Telecommunications, Rumson, NJ; Ascendent Telecommunications, Inc., Encino, CA; interNetwork, Inc., San Francisco, CA; Paradyne, Largo, FL; Procket Networks, Milpitas, CA; and Radvision, Glen Rock, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SCC intends to file additional written notification disclosing all changes in membership.

On February 4, 2003, SCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26649).

The last notification was filed with the Department on January 28, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2004 (69 FR 10264).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13877 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)—Docket No. 1406]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Juvenile Justice Advisory Committee

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: OJJDP is announcing the meeting of the Juvenile Justice Advisory

Committee (JJAC) in Denver, Colorado, on July 9–10, 2004, at the meeting times and location noted below.

DATES: The schedule of events is as follows:

Friday, July 9, 2004: 9 a.m.–5 p.m. Discussion and deliberation on JJAC. Recommendations to the President, the Congress, and the Administrator of OJJDP (Public Meeting).

Saturday, July 10, 2004: 9 a.m.–10:30 a.m. If needed, further discussion and deliberation on JJAC. Recommendations to the President, the Congress, and the Administrator of OJJDP (Public Meeting). If further discussion time is not needed, subcommittees of the JJAC will meet in closed session, 10:30–11:30 a.m. Subcommittee Reporting (Open Session), 11:30 a.m.–12 p.m. Closing Remarks (Open Session).

ADDRESSES: The meeting will take place at the Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Timothy Wight, Designated Federal Official, OJJDP, by e-mail at: *Timothy.Wight@usdoj.gov*, or by telephone at (202) 514–2190 (please note that this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Juvenile Justice Advisory Committee, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The JJAC is composed of one representative from each State and territory. Their duties are to review Federal policies regarding juvenile justice and delinquency prevention; advise the OJJDP Administrator with respect to particular functions and aspects of the work of OJJDP; and advise the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the JJAC, including a list of members, may be found at *http://www.ojjdp.ncjrs.org/jjac/*.

Members of the public who wish to attend the open sessions of the meeting should register by sending an e-mail with their name, affiliation, address, phone number, and which sessions they would like to attend, to *JJAC@jjrc.org*. Individuals without access to e-mail, may call Carol Sadler at (301) 519–5245. Because space is limited, notification should be sent by June 28, 2004.

Dated: June 16, 2004.

Marilyn Roberts,

Executive Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 04–13942 Filed 6–18–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

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/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Application for Continuation of Death Benefit for Student (LS–266). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 20, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *Email bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. The Act provides for continuation of death benefits for a child or certain other surviving dependents after the age of 18 (to age 23) if the dependent qualifies as a student as defined in Section 2 (18) of the Act. Regulation 20 CFR 702.121 addresses the use of forms for the reporting of required information. The LS–266 is submitted by the parent or guardian of the dependent for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the educational institution. The information is used by the Department of Labor to determine whether a continuation of the benefits is justified. This information collection is currently approved for use through December 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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 Department of Labor seeks the approval of the extension of this information collection in order to ensure that eligible dependents may continue to receive benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefits for Student.

OMB Number: 1215–0073.

Agency Number: LS–266.

Affected Public: Individuals or households; Business or other for-profit.

Total Respondents: 43.

Total Annual responses: 43.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 22.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 15, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–13950 Filed 6–18–04; 8:45 am]

BILLING CODE 4510–CN–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Thursday, June 24, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Proposed Rule: Section 701.14 of NCUA's Rules and Regulations, Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or in Troubled Condition.
3. Proposed Rule: Part 717 of NCUA's Rules and Regulations Implementing the Fair and Accurate Credit Transactions Act of 2003, Affiliate Marketing Regulations.
4. Proposed Rule: Part 723 of NCUA's Rules and Regulations, Member Business Loans.
5. Final Rule: Parts 703 and 704 of NCUA's Rules and Regulations, Investment in Exchangeable Collateralized Mortgage Obligations.

FOR FURTHER INFORMATION CONTACT: Beck Baker, Secretary of the Board, telephone: (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14112 Filed 6–17–04; 2:29 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form BD/Rule 15b1–1, SEC File No. 270–19, OMB Control No. 3235–0012

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (the "Exchange Act") is the application form used by firms to apply to the Commission for registration as a broker-dealer. Form BD also is used by firms other than banks and registered broker-dealers to apply to the Commission for registration as a municipal securities dealer or a government securities broker-dealer. In addition, Form BD is used to change information contained in a previous Form BD filing that becomes inaccurate.

The total annual burden imposed by Form BD is approximately 8,250 hours, based on approximately 20,600 responses (600 initial filings + 20,000 amendments). Each initial filing requires approximately 2.75 hours to complete and each amendment requires approximately 20 minutes to complete. There is no annual cost burden.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth/ Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549.

Dated: June 14, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13966 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15a–4, SEC File No. 270–7, OMB Control No. 3235–0010.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15a–4 under the Securities Exchange Act of 1934 (the "Exchange Act") permits a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to continue to transact business on the exchange while the Commission reviews his or her application for registration as a broker-dealer if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden imposed by Rule 15a–4 is approximately 106 hours, based on approximately 25 responses (25 Respondents x 1 Response/Respondent),

each requiring approximately 4.23 hours to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

The statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 14, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13967 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49859]

Order Temporarily Exempting Standardized Options and Security Futures From Rule 12d2–2 Under the Securities Exchange Act of 1934

June 15, 2004.

I. Background

Section 12(a) of the Securities Exchange Act of 1934 ("Exchange Act") makes it unlawful for any member, broker, or dealer to affect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security on that exchange in accordance with the provisions of the Exchange Act and the rules thereunder.[1] Section 12(d) of the Exchange Act provides that a security registered with a national securities exchange may be withdrawn or stricken from listing and registration on an exchange in accordance with the rules of the exchange, and upon such terms as the Commission may deem necessary, upon application by the issuer of the security or by the exchange to the Commission.

Section 12(a) of the Exchange Act does not apply to security futures products.[2] In addition, the Commission exempted by rule security futures products from section 12(g) of the Exchange Act if traded on a national securities exchange and cleared by a clearing agency that is registered as a clearing agency under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7).[3] There is no similar exemption, however, for security futures products from section 12(d) of the Exchange Act. In addition, the Commission, by rule, exempted standardized options[4] from the provisions of section 12(a) of the Exchange Act,[5] but was silent as to whether standardized options are exempt from section 12(d). Moreover, the options exchanges have continued to file applications under Rule 12d2–2 to delist options since the Commission exempted them from the provisions of section 12(a) of the Exchange Act and the Commission has issued orders approving such delistings.

The Commission, however, does not believe that the requirements of Rule 12d2–2 provide investors in options with any protections and has never applied the requirements of this rule to security futures products. For this reason, as part of its proposal issued today to streamline the procedures for delisting and deregistration of securities under section 12(d) of the Exchange Act,[6] the Commission is proposing to amend Rule 12d2–2 to exempt standardized options that are issued by a clearing agency and traded on a national securities exchange, and to exempt security futures products that are traded on a national securities exchange, from section 12(d) of the Exchange Act and, thus, also the requirements of Rule 12d2–2.

II. Temporary Exemption for Standardized Options and Security Futures

Section 36 of the Exchange Act gives the Commission the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation, or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[7] The Commission believes it is consistent with the protection of investors and appropriate in the public interest to temporarily exempt certain standardized options and security futures products from Rule 12d2–2 under the Exchange Act.[8]

The temporary exemption for standardized options and security futures products from Rule 12d2–2 will provide clarity to market participants while the proposal, as noted above, to permanently exempt standardized options and security futures products traded on a national securities exchange from section 12(d) of the Exchange Act, is pending. The Commission believes there is little practical benefit to requiring the delisting of standardized options and security futures to comply with Rule 12d2–2. Standardized options and security futures products are derivatives, and thus holders of such products have no ownership interest in the underlying security or index, unless the option is physically settled and the holder chooses to exercise the standardized option or hold the security future until expiration. For this reason, when a standardized option or security futures product fails to meet an exchange's maintenance standards, the exchange may not add new options

[1] 15 U.S.C. 78*l*(a).

[2] 15 U.S.C. 78c(a)(56).

[3] *See* Securities Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

[4] 17 CFR 240.9b–1.

[5] *See supra* note 3.

[6] *See* Securities Exchange Act Release No. 49858 (June 15, 2004).

[7] 15 U.S.C. 78mm.

[8] The temporary exemption would be in effect until October 31, 2004.

series or expiration months in security futures products, but market participants are still allowed to do closing transactions in open series of options until expiration or until the settlement date of the security futures product.

Accordingly, it is ordered, pursuant to section 36 of the Exchange Act,[9] that any standardized option issued by a clearing agency and traded on a national securities exchange, and any security futures product that is traded on a national securities exchange, is exempted from Rule 12d2–2 under the Exchange Act until October 31, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13968 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49851; File No. SR–EMCC–2004–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Buy-In and Sell-Out Procedures

June 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 2, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would (a) permanently amend Sections 18 ("Buy-Ins") and 19 ("Sell-Outs") of EMCC Rule 7 ("Novation and Guaranty of Obligations and Receive, Deliver, and Settlement Obligations") to shorten the time periods when buy-ins and sell-outs may be initiated and executed and (b) make conforming, technical changes to EMCC Rule 1 ("Definitions and Descriptions") and Rule 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When EMCC was formed, it was recognized that its buy-in and sell-out procedures should be similar to those of the International Securities Market Association ("ISMA") because of EMCC's understanding that ISMA's procedures are generally followed by emerging market trading parties for transactions settled outside EMCC. The reason for having similar buy-in and sell-out procedures was to preclude EMCC members from being subject to a buy-in or sell-out by a non-EMCC member and not be able to retransmit the buy-in or sell-out to an EMCC member in the same time frame. Accordingly, the time periods for buy-ins and sell-outs in EMCC rules followed the time periods that would be used by non-EMCC members for buy-ins and sell-outs.

In December 2003, EMCC learned that effective January 1, 2004, ISMA was changing its buy-in and sell-out time frames for non-EMCC transactions. ISMA's changes had the effect of shortening the time period when a buy-in or sell-out could be initiated and when it could be executed. If EMCC had not made a corresponding change to its buy-in and sell-out rules at that time, it was possible that many EMCC members would have stopped submitting transactions to EMCC because they potentially could face buy-in and sell-out exposure due to the differences in EMCC's and ISMA's time frames. Accordingly, in order not to jeopardize the usage of EMCC for trade processing, or expose its members to risk, EMCC filed a proposed rule change with the Commission to conform its buy-in and sell-out time frames to those of ISMA. On December 30, 2003, the Commission approved on a temporary basis through June 30, 2004, EMCC's proposed rule change.[3] Because the industry has not taken any action to date to rescind the changes ISMA made effective on January 1, 2004, EMCC is now seeking to have its buy-in and sell-out rules approved on a permanent basis.

In addition to these proposed rule changes, EMCC also seeks to make technical corrections to Rule 1 and Rule 7 regarding several rule and section references regarding its buy-in and sell-out provisions that inadvertently were not made in the past. This filing will correct that oversight.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

EMCC has not received any written comments from its members with regard to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] 15 U.S.C. 78mm.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Securities Exchange Act Release No. 49011 (Dec. 30, 2003), 69 FR 711 (Jan. 6, 2004) [File No. SR–EMCC–2003–07].

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EMCC–2004–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–EMCC–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC and on EMCC's Web site at *http://www.e-m-c-c.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMCC–2004–04 and should be submitted on or before July 12, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13902 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49856; File No. SR–Phlx–2004–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Permit Holder Fees

June 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "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 Phlx. On June 3, 2004, the Phlx submitted an amendment to the proposed rule change.[3] On June 14, 2004, the Phlx submitted via facsimile a second amendment to the proposed rule change.[4] The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder, 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 Phlx proposes to amend its schedule of fees and charges to adopt a new category of permit holders for billing purposes to address situations where permit holders do not fall under one of the existing permit fee categories. These permit holders, delineated as "other", will be assessed a fee of $200 per month. The text of the proposed rule change is available at the Exchange and at the Commission.

Current Permit Fees

Monthly permit fees are assessed based on how each permit is used. Current permit fees are as follows:[7]

Order Flow Provider Permit Fee:[8]

a. Permits used only to submit orders to the equity, foreign currency options or options trading floor (one floor only)—$200 per month.

b. Permits used only to submit orders to more than one trading floor—$300 per month.

Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader Permit Fee:

a. First permit—$1,200 per month.

b. Additional permits for members in the same organization—$1,000 per month.

Permit holders may also be designated as "excess" permit holders in cases where permit holders in the same organization, other than the permit holder who qualifies the member organization, are either: (1) not Floor Brokers, Specialists or ROTs (on any trading floor) or Off-Floor Traders; or (2) not associated with a member organization that meets the definition of an order flow provider.[9] Member organizations that have excess permit holders are assessed $200 for each "excess permit."

Permit Fee Changes

The Exchange is proposing to adopt a permit fee category to address the limited situations where a permit holder does not fit within any of the existing permit fee categories. The Exchange represents that it has found that a few permit holders have not fit in the other permit fee categories, and, consequently, no permit fee was applicable. For example, a member organization may determine to have a permit holder in order to be a Phlx member organization and reflect such status on its letterhead, which is common in the securities industry. The Exchange states that, if such member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 2, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the proposed rule change in its entirety.

[4] *See* facsimile from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified the categories of permit holders to which the proposed new permit fee category would be applicable. Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* Securities Exchange Act Release No. 49157 (January 30, 2004), 69 FR 5883 (February 6, 2004) (SR–Phlx–2004–02).

[8] This fee applies to a permit held by a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or Registered Options Trader ("ROT") (on any trading floor) or Off-Floor Trader, and whose member organization submits orders to the Exchange. Phlx Rule 620(a) requires such registration.

[9] *See* Securities Exchange Act Release No. 49320 (February 25, 2004), 69 FR 10091 (March 3, 2004) (SR–Phlx–2004–09).

organization does not send any business to the Exchange, it would not qualify for the "order flow provider permit fee," and if it does not qualify for the other existing permit fees, then it would not be subject to a permit fee at all. This is an example of a situation that the Exchange intends to capture by adopting an "other permit holder" fee category. In this regard, the "other" category is intended to apply to permit holders who solely qualify their respective member organization.[10]

Additionally, the Exchange proposes to establish the date of notification for terminating a permit as the date that permit fee billing will cease. The Exchange represents that this is a change from using the effective date of the posting period. Currently, upon notice of termination of a permit, the effective date is subject to the posting and notice requirements set forth by the Exchange.[11] This generally requires a minimum of seven days notice and publication in the Exchange's Membership Bulletin. The Exchange states that, if notice occurs over a new billing period, the member would currently be charged a permit fee for a full additional month during which the permit would not be needed or utilized.

Further, the Exchange is proposing to assess only one monthly permit fee in certain limited situations where two monthly permit fees would be imposed. The Exchange states that, pursuant to current Exchange rules, a permit may not be transferred except if the transfer occurs within the permit holder's member organization. For example, if the permit holder transfers the permit to another individual within the same member organization only one monthly permit fee is assessed for that permit. Conversely, if the permit holder transfers from one member organization to another unrelated member organization in the same month, both member organizations are assessed a permit fee in the same billing period. The Exchange states that, when a permit holder becomes associated with another member organization as a result of a merger, partial sale of the current member organization, or other business combination, a new permit will be issued but, pursuant to this proposal, the related monthly permit fee for the new permit will not be assessed in these limited situations in order to avoid double billing for monthly permit fees in the month that the merger or business combination occurs. This interpretation of the assessment of only one permit fee when a permit holder becomes associated with another member organization as a result of a merger partial sale or other business combination with another member organization is noted in the fee schedule.

The Exchange represents that this proposal creates no new permits or permit holders, but merely categorizes permit holders for purposes of applicable permit fees.

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, as amended, 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to garner additional revenue by creating an additional category of permit fees to cover the limited instances where permit holders do not currently fall within an existing category of permit fees. This should ensure that each permit holder is subject to a permit fee. In addition, allowing monthly billing of permit fees to cease at the time a member notifies the Exchange, as opposed to waiting for the effective date of the posting and notice requirements, should avoid unnecessarily billing a member for permit fees for a month during which their permit was terminated. Also, charging only one permit fee for the month in which a merger or other business combination occurs should avoid unfairly double billing for a permit fee to a permit holder changing affiliation due to a merger or other business organizational changes.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act[13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and is designed to perfect the mechanisms 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 Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing proposed rule change, as amended, as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[14] and Rule 19b–4(f)(2)[15] thereunder. Accordingly, the proposed rule change, as amended, will take effect upon filing with the Commission. 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.[16]

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

[10] This means that there is just one permit holder in that member organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then the fee category proposed herein will not apply. The Exchange notes that it could separately consider adopting a permit fee to cover that category.

[11] Therefore, members will not be billed an additional monthly permit fee for the following month after notice of termination has been given, provided that the termination becomes effective. However, if a permit holder terminates a permit at any time within a month, consistent with current practice, that permit holder will still be required to pay the applicable monthly permit fee for that month.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 14, 2004, the date on which the Phlx submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–32 and should be submitted on or before July 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13969 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P032]

State of North Dakota; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 9, 2004, the above numbered declaration is hereby amended to include Bottineau, Burke, Mountrail, Renville, Towner, and Ward Counties in the State of North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation occurring on March 26, 2004 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: June 15, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–13972 Filed 6–18–04; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–296]

WTO Dispute Settlement Proceeding Regarding Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on November 19, 2003, the Government of the Republic of Korea requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the U.S. countervailing duty ("CVD") investigation on dynamic random access memory semiconductors ("DRAMS") from Korea. Korea alleges that determinations made in this investigation are inconsistent with Articles 1, 2, 10, 12, 14, 15, 19, 22, and 32.1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and Articles VI:3 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 7, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0084@ustr.gov*, with "Korea DRAMS (DS296)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If a dispute settlement panel is established, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Korea

With respect to the measures at issue, Korea's panel request refers to the following:

- The affirmative preliminary CVD determination by the U.S. Department of Commerce ("Commerce"), 68 FR 16766 (April 7, 2003);
- The affirmative final CVD determination by Commerce, 68 FR 37122 (June 23, 2003);
- The affirmative final injury determination by the U.S. International Trade Commission ("USITC"), 67 FR 47607 (August 11, 2003), and USITC Pub. 3617 (August 2003);
- The CVD order by Commerce, 68 FR 47546 (August 11, 2003).

With respect to the claims of WTO-inconsistency, Korea's panel request refers to the following:

- With respect to the Commerce determinations:
- Commerce failed to demonstrate the existence of a financial contribution by the Government of Korea with respect to

each distinct financial transaction at issue in its subsidy investigation.

• Commerce assumed that every Korean private financial institution involved in its subsidy investigation was under the direction or entrustment of the Government of Korea;

• Commerce failed to demonstrate that a benefit was conferred on the respondent Hynix Semiconductor, Inc. ("Hynix"), given available market benchmarks among Hynix's creditors;

• Commerce disregarded market benchmarks for measuring benefit established by a foreign bank operating in the Korean market that extended financing to Hynix during the period of investigation;

• Commerce failed to utilize relevant market benchmarks in determining whether Hynix was "creditworthy" or "equityworthy" and Commerce's application of an improper "uncreditworthy" benchmark and discount rate in calculating the benefit to Hynix;

• Commerce levied countervailing duties in excess of the amount allowed;

• Commerce imposed an improper burden of proof on the Government of Korea and Hynix;

• Commerce disregarded the fact that many Korean companies underwent debt restructuring similar to that undergone by Hynix; and

• Commerce conducted various private verification meetings in the territory of Korea, at which the Government of Korea had no representatives, over the explicit objection of the Government of Korea.

• With respect to the ITC determinations:

• The ITC determinations on injury and causation were not based on positive evidence and an objective assessment of the effects of allegedly subsidized imports;

• The ITC determinations on injury and causation improperly assessed the significance of the volume and price effects of subject imports;

• The ITC improperly assessed the overall condition of the domestic industry;

• The ITC improperly ignored the definition of domestic industry as set forth in Article 16 of the SCM Agreement, defined the domestic industry and imports inconsistently, and thus distorted the volume of imports and the effects thereof on the domestic industry;

• The ITC failed to demonstrate the requisite causal link between subject imports and injury, improperly assessed the role of other factors, and improperly attributed the effect of other factors to the allegedly subsidized imports; and

• The ITC's injury determination did not set forth in sufficient detail the ITC's findings and conclusions on all material issues of fact and law.

• With respect to the CVD order, the order was not imposed in accordance with the relevant provisions of the SCM Agreement or the relevant provisions of the GATT 1994.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0084@ustr.gov*, with "Korea DRAMS (DS296)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically to the electronic mail address listed above. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–296, Korea DRAMS, may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–13945 Filed 6–18–04; 8:45 am]

BILLING CODE 3190–W4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–280]

WTO Dispute Settlement Proceeding Regarding Countervailing Duty Measures on Certain Steel Plate From Mexico

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the establishment of a dispute settlement panel requested by the Government of Mexico under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"). The Government of Mexico has requested that the panel review the calculation by the Department of Commerce ("Commerce") of countervailing duties in the Final Results of Administrative Review in Certain Cut-to-Length Carbon Steel Plate from Mexico (C–201–810), published in the **Federal Register** on March 13, 2001. The Government of Mexico's request for the establishment of a panel alleges that Commerce's determination was inconsistent with various provisions of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 21, 2004 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0402@ustr.gov*, Attn: "Mexican Steel Plate Dispute" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Elizabeth V. Baltzan, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that on August 8, 2003, the Government of Mexico submitted a request for establishment of a dispute settlement panel to examine the final results of administrative review, in which Commerce concluded that imports of steel plate from Mexico were subsidized and sold in the United States.

Major Issues Raised and Legal Basis of the Complaint

In the final results of administrative review, Commerce imposed countervailing duties following the application of what is known as the "change-in-ownership" methodology. On the basis of this methodology, Commerce determined that the foreign producer was the "same person" before and after its privatization. According to the Government of Mexico, Commerce therefore concluded that the subsidies continued to confer a benefit on the foreign producer, for which reason countervailing duties continued to be imposed.

The Government of Mexico alleges that in so doing, Commerce did not fulfill its obligation to determine the existence of a subsidy and the benefit to the recipient. The Government of Mexico further alleges that failure to fulfill this obligation constitutes a violation of Articles 10, 14, 19, and 21 of the SCM Agreement.

On June 30, 2003, Commerce published in the **Federal Register** a Notice of Final Modification of Agency Practice Under section 123 of the Uruguay Round Agreement Act ("Notice"), in which Commerce modified its "change in ownership" methodology, including the "same person" test. According to the Notice, the modification is applicable to investigations and reviews initiated on or after June 30, 2003. Commerce did not apply the modified methodology to the administrative review that is the subject of this dispute as the review predated the modification.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0402@ustr.gov*, with "Mexican Steel Plate Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW, Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–13948 Filed 6–18–04; 8:45 am]

BILLING CODE 3190–W4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–295]

WTO Dispute Settlement Proceeding Regarding Mexican Antidumping Measure on Long-Grain White Rice and Mexico's Foreign Trade Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on November 7, 2003, the WTO, at the request of the United States, established a WTO dispute settlement panel to examine Mexico's definitive antidumping measure on U.S. long-grain white rice and certain provisions of Mexico's Foreign Trade Act. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 15, 2004 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0433@ustr.gov*, with "Mexico Rice Dispute (DS295)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–6139.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. If a dispute settlement panel is established pursuant to the WTO Dispute Settlement Understanding (DSU), such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On June 5, 2002, Mexico published in the Diario Oficial its definitive antidumping measure on long-grain white rice from the United States. The United States believes this measure to be inconsistent with several provisions of the WTO Antidumping Agreement, including Articles 1, 3, 4, 5, 6, 9, 11, 12, and Annex II. The United States also believes that the measure is inconsistent with Articles I and VI of the GATT 1994. The U.S. concerns relate, inter alia, to the manner in which Mexico conducted its dumping and injury investigations; Mexico's calculation of the antidumping margins that it applied to exporters that did not receive individual margins; and Mexico's non-transparent determinations.

The United States is also challenging certain provisions of Mexico's Foreign Trade Act that appear to be inconsistent with Mexico's obligations under various provisions of the Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures. The provisions at issue include Article 53, which sets the deadline for interested parties to present arguments, information, and evidence to the investigating authorities; Article 64, which establishes how Mexican investigating authorities will apply the "facts available" in calculating antidumping and countervailing duty margins; Article 68, which establishes rules for conducting reviews of exporters; Article 89D, which applies to "new shipper" reviews; and Article 93V, which provides for the application of fines on importers that enter products subject to antidumping and countervailing duty investigations.

The United States is also challenging Article 366 of Mexico's Federal Code of Civil Procedure, as well as Articles 68 and 97 of the Foreign Trade Act. Mexican officials have represented to the United States that these provisions prevent Mexico from conducting reviews of antidumping or countervailing duty orders while a judicial review of the order is ongoing.

The U.S. panel request, which sets out the U.S. claims in detail, can be downloaded from the WTO Web site, at *http://docsonline.wto.org:80/DDFDocuments/t/WT/DS/295-2.doc.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0433@ustr.gov,* with "Mexico Rice Dispute (DS295)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–295, Mexico Rice Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–13946 Filed 6–18–04; 8:45 am]

BILLING CODE 3190–W4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–282]

WTO Dispute Settlement Proceeding Regarding Antidumping Measures on Oil Country Tubular Goods From Mexico

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that, at the request of the Government of Mexico, a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") is reviewing various measures relating to the antidumping duty order on oil country tubular goods ("OCTG") from Mexico. Mexico alleges that determinations made by U.S. authorities concerning this product, and certain related matters, are inconsistent with Articles 1, 2, 3, 6, 11, and 18 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 ("AD Agreement"), Articles VI and X of the General

Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 7, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0432@ustr.gov*, with "Mexico OCTG Dispute" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Baltzan, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding ("DSU"). The panel will hold its meetings in Geneva, Switzerland, and is expected to issue a report on its findings and recommendations sometime after March 2005.

Major Issues Raised by Mexico

With respect to the measures at issue, Mexico's panel request refers to the following:

- The final sunset review determinations on OCTG from Mexico by the U.S. Department of Commerce ("Commerce") (66 FR 14131 (March 9, 2001), and the U.S. International Trade Commission ("ITC") (USITC Publication No. 3434 (June 2001) and 66 FR 35997 (July 10, 2001)), as well as the resulting continuation by Commerce of the antidumping duty order on OCTG from Mexico (66 FR 38630 (July 25, 2001));
- The final results of the fourth administrative review of the antidumping duty order on OCTG from Mexico (66 FR 15832 (March 21, 2001);
- Sections 751 and 752 of the Tariff Act of 1930;
- The URAA Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1 (1994);
- Commerce's Sunset Policy Bulletin (63 FR 18871 (April 16, 1998));
- Commerce's sunset review regulations, 19 CFR 351.218;
- The ITC's sunset review regulations, 19 CFR 207.60–69; and
- Portions of Commerce's regulations governing administrative reviews, 19 CFR 351.213, 351.221, and 351.222.

With respect to the claims of WTO-inconsistency, Mexico's panel request refers to the following:

- With regard to the sunset review conducted by Commerce, Commerce's "likely" standard, its determination in this regard, and Commerce's calculation of the likely dumping margin reported to the ITC, as such and as applied.
- With regard to the sunset review conducted by the ITC:
- The ITC's "likely" standard, as such and as applied;
- The statutory requirements that the ITC determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury "within a reasonably foreseeable time" and that the ITC "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time", both as such and as applied;
- The ITC's failure to conduct an "objective examination" of the record based on "positive evidence";
- The ITC's failure to base its determination on a proper analysis of dumped imports, their effect on prices in the domestic market, and the consequent impact of the dumped imports on the domestic industry;
- The ITC's failure to evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry;
- The ITC's failure to consider "any known factors other than the dumped imports";
- The ITC's improper consideration of the WTO-inconsistent margin reported by Commerce; and
- The ITC's use of a "cumulative" injury analysis.
- With regard to the fourth administrative review conducted by Commerce:
- Commerce's determination not to revoke the antidumping duty order when it was demonstrated that the maintenance of the order was not necessary to offset dumping;
- Commerce's application of conditions for revocation on TAMSA that were not WTO-inconsistent and that had not been published in advance of their application; and
- Commerce's use of "zeroing" with respect to so-called "negative dumping margins" with respect to Hylsa.
- The failure by Commerce and the ITC to apply U.S. antidumping laws, regulations, decisions and rulings in a uniform, impartial, and reasonable manner.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0069@ustr.gov*, with "Mexico OCTG Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically, to the electronic mail address listed above. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will

maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–282, Mexico OCTG Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–13947 Filed 6–18–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; withdrawal of task from the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: This notice withdraws a task formerly assigned to the ARAC, Transport Airplane and Engine Issues.

FOR FURTHER INFORMATION CONTACT: Mike Kaszycki, Transport Standards Staff, 1601 Lind Avenue, SW., Renton, WA 98055, (227) 425–2137, *mike.kaszycki@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2001, the Federal Aviation Administration (FAA) published a task in the **Federal Register** instructing the Aviation Rulemaking Advisory Committee (ARAC) to develop recommendations for preventing fires related to fuel tank vent systems (66FR16087). The FAA requested that ARAC:

Phase I. Review the draft part 25 final rule concerning fuel-vent system fire protection, including the FAA's proposed disposition of public comments. Prepare a report for the FAA documenting any recommended changes resulting from this review and any remaining unresolved issues.

Phase II. Review the draft advisory material (AC 25.975) associated with the part 25 rule and prepare a report for the FAA similar to the phase I report, documenting any recommended changes as well as any remaining unresolved issues.

The ARAC assigned the task to the Powerplant Installation Harmonization Working Group (PPIHWG). The schedule for Phase I called for the working group to submit their report no later than 60 days after receiving the draft document from the FAA. The schedule for Phase II called for the working group to submit their report no later than 6 months after receiving the draft document from the FAA.

Withdrawal of the Task

As a result of industry resource issues and FAA rulemaking prioritization activities, no work was done on this tasking. The PPIHWG chair reported that the necessary industry specialists were focused on other fuel tank safety initiatives and not available to begin work on this tasking. At the same time, industry was expressing a general concern about ARAC's impact on its resources. It challenged the FAA and Joint Aviation Authorities through the Harmonization Management Team (HMT) to develop a prioritized rulemaking plan that incorporates resource commitments that are more consistent with the regulatory authorities' rulemaking capabilities.

Subsequently, we reviewed our regulatory program, focusing on prioritizing rulemaking initiatives to more efficiently and effectively use limited industry and regulatory resources. We also issued a letter to the ARAC, Transport Airplanes and Engine (TAE) issues, placing a moratorium on low priority ARAC harmonization working group activities, one of which was this tasking to the PPIHWG. Our review yielded an internal Regulation and Certification Rulemaking Priority List that will guide the agency's rulemaking activities, including the tasking of initiatives to the ARAC. Our review also identified several taskings that we can withdraw and rulemaking initiatives that we can handle by alternative means.

One of the tasks identified for withdrawal was the two-phase tasking to the ARAC, TAE issues area to develop recommendations for preventing fires related to fuel tank vent systems. The FAA coordinated its decision with both the Joint Aviation Authorities (now the European Aviation Safety Agency) and Transport Canada Civil Aviation.

So, through this notice, we are withdrawing from ARAC the two-phase tasking to develop recommendations for preventing fires related to fuel tank vent systems.

Issued in Washington DC on June 15, 2004.

Tony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–13982 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. § 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Northern Indiana Commuter Transportation District intends to transfer a parcel of property to the City of South Bend for a street improvement project. Northern Indiana Commuter Transportation District currently owns the land. The property consists of approximately 1.58 acres of vacant land. The property is vacant land divided by Meade, Washington and Orange Streets and is bordered by the Norfolk Southern Railway. The property is located in South Bend, Indiana.

EFFECTIVE DATE: Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest by July 21, 2004.

ADDRESSES: Interested parties should notify the Regional Office by writing to Joel P. Ettinger, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 320, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Donald Gismondi, Deputy Regional Administrator at 312/353–2789.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. section 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. section 5334(g)(1)

Determinations: The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. section 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. section 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Facility

The property is approximately 1.58 acres of vacant land. The property is divided by Meade, Washington and Orange Streets. It is bordered by the Norfolk Southern Railway. The property consists of three parcels of land, which are all vacant. The property was once the route of the South Shore Line's passenger service into South Bend. Service to downtown ended in 1970, and the track was removed soon afterward. No structures have been located on this land since 1977. The property is zoned for light, industrial usage and is located in South Bend, Indiana.

Issued on: June 10, 2004.

Donald Gismondi,

Deputy Regional Administrator.

[FR Doc. 04–13983 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—ICI Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 15 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003 at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39205, July 1, 2003.

With respect to any bonds currently in force with the above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 9, 2004.

Vivian L. Cooper,

Director, Financial Accounting Services Division.

[FR Doc. 04–13898 Filed 6–18–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–118926–97]

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 an existing final regulation, REG–118926–97 (TD 8817), Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations (§ 1.6038B–1, 1.6038B–2).

DATES: Written comments should be received on or before August 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations.

OMB Number: 1545–1615.

Regulation Project Number: REG–118926–97.

Abstract: Section 6038B requires U.S. persons to provide certain information when they transfer property to a foreign partnership or foreign corporation. This regulation provides reporting rules to identify United States persons who contribute property to foreign

partnerships and to ensure the correct reporting of items with respect to those partnerships.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and individuals or households.

The collections of information contained in these final regulations are in § 1.6038B–1(b) and 1.6038B–2. The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The burden of complying with the collection of information required to be reported on Form 926 is reflected in the burden for Form 926.

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: June 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13955 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208985–89]

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 an existing notice of proposed rulemaking, REG–208985–89, Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989 (§§ 1.563–3, 1.898–3 and 1.898–4).

DATES: Written comments should be received on or before August 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989.

OMB Number: 1545–1355.

Regulation Project Number: REG–208985–89 (formerly INTL–848–89).

Abstract: This regulation provides guidance concerning Internal Revenue Code section 898, which seeks to eliminate the deferral of income and, therefore, the understatement in income, by United States shareholders of certain controlled foreign corporations and foreign personal holding companies. The elimination of deferral is accomplished by requiring a specified foreign corporation to conform its taxable year to the majority U.S. shareholder year. The information collected will be used by the IRS to assess the reported tax and determine whether taxpayers have complied with Code section 898.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 700.

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: June 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13956 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–45–86]

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 an existing final regulation, INTL–45–86 (TD 8125), Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation (§ 1.924).

DATES: Written comments should be received on or before August 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation.

OMB Number: 1545–0904.

Regulation Project Number: INTL–45–86.

Abstract: This regulation provides rules for complying with foreign management and foreign economic process requirements to enable foreign sales corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Section 1.924(d)–1(b)(2) of the regulation requires that records must be kept to verify that the necessary activities were performed outside the United States.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 11,001.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 22,001.

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: June 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13957 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–116608–97]

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 an existing final regulation. REG–116608–97 EIC Eligibility Requirements (§ 1.32–3).

DATES: Written comments should be received on or before August 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the for and instructions 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: EIC Eligibility Requirements.

OMB Number: 1545–1575.

Regulation Project Number: REG–116608–97.

Abstract: Under Section 1.32–3, this regulation provides guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The regulation applies to taxpayers claiming the EIC for taxable years beginning after December 31, 1996.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1.

Estimated Total Annual Hours: 1.

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: June 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13958 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8689

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 Form 8689, Allocation of Individual Income Tax to the Virgin Islands.

DATES: Written comments should be received on or before August 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions 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: Allocation of Individual Income Tax to the Virgin Islands.

OMB Number: 1545–1032.

Form Number: Form 8689.

Abstract: Form 8689 is used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.

Current Actions: There are no changes being made to Form 8689 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 4 Hours, 28 minutes.

Estimated Total Annual Burden Hours: 3,568.

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: June 9, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–13959 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–OL

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, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–OL, U.S. Individual Income Tax Declaration for an IRS e-file On-Line Return.

DATES: Written comments should be received on or before August 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions 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: U.S. Individual Income Tax Declaration for an IRS e-file Online Return.

OMB Number: 1545–1397.

Form Number: Form 8453–OL.

Abstract: Form 8453–OL is used in conjunction with the On-Line Electronic Filing Program. The data on the form is used to verify the electronic portion of the tax return, allow for direct deposit of any refund, provide consent for the IRS to disclose the status of the return to the on-line service provider and/or transmitter, and obtain the required signatures. Form 8453–OL, together with the electronic transmission, comprises the taxpayer's tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

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: June 10, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–13960 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8862.

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8862, Information To Claim Earned Income Credit After Disallowance.

DATES: Written comments should be received on or before August 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions 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: Information TO Claim Earned Income Credit After Disallowance.

OMB Number: 1545–1619.

Form Number: Form 8862.

Abstract: Section 32 of the Internal Revenue Code allows taxpayers to claim an earned income credit (EIC) for each of their qualifying children. Code section 32(k), as enacted by section 1085(a)(1) of the Taxpayer Relief Act of 1997, disallows the EIC for a statutory period if the taxpayer improperly claimed it in a prior year. Form 8892 is used by taxpayers to reestablish their eligibility to claim the EIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 2 Hours, 20 minutes.

Estimated Total Annual Burden Hours: 2,340,000.

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: June 10, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–13961 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, July 16, 2004 from 1 p.m. to 2 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer

Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, July 16, 2004 from 1 p.m. to 2 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: June 15, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13962 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, July 16, 2004 from 11 a.m. to 12:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, July 16, 2004, from 11 a.m. to 12:30 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: June 15, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13963 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, July 19, 2004.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, July 19, 2004 from 2 p.m. Pacific time to 3 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: June 16, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13964 Filed 6–18–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 118
Monday, June 21, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration—Exclusive of Alaska

Correction

In proposed rule document 03–30264 beginning on page 68452 in the issue of December 8, 2003, make the following correction:

§4120.3–2 [Corrected]

On page 68470, in the third column, in §4120.3–2(b), in the sixth line, "February 6, 2004" should read "[Insert date 60 days after publication of final rule in the Federal Register]."

[FR Doc. C3–30264 Filed 6–18–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15410; Airspace Docket No. 03–AAL–1]

RIN 2120–AA66

Establishment of Restricted Area 2204, Oliktok Point; AK

Correction

In rule document 04–12063 beginning on page 30576 in the issue of Friday, May 28, 2004, make the following correction:

§73.22 [Corrected]

On page 30577, in the first column, in §73.22, under the heading **R–2204 Oliktok Point, AK (New)**, in the first paragraph, in the second line, the latitude coordinates should read, "lat. 70°30′35″".

[FR Doc. C4–12063 Filed 6–18–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 21, 2004

Part II

Securities and Exchange Commission

17 CFR Parts 200 and 240

Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities; Supervised Investment Bank Holding Companies; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–49830; File No. S7–21–03]

RIN 3235–AI96

Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: We are adopting rule amendments under the Securities Exchange Act of 1934 that establish a voluntary, alternative method of computing deductions to net capital for certain broker-dealers. This alternative method permits a broker-dealer to use mathematical models to calculate net capital requirements for market and derivatives-related credit risk. A broker-dealer using the alternative method of computing net capital is subject to enhanced net capital, early warning, recordkeeping, reporting, and certain other requirements, and must implement and document an internal risk management system. Furthermore, as a condition to its use of the alternative method, a broker-dealer's ultimate holding company and affiliates (referred to collectively as a consolidated supervised entity, or "CSE") must consent to group-wide Commission supervision. This supervision would impose reporting (including reporting of a capital adequacy measurement consistent with the standards adopted by the Basel Committee on Banking Supervision), recordkeeping, and notification requirements on the ultimate holding company. The ultimate holding company (other than an "ultimate holding company that has a principal regulator") and its affiliates also would be subject to examination by the Commission. In addition, we have modified the proposed rule amendments on Commission supervision of an "ultimate holding company that has a principal regulator" to avoid duplicative or inconsistent regulation. Finally, we are amending the risk assessment rules to exempt a broker-dealer using the alternative method of computing net capital from those rules if its ultimate holding company does not have a principal regulator. The rule amendments are intended to improve our oversight of broker-dealers and their ultimate holding companies.

EFFECTIVE DATE: August 20, 2004.

FOR FURTHER INFORMATION CONTACT: With respect to amendments to financial responsibility rules and books and records requirements, contact Michael A. Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–4886, David Lynch, Financial Economist, at (202) 942–0059, Rose Russo Wells, Attorney, at (202) 942–0143, Bonnie L. Gauch, Attorney, at (202) 942–0765, or Matthew B. Comstock, Attorney, at (202) 942–0156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

With respect to general questions, contact Linda Stamp Sundberg, Attorney Fellow, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is amending § 200.19 and Rules 30–3, 15c3–1, 17a–4, 17a–5, 17a–11, 17h–1T, and 17h–2T under the Securities Exchange Act of 1934 ("Exchange Act"). We proposed amendments on consolidated supervised entities for comment in October of 2003.[1]

I. Introduction

The Commission is amending Rule 15c3–1[2] (the "net capital rule") under the Securities Exchange Act of 1934 (the "Exchange Act") to establish a voluntary, alternative method of computing net capital for certain broker-dealers. Under the amendments, a broker-dealer that maintains certain minimum levels of tentative net capital and net capital may apply to the Commission for a conditional exemption from the application of the standard net capital calculation. As a condition to granting the exemption, the broker-dealer's ultimate holding company[3] must consent to group-wide Commission supervision.[4] The amendments should help the Commission to protect investors and maintain the integrity of the securities markets by improving oversight of broker-dealers and providing an incentive for broker-dealers to implement strong risk management practices. Furthermore, by supervising the financial stability of the broker-dealer and its affiliates on a consolidated basis, the Commission may monitor better, and act more quickly in response to, any risks that affiliates and the ultimate holding company may pose to the broker-dealer.

These amendments are intended to reduce regulatory costs for broker-dealers by allowing very highly capitalized firms that have developed robust internal risk management practices to use those risk management practices, such as mathematical risk measurement models, for regulatory purposes. A broker-dealer's deductions for market and credit risk probably will be lower under the alternative method of computing net capital than under the standard net capital rule.

A. Broker-Dealer Requirements

The alternative method of computing net capital responds to the firms' requests to align their supervisory risk management practices and regulatory capital requirements more closely. Under the alternative method, firms with strong internal risk management practices may utilize mathematical modeling methods already used to manage their own business risk, including value-at-risk ("VaR") models and scenario analysis, for regulatory purposes.

A broker-dealer that applies to the Commission for an exemption from the standard net capital rules also must comply with specific requirements designed to address various types of risks that the broker-dealer assumes. A broker-dealer is eligible to use the alternative method of computing net capital only if it maintains tentative net capital[5] of at least $1 billion and net capital of at least $500 million.[6] If the tentative net capital of a broker-dealer calculating net capital under this alternative method falls below $5 billion, the broker-dealer must notify the Commission and the Commission then would consider whether the broker-dealer must take appropriate remedial action.[7]

In addition, a broker-dealer that uses the alternative method must have in place comprehensive internal risk management procedures that address market, credit, liquidity, legal, and

[1] Exchange Act Release No. 48690 (Oct. 24, 2003), 68 FR 62872 (Nov. 6, 2003) ("Proposing Release").

[2] 17 CFR 240.15c3–1.

[3] We will review, on a case-by-case basis, the broker-dealer's designation of its ultimate holding company in its application to use the alternative method of computing net capital.

We use the term "ultimate holding company" in the final rules, rather than the term "holding company" that we used in the proposed rules.

[4] If a broker-dealer were the ultimate parent company of its affiliate group, it would be considered the ultimate holding company for purposes of these amendments. The ultimate holding company may not be a natural person. Nothing in these amendments is intended to create a preference for one organizational structure over another.

[5] *See* 17 CFR 240.15c3–1(c)(15).

[6] 17 CFR 240.15c3–1(a)(7)(i).

[7] 17 CFR 240.15c3–1(a)(7)(ii).

operational risk at the firm. These requirements are designed to help ensure the integrity of the broker-dealer's risk measurement, monitoring, and management process and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk. Furthermore, a broker-dealer must provide the Commission with specified financial, operational, and risk management information on a monthly, quarterly, and annual basis.

B. Ultimate Holding Company Requirements

As a condition to a broker-dealer's use of the alternative method of computing net capital, the rule amendments require a broker-dealer's ultimate holding company, if that ultimate holding company does not have a principal regulator, to consent to certain undertakings. In particular, the ultimate holding company must:

- Provide information about the financial and operational condition of the ultimate holding company. Specifically, it must provide the Commission with certain capital and risk exposure information provided to the ultimate holding company's senior risk managers. This information would include market and credit risk exposures, as well as an analysis of the ultimate holding company's liquidity risk;
- Comply with rules regarding the implementation and documentation of a comprehensive, group-wide risk management system for identifying, measuring, and managing market, credit, liquidity, legal, and operational risk;
- Consent to Commission examination of the ultimate holding company and its material affiliates; and
- As part of its reporting requirements, compute, on a monthly basis, group-wide allowable capital and allowances for market, credit, and operational risk in accordance with the standards ("Basel Standards")[8] adopted by the Basel Committee on Banking Supervision ("Basel Committee").

In response to comments about bank holding companies, we have revised the proposed rules for an ultimate holding company that has a principal regulator. Generally, under the final rules, this type of ultimate holding company is not subject either to Commission examination or those rules requiring internal risk management controls outside of the broker-dealer and is subject to reduced reporting, recordkeeping, and notification requirements.

The rule amendments also respond to international developments. Affiliates of certain U.S. broker-dealers that conduct business in the European Union ("EU") have stated that they must demonstrate that they are subject to consolidated supervision at the ultimate holding company level that is "equivalent" to EU consolidated supervision.[9] Commission supervision incorporated into these rule amendments is intended to meet this standard. As a result, we believe these amendments will minimize duplicative regulatory burdens on firms that are active in the EU as well as in other jurisdictions that may have similar laws.

II. Proposing Release and Comments

The Commission proposed rule amendments in October 2003 that would have established a voluntary, alternative method for computing net capital charges for certain broker-dealers. In the Proposing Release, the Commission solicited both general comments on the proposal and specific comments on each rule amendment.

The Commission received 20 comment letters in response to the proposed rule amendments: Five from broker-dealers or broker-dealer holding companies, five from bank holding companies subject to supervision by the Board of Governors of the Federal Reserve System ("Federal Reserve") or a non-domestic "comprehensive consolidated supervisor," one from a securities industry representative, six from U.S. and international banking industry representatives, two from individuals, and one from another regulator.

The majority of commenters endorsed the Commission's initiative to permit certain broker-dealers to use the alternative method of computing net capital. These commenters supported the alternative capital calculation for broker-dealers that have developed mathematical models for measuring risk and group-wide internal risk management control systems to control risk. One commenter, however, questioned the use of models to the extent that it would lower broker-dealer capital requirements, and some commenters questioned the Commission's statutory authority to adopt the proposal.

The commenters that supported the proposal suggested that the Commission modify the proposed rule amendments in various ways. Bank holding companies generally supported the alternative capital computation, but expressed concern that the proposal could impose duplicative and inconsistent requirements on holding companies and their affiliates that are subject to comprehensive consolidated supervision by the Federal Reserve and non-domestic financial regulators.

Generally, commenters addressed various aspects of the methods for calculating deductions for market and credit risk at the broker-dealer level and allowable capital at the ultimate holding company level. They also stated that the Commission should be flexible in permitting firms to use interim methods to calculate allowable capital at the ultimate holding company level until implementation of the New Basel Capital Accord. Some commenters urged the Commission to take measures to ensure the confidentiality of information that the Commission obtains as a result of the proposed rules and rule amendments. Commenters also suggested that the Commission align CSE reporting requirements with public company and other reporting requirements.

Comments on specific rule amendments and the Commission's response to those comments are discussed below in the descriptions of the final rule amendments.

III. Final Rule Amendments

A. General

After considering the comment letters, we are adopting rule amendments that provide broker-dealers with a voluntary, alternative method of computing net capital that permits very highly capitalized broker-dealers to use their internal mathematical models for net

[8] The central bank governors of the Group of Ten countries ("G–10 countries") established the Basel Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters. Its basic consultative papers are: the Basel Capital Accord (1988), the Core Principles for Effective Banking Supervision (1997), and the Core Principles Methodology (1999). The Basel Standards establish a common measurement system, a framework for supervision, and a minimum standard for capital adequacy for international banks in the G–10 countries. The Basel Committee is currently developing a new international agreement (the "proposed New Basel Capital Accord"). It expects to issue a final version of the New Basel Capital Accord by the end of June 2004, with an effective date for implementation of the standardized and foundation approaches by year-end 2006, and implementation of the most advanced approaches by year-end 2007.

[9] EU "consolidated supervision" consists of a series of quantitative and qualitative rules, imposed at the level of the ultimate holding company, regarding firms' internal controls, capital adequacy, intra-group transactions, and risk concentration. Without a demonstration of "equivalent" supervision, U.S. securities firms have expressed concerns that an affiliate institution located in the EU either may be subject to additional capital charges or be required to form a sub-holding company in the EU. *See* "Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002."

capital purposes, subject to specified conditions. Generally, we revised the rule amendments related to the broker-dealer's and the ultimate holding company's computation of net capital and allowable capital, respectively. We also revised the rule amendments with respect to broker-dealers that are affiliated with ultimate holding companies that have principal regulators.

As stated in the Proposing Release, the Commission has broad authority under Exchange Act section 15(c)(3) to adopt rules and regulations regarding the financial responsibility of broker-dealers that we find are necessary or appropriate in the public interest or for the protection of investors.[10] The Commission has promulgated various rules under this provision regarding net capital requirements [11] and protection of customer property.[12] As part of our oversight of broker-dealers, we receive financial and risk management information about broker-dealers, their holding companies, and their affiliates. The rules and the information received have assisted the Commission and the self-regulatory organizations ("SROs") in identifying, at an early stage, firms that are experiencing financial problems.

The principal purposes of Exchange Act Rule 15c3–1 (the "net capital rule") are to protect customers and other market participants from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation. The net capital rule requires different minimum levels of capital based upon the nature of the firm's business and whether the broker-dealer handles customer funds or securities.

Ultimate holding companies that own large broker-dealers also may own many other entities. These affiliated entities may engage in both securities and non-securities activities worldwide. Broker-dealer holding company structures vary and may be quite complex. Depending upon the nature of these structures, broker-dealers may incur risks because of their affiliation with unregistered entities. For example, a broker-dealer's access to short-term funding may be affected by the insolvency of an affiliate. In addition, management at the ultimate holding company level may attempt to divert capital from the broker-dealer, to the extent permitted by the net capital rule, to support an affiliate experiencing financial difficulty. While this shift of assets alone would not violate the net capital rule, it could make it more likely that the firm would fail during volatile market conditions.

To help ensure that the Commission can obtain information necessary to monitor the financial well-being of a broker-dealer, a broker-dealer may use the alternative method of computing net capital only if its ultimate holding company agrees to provide the Commission's with additional information about the financial condition of the ultimate holding company and its affiliates. For an ultimate holding company that does not have a principal regulator, this financial information includes a monthly computation of group-wide allowable capital and allowances for market, credit, and operational risk calculated in accordance with the Basel Standards. This type of ultimate holding company also must provide the Commission with specified financial, operational, and risk management information on a monthly, quarterly, and annual basis. Moreover, an ultimate holding company that does not have a principal regulator must implement and maintain a consolidated internal risk management control system and procedures to monitor and manage group-wide risk, including market, credit, funding, operational, and legal risks, and make and maintain certain books and records. Both the ultimate holding company and its affiliates that do not have principal regulators must consent to Commission examination.

Under the final rules, an ultimate holding company that has a principal regulator is subject to substantially fewer requirements than one that does not have a principal regulator. As a condition to its affiliated broker-dealer's use of the alternative method of computing net capital, this category of ultimate holding company consents to provide the Commission, on a quarterly basis, with the capital measurements that it submits to its principal regulator, consolidated and consolidating balance sheets and income statements, and certain regular risk reports provided to the persons responsible for managing group-wide risk. Annually, an ultimate holding company that has a principal regulator must provide audited consolidated balance sheets and income statements and capital measurements, as submitted to its principal regulator. An ultimate holding company that has a principal regulator also is subject to more limited undertaking and information requirements related to the broker-dealer's application for exemption from the standard net capital rule as well as reduced notification and recordkeeping requirements.

We have included what we believe are prudent parameters for measurement of a broker-dealer's deductions for market and credit risk and allowances for risk for its ultimate holding company, although in some cases these parameters may be more conservative than some firms may believe are necessary to account for risk. For example, we have adopted, as proposed, rules that require the VaR model used to calculate market risk for the broker-dealer to be based on a ten business-day movement in rates and prices and calculated using a 99% confidence level. The VaR measure then must be multiplied by a factor of at least three. These parameters are based on our experience and existing Commission rules and rules of other regulatory agencies where there are similar risk factors in the regulated entities.

B. Amendments to Paragraphs (a) and (c) of Rule 15c3–1

1. Minimum and Early Warning Capital Requirements

We are revising proposed paragraph (a)(7) of Rule 15c3–1. As proposed, paragraph (a)(7) of Rule 15c3–1 would have permitted the Commission to approve, in whole or part, a broker-dealer's application, or amendment to an application, to use the alternative method of computing net capital. Proposed paragraph (a)(7) also would have required the broker-dealer to maintain at all times tentative net capital of at least $1 billion and net capital of at least $500 million.

In the Proposing Release, we requested comment on whether the proposed required minimum levels of tentative net capital and net capital described in proposed paragraph (a)(7) of Rule 15c3–1 should be raised or lowered. One commenter stated that we should permit a broker-dealer with tentative net capital of less than $1 billion to use the alternative net capital computation if it is an affiliate of an international bank with consolidated capital of over $1 billion. Another commenter asserted that "the Commission should permit other broker-dealers in the CSE group-wide affiliate structure" to use the alternative method of computing net capital even if those broker-dealers do not meet the minimum capital levels. These comments, however, do not take into account certain regulatory and

[10] 15 U.S.C. 78o(c)(3).
[11] 17 CFR 240.15c3–1.
[12] 17 CFR 240.15c3–3.

bankruptcy considerations.[13] Accordingly, we are adopting the $1 billion tentative net capital and $500 million net capital requirements as proposed, but are setting forth these requirements in paragraph (a)(7)(i) of Rule 15c3–1 in the final rules.

We also are adding a new requirement to paragraph (a)(7) of Rule 15c3–1, as adopted. The final rules incorporate changes to the proposed rules that may allow firms to take smaller deductions for market and credit risk than the proposed rules would have permitted. Consequently, the final rules add paragraph (a)(7)(ii), which requires a broker-dealer to notify the Commission if the broker-dealer's tentative net capital falls below $5 billion. This $5 billion early warning requirement is based upon the staff's experience and the current levels of net capital maintained by the broker-dealers most likely to apply to use the alternative method of computing net capital. Upon written application, however, the Commission may exempt, either unconditionally or on specified terms and conditions, a broker-dealer from the $5 billion early warning requirement. To obtain an exemption, the broker-dealer must satisfy the Commission that because of the special nature of the firm's business, its financial positions, its internal risk management systems, and its compliance history, among other factors, application of the requirement is unnecessary or inappropriate in the public interest or for the protection of investors.

We also are revising Rule 15c3–1 to add paragraph (a)(7)(iii). Paragraph (a)(7)(iii) generally requires a broker-dealer that computes deductions for market and credit risk under Appendix E to comply with Rule 15c3–4[14] as though it were an OTC derivatives dealer. Paragraph (a)(7)(iii) replaces proposed amendments to Rule 15c3–4 and is discussed in greater detail in the section of this release that addresses that rule.

The requirements of paragraph (a)(7), as revised, are intended to help ensure that a broker-dealer maintains prudent amounts of liquid assets against various risks that it assumes and that it maintain a robust internal risk management system. The current haircut structure seeks to ensure that broker-dealers maintain a sufficient capital base to account for operational, leverage, and liquidity risk, in addition to market and credit risk. We expect that use of the alternative net capital computation will reduce deductions for market and credit risk substantially for broker-dealers that use that method. Moreover, inclusion in net capital of unsecured receivables and securities that do not have a ready market under the current net capital rule will reduce the liquidity standards of Rule 15c3–1. Thus, the alternative method of computing net capital and, in particular, its requirements that broker-dealers using the alternative method of computing maintain minimum tentative net capital of at least $1 billion, maintain net capital of at least $500 million, notify the Commission that same day if their tentative net capital falls below $5 billion, and comply with Rule 15c3–4 are intended to provide broker-dealers with sufficient capital reserves to account for market, credit, operational, and other risks.

2. Entities That Have Principal Regulators

We are revising proposed paragraph (c)(13) of Rule 15c3–1. Proposed paragraph (c)(13) would have defined an "entity that has a principal regulator" as a person (other than a natural person) that is not a registered broker-dealer (other than a broker-dealer registered under section 15(b)(11) of the Exchange Act) and that belongs to one of two categories. Proposed paragraph (c)(13)(i), the first category, would have included insured depository institutions, entities registered with the Commodities Futures Trading Commission, or licensed or regulated insurance companies. Proposed paragraph (c)(13)(ii), the second category, would have included bank holding companies, savings and loan holding companies, and foreign banks that do business in the U.S. The proposed rules would have required entities in this second category to have in place appropriate arrangements to ensure that information provided to the Commission was sufficiently reliable for the purposes of proposed Appendix E and proposed Appendix G. The proposed rules also would have required these entities to be primarily in the insured depository institutions business (excluding their insurance and commercial businesses).

Several commenters stated that the Commission should revise the proposed rules to minimize duplicative or inconsistent requirements for holding companies that are subject to another regulator's consolidated supervision.[15] Commenters also stated that the Commission could better use its resources to supervise holding companies that do not otherwise have principal regulators. Moreover, commenters urged the Commission to provide as much clarity as possible, both for regulated entities and consolidated supervisors, about provisions intended to avoid duplicative or inconsistent requirements.

In response to these comments, we are adopting a revised definition of "entity that has a principal regulator" and adding a definition of an "ultimate holding company that has a principal regulator." Creation of two definitions should help to clarify the scope of paragraph (c)(13) of Rule 15c3–1. We will not examine any entity that has a principal regulator and we will use the reports that it files with its principal regulator for our regulatory purposes, to the greatest extent possible.

Under the revised definition in paragraph (c)(13)(i) of Rule 15c3–1, an entity that has a principal regulator includes certain functionally regulated affiliates of the ultimate holding company that are not registered as a broker or dealer.[16] Entities that have principal regulators include insured depository institutions; futures commission merchants or introducing brokers registered with the Commodity Futures Trading Commission; entities registered with or licensed by a State insurance regulator that issues any insurance, endowment, or annuity policy or contract; and certain foreign banks.[17]

Paragraph (c)(13)(i) also includes Edge Act and Agreement Corporations, provided they are not primarily in the securities business. We added these entities to the definition of entity that has a principal regulator because they are subject to supervision by the Federal Reserve. Under these rules, the Commission may examine Edge Act and Agreement Corporations that primarily are in the securities business.[18]

[13] Bankruptcy or other statutes, rules, and regulations may restrict transfers from an entity in bankruptcy.

[14] 17 CFR 240.15c3–4.

[15] *See, e.g.*, Letter from Messrs. Michael J. Alix and Mark W. Holloway, Co-Chairs, CSE Steering Committee of the Securities Industry Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated February 27, 2004.

[16] This reference is to brokers or dealers registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)).

[17] This category is limited to a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)) that has its headquarters in a jurisdiction for which any foreign bank has been approved by the Federal Reserve to conduct business pursuant to the standards set forth in 12 CFR 211.24(c), provided such foreign bank represents to that Commission that it is subject to the same supervisory regime as the foreign bank previously approved by the Federal Reserve.

[18] The Federal Reserve charters an "Edge Act Corporation" to engage in international banking. Section 25A of the Federal Reserve Act (12 U.S.C. 611–633). A state charters an "Agreement

Continued

We also added paragraph (c)(13)(i)(F) of Rule 15c3–1 to the final rules. Under this paragraph, the Commission may determine if other types of entities subject to comprehensive supervision by other regulators qualify as entities that have principal regulators.[19]

The new definition of ultimate holding company that has a principal regulator in paragraph (c)(13)(ii) recognizes the concept of comprehensive, consolidated supervision. Any financial holding company or a company that is treated as a financial holding company under the Bank Holding Company Act of 1956[20] will be considered an ultimate holding company that has a principal regulator. Accordingly, any U.S. holding company or foreign bank that has elected financial holding company status will be an ultimate holding company that has a principal regulator.

By adopting this new definition of an ultimate holding company that has a principal regulator, we are recognizing the comprehensive, consolidated supervision of both the Federal Reserve and non-domestic bank regulators. In addition, because we will consider the entity that elected to be treated as a financial holding company to be an ultimate holding company that has a principal regulator, we will not need to look for a higher holding company level within a consolidated group. We also understand that all of the banking organizations that have expressed interest in the CSE proposal would qualify as financial holding companies or as companies that are treated as financial holding companies.

A bank holding company may elect to become a financial holding company and be eligible to engage in expanded financial activities if it is "well capitalized" and "well managed."[21] In connection with financial holding company elections by foreign banks, the Federal Reserve also evaluates any foreign bank that operates a branch or agency, or owns or controls a commercial lending company in the United States under capital and management standards that are comparable to the standards applicable to U.S. banks and gives due regard to the principle of national treatment and equality of competitive opportunity.[22] For these foreign banking organizations, the Federal Reserve also reviews whether they are subject to comprehensive consolidated supervision.[23] The Federal Reserve has found that home country supervision is an important element in determining if a bank is well managed.[24]

Based on these requirements, we would not examine financial holding companies or companies that are treated as financial holding companies. In addition, under the rules as adopted, these entities are subject to a streamlined application process, fewer periodic reporting requirements, and may submit to the Commission the same measurement of capital that they submit to their primary regulator. Inclusion of these entities in the definition of "ultimate holding company that has a principal regulator" is intended reduce duplicative or inconsistent regulation because these entities already are subject to the reporting and examination requirements of the Federal Reserve.

Under paragraph (c)(13)(ii)(B), the Commission may determine that other persons also should be included as ultimate holding companies that have principal regulators if it finds that the persons are subject to consolidated, comprehensive supervision; there are in place appropriate arrangements so that information provided to the Commission is sufficiently reliable for the purposes of determining compliance with Appendix E and Appendix G; and based on the persons' businesses, it is appropriate to consider the persons ultimate holding companies that have principal regulators for the purposes of Appendix E and Appendix G. An affiliated broker-dealer of a domestic entity or a foreign bank that has not elected to be treated as a financial holding company could apply to use the alternative method of computing net capital. Paragraph (c)(13)(ii)(B) permits us to consider whether, in appropriate circumstances, the Commission should treat the domestic entity or foreign bank as an ultimate holding company that has a principal regulator.[25]

3. Tentative Net Capital

We are adopting an amended definition of tentative net capital. The proposed amendment to paragraph (c)(15) of Rule 15c3–1 would have defined "tentative net capital" for a broker-dealer using the alternative method of computing net capital as the net capital of the broker or dealer before deductions for market and credit risk computed pursuant to Appendix E to Rule 15c3–1 or paragraph (c)(2)(vi) of Rule 15c3–1, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments that otherwise would be deducted by virtue of paragraph (c)(2)(iv) of Rule 15c3–1.

We are amending the definition of tentative net capital to include securities for which there is no ready market, as that term is defined under paragraph (c)(2)(11) of the net capital rule. This modification is necessary because, as discussed below, we eliminated the requirement that a security have a ready market to qualify for capital treatment using VaR models. Under the final rules, a broker-dealer may include securities for which there is no ready market in calculating tentative net capital under the alternative method only if the Commission has approved the use of mathematical models for purposes of calculating deductions to net capital for those securities pursuant to Appendix E.

C. Broker-Dealer Requirements Under Appendix E

Appendix E to Exchange Act Rule 15c3–1 describes the alternative method of computing net capital that a broker-dealer may use, including related application requirements. It also imposes requirements regarding internal risk management controls and reporting, and describes additional supervisory conditions that the Commission may impose on the broker-dealer in appropriate circumstances.[26] Under the final rules, once a broker-dealer has submitted an application, the Commission will review how the firm manages its market, credit, liquidity and

Corporation" to engage in international banking activities. The Agreement Corporation enters into an "agreement" with the Federal Reserve to limit its activities to those that an Edge Act Corporation may undertake. Section 25 of the Federal Reserve Act (12 U.S.C. 601–604a). The purpose of both Edge Act Corporations and Agreement Corporations is to aid in financing and stimulating foreign trade. These entities may engage only in international banking or other financial transactions related to international business. The Board of Governors approves or denies applications to establish Edge Act Corporations and also examines both Edge Act and Agreement Corporations and their subsidiaries.

[19] The Commission will determine if there are in place appropriate arrangements so that information that the person provides to the Commission is sufficiently reliable for the purposes of determining compliance with Appendices E and G, and it is appropriate to deem the person to be an entity that has a principal regulator considering all relevant circumstances, including the person's mix of business.

[20] 12 U.S.C. 1840 *et seq.*

[21] 12 U.S.C. 1843(l)(1) and 12 CFR 225.81(b).

[22] 12 U.S.C. 1843(l)(3) and 12 CFR 225.90.

[23] 12 CFR 225.92(e).

[24] *Id.*

[25] This paragraph also governs the application of a savings and loan holding company as defined in Section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(1)(D)).

[26] We have replaced old Appendix E. Old Appendix E outlined a phase-in schedule for increased minimum net capital requirements for broker-dealers. The increased net capital minimums were fully effective as of July 1, 1994. Exchange Act Release No. 31511.

funding, legal, and operational risk, and its mathematical models, to determine if the broker-dealer has met the requirements of Appendix E and is complying with other applicable rules. The Commission also will review whether the broker-dealer's ultimate holding company is complying with the terms of the undertaking that it agrees to provide as a condition of the broker-dealer's use of the alternative method of computing net capital.

1. Application

Under proposed paragraph (a) of Appendix E, a broker-dealer would have applied to the Commission for an exemption from the standard net capital rule and for permission to calculate certain deductions for market and credit risk in accordance with Appendix E.[27] Proposed paragraph (a) described the various types of information that the broker-dealer would have submitted to allow the Commission to determine whether an exemption from the net capital rule was necessary or appropriate in the public interest or for the protection of investors.

a. Information To Be Submitted by the Broker-Dealer

As proposed, paragraph (a)(1) of Appendix E would have required a broker-dealer that applied to use the alternative method of computing net capital to include with its application financial, risk management, and other information about the firm. Specifically, broker-dealers would have been required to submit to the Commission a description of their internal risk management control system and how that system satisfies the requirements of Rule 15c3–4, together with a description of the method the broker-dealer intended to use to calculate deductions to net capital. We did not receive substantive comments on this rule related to information to be submitted about the broker-dealer and paragraph (a)(1) of Appendix E has been adopted as proposed.[28]

b. Confidential Treatment

A broker-dealer's application for exemption from the standard net capital rule and all submissions in connection with the application will be accorded confidential treatment, to the extent permitted by law. We received comments expressing some concern with the Commission's ability to maintain the confidentiality of documents and information filed with the Commission under these rules. Under the final rules, broker-dealers and ultimate holding companies will submit information to the Commission based on their understanding that the information will remain confidential. The information that we expect to receive from these entities is, by its nature, competitively sensitive. For example, we understand that broker-dealers and their holding companies have a commercial interest in their risk models, risk management systems and processes, and data that they obtain through use of these models, systems, and processes. We also have been advised that if the Commission were unable to afford confidential protection to the information that we expect to receive from broker-dealers and their ultimate holding companies, firms may hesitate to apply for the exemption from the standard net capital rule and consent to Commission supervision at the ultimate holding company level. This result would undermine and jeopardize the viability of the CSE system.

The Freedom of Information Act ("FOIA") provides at least two exemptions under which the Commission has authority to grant confidential treatment for applications filed under this rule. First, FOIA Exemption 4 provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[29] As specified in paragraph (a)(5) of new Appendix E, "all information submitted in connection with the application will be accorded confidential treatment to the extent permitted by law." The information to be filed with the Commission concerns firms' trading strategies, risk profiles, financial positions, and other information that is protected from disclosure under Exemption 4.

Second, FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." Similarly, Commission Rule 80(b)(8), Commission Records and Information, implementing Exemption 8, states that the Commission generally will not publish or make available to any person matters that are "contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions."[30] Significantly, the courts have ruled consistently that Exemption 8 provides categorical protection for information related to such reports.

c. Commission Review

Paragraph (a)(6) of proposed Appendix E would have permitted the Commission to approve a broker-dealer's application to use the alternative method of computing net capital, subject to the imposition of any conditions or limitations that the Commission found were necessary or appropriate in the public interest or for the protection of investors, after a review of whether the broker-dealer met the requirements of Appendix E; the broker-dealer was in compliance with other, applicable Exchange Act provisions or rules or rules of a self-regulatory organization; and the ultimate holding company was in compliance with applicable terms of its undertaking, which are conditions for the approval. We did not receive comments on this provision and the Commission is redesignating paragraph (a)(6) as paragraph (a)(7) of Appendix E and adopting it as proposed, with one exception.[31] We clarify in paragraph (a)(7), as adopted, that the Commission also must approve amendments to a broker-dealer's application to use the alternative method of computing net capital. Furthermore, note that paragraph (a)(1)(ix)(D), which describes the undertaking that an ultimate holding company that has a principal regulator must provide as a condition of its affiliated broker-dealer's exemption from the standard net capital rule, limits the conditions that the Commission may place on an ultimate holding company that has a principal regulator in

[27] From time to time, the broker-dealer will submit amendments to its application. For example, the broker-dealer will be required to submit an amendment to its application if it materially amends a VaR model that it uses to calculate a deduction for market or credit risk.

[28] As described below, however, the Commission has amended the undertaking provisions of paragraph (a)(1) to describe separately the requirements for an undertaking that a broker-dealer must submit for an ultimate holding company that does not have a principal regulator and an ultimate holding company that has a principal regulator.

[29] *See* 5 U.S.C. 552(b)(4).

[30] *See* 5 U.S.C. 552(b)(4).

[31] In its undertaking, an ultimate holding company agrees to comply with the applicable provisions of Appendices E and G as a condition to the broker-dealer's use of the alternative method of computing net capital. Appendix E, for example, requires a broker-dealer to include specified information from the ultimate holding company with the broker-dealer's application to compute deductions for market and credit risk under Appendix E. If the ultimate holding company did not produce the requisite information, it would not be in compliance with the terms of its undertaking.

approving the broker-dealer's exemption application.[32]

Paragraph (a)(7) of proposed Appendix E would have required a broker-dealer to amend and resubmit to the Commission its application for exemption from the standard net capital rule if the broker-dealer desired to change materially a mathematical model used to calculate deductions for market or credit risk or its internal risk management control system. We did not receive comment on this requirement and are redesignating paragraph (a)(7) as paragraph (a)(8) and adopting it as proposed.

Paragraph (a)(8) of proposed Appendix E would have required a broker-dealer to report any material changes to its or its ultimate holding company's corporate structure. The final rules do not include this notification requirement because it is redundant. The Commission will receive notification of the changes as part of the regular filings that the ultimate holding company submits under paragraph (b) of Appendix G.

Paragraph (a)(9) of proposed Appendix E would have required a broker-dealer to notify the Commission 45 days before it ceased using the alternative method of computing net capital under Appendix E. Under the proposed paragraph, the Commission could have ordered a shorter or longer notification period upon broker-dealer consent or if the Commission found that a shorter or longer period was necessary or appropriate in the public interest or for the protection of investors. We did not receive any comments on this requirement. We are redesignating paragraph (a)(9) as paragraph (a)(10) and adopting it as proposed.

Paragraph (a)(10) of proposed Appendix E would have permitted the Commission, by order, to revoke a broker-dealer's exemption from the standard net capital rule under Appendix E if the Commission found that the exemption no longer was necessary or appropriate in the public interest or for the protection of investors. A broker-dealer that no longer could use Appendix E would have been required to compute its capital charges using the standard haircut method.

A commenter suggested that the Commission's authority to revoke a broker-dealer's exemption from the standard net capital rule "should clarify that any limitations or remedial action must be narrowly circumscribed to address the relevant deficiency." The commenter also asserted the Commission should limit revocation of the exemption "to instances in which the Commission finds a material capital deficiency or a substantial pattern of material non-compliance."

In response to comments received, we are amending paragraph (a)(10). We also are redesignating paragraph (a)(10) as paragraph (a)(11) in Appendix E, as adopted. Paragraph (a)(11) adds a description of the factors that the Commission will rely evaluate in determining whether to revoke a broker-dealer's exemption from the net capital rule. Specifically, the Commission will consider the compliance history of the broker-dealer related to its use of models, the financial and operational strength of the broker-dealer and its ultimate holding company, and the broker-dealer's compliance with its internal risk management controls.

2. Risk Management Control System

Under proposed paragraph (b) of Appendix E, a broker-dealer using the alternative method of computing net capital would have been required to establish, document, and maintain an internal risk management control system that met the requirements of § 240.15c3–4.[33] The rule amendments, as adopted, do not include this requirement. Proposed paragraph (b) is omitted as unnecessary because the broker-dealer must comply with Rule 15c3–4 under Rule 15c3–1(a)(7)(iii), as adopted.

3. Computation of the Deduction for Market Risk

Commenters generally supported the method for calculating a broker-dealer's deductions for market risk described in paragraph (c) of proposed Appendix E. They raised several issues with respect to specific provisions for calculating the deduction, however. We address those issues in the sections that follow.

As a preliminary matter, we note that a broker-dealer must compute its deduction for market risk monthly. Paragraph (c) of proposed Appendix E would have required a daily computation of the deduction for market risk. Commenters raised a question as to whether a broker-dealer would be required to make daily capital computations and, if so, stated that daily computations would be unnecessary and burdensome. We have revised these sections to clarify that as part of their risk management practices, firms must compute VaR and current exposures daily. We note, however, that a broker-dealer must be in compliance with net capital requirements at all times.

Under paragraphs (c)(1) and (2) of proposed Appendix E, the deduction for market risk would have been equal to the amount of the sum of the following: (i) For positions for which the Commission has approved the use of VaR models, the VaR of those positions multiplied by the appropriate multiplication factor; (ii) for positions for which the Commission has approved the use of scenario analysis, the greatest adverse movement of the positions, or some multiple thereof based on liquidity or, if greater, a minimum deduction; and (iii) for all other positions, a deduction under the standard haircut method of paragraph (c)(2)(vi) Rule 15c3–1.

Paragraph (b)[34] of Appendix E, as adopted, describes the method of computing a broker-dealer's deduction for market risk. A broker-dealer's deduction for market risk under paragraph (b) is an amount equal to the sum of the following: (i) For positions for which the Commission has approved the broker-dealer's use of VaR models, the VaR of those positions multiplied by the appropriate multiplication factor; (ii) for positions for which the VaR model does not incorporate specific risk, a deduction for specific risk to be determined by the Commission based on a review of the broker-dealer's application and the positions involved; (iii) for positions for which the Commission has approved the use of scenario analysis, the greatest loss resulting from the scenario over any ten-day period, or some multiple thereof based on liquidity or, if greater, a minimum deduction; and (iv) for all other positions, a deduction under § 240.15c3–1(c)(2)(vi), (c)(2)(vii), and applicable appendices to § 240.15c3–1. We address each of the deductions for market risk in the sections that follow.

a. Deductions for Market Risk Using VaR Models

As noted, a broker-dealer may use a VaR model to calculate its deduction for market risk for those positions for which the Commission has approved the use of VaR models. To calculate the deduction, the broker-dealer multiplies the VaR of those positions by the appropriate multiplication factor. The multiplication factor is intended to help provide adequate capital during periods of market stress or other eventualities.[35] The results of quarterly backtests

[32] Refer to section (D)(a)(ii) of this release for a discussion of the undertaking for an ultimate holding company that has a principal regulator.

[33] *See infra*, discussion of proposed amendments to Rule 15c3–4.

[34] The final rules redesignate paragraph (c) of proposed Appendix E as paragraph (b).

[35] 17 CFR 240.15c3–1e(b)(1).

determine which of the multiplication factors contained in Table 1 of Appendix E a broker-dealer must use, except that the broker-dealer must use an initial multiplication factor of three.[36]

We have amended the proposed rules with regard to specified provisions of the VaR models used for computing a deduction for market risk.

i. Elimination of the VaR Phase-in Period

In response to comments received, Appendix E, as adopted, no longer includes the phase-in period for VaR models. Under paragraph (c)(3) of proposed Appendix E, the Commission would have phased in the use of VaR models to calculate deductions for net capital for three bands of positions over a period of at least 18 months. Commenters stated that implementation of VaR for calculation of deductions for market risk on a phased-in basis would impose unnecessary operational costs and inefficiencies. Elimination of the phase-in requirement is intended to promote more effective group-wide risk management and eliminate unnecessary operational costs and inefficiencies. Therefore, upon Commission approval of its VaR models, a broker-dealer may use its VaR models to calculate deductions for market risk capital for all positions for which the broker-dealer can demonstrate that its modeling procedures meet the applicable requirements in the final rules.

ii. Positions With No "Ready Market" Under VaR

Paragraph (c)(2) of proposed Appendix E generally would have prohibited the use of VaR models to compute deductions for market risk for positions with no "ready market"; debt securities that are below investment grade; and any derivative instrument based on the value of these positions, unless the Commission granted the broker-dealer's application to use a VaR model for those positions. Under paragraph (c)(2)(vii) of the net capital rule, positions for which there is no "ready market," as defined in section 240.15c3–1(c)(11),[37] would have excluded these positions from inclusion in VaR models; that is, the positions would have been subject to a 100% deduction.

Commenters asserted that, while positions with no ready market may lack historical data sufficient to allow accurate modeling, the rules should require a broker-dealer to demonstrate that its models adequately capture the material risks associated with the categories of securities in which they transact business, not limit use of VaR to those securities that have a ready market. We agree with the commenters and, therefore, Appendix E, as adopted, does not limit a broker-dealer's use of VaR models for computing deductions for market risk to securities that have a "ready market."

b. Deductions for Specific Risk

Paragraph (b)(2) of Appendix E may require a deduction for specific risk because of the reliance on VaR models for regulatory purposes, particularly for determining deductions for market risk for securities with no ready market. Generally, specific risk is the risk associated with how the price-change on an individual position may differ from broad, market-wide changes in prices. If the VaR models that a broker-dealer uses to compute deductions for market risk incorporate specific risk, there is no additional deduction for specific risk in determining the deduction for market risk. If, however, the VaR models do not incorporate specific risk, paragraph (b)(2) requires a broker-dealer to include separate deductions for specific risk. The Commission will determine the deduction for specific risk on a case-by-case basis based on a review of the broker-dealer's application and the positions involved.

c. Deduction for Market Risk Using Scenario Analysis

The Commission is amending the proposed rule on calculation of deductions for market risk using scenario analysis. Under the paragraph (c)(5) of proposed Appendix E, the deduction for market risk calculated using scenario analysis generally would have been three times the greatest adverse movement resulting from the scenario analysis over any ten-day period. Paragraph (b)(3)[38] of Appendix E, as adopted, permits a broker-dealer to determine a deduction for market risk using scenario analysis for those positions for which the Commission has approved the broker-dealer's application to use scenario analysis. The deduction will be the greatest loss resulting from a range of adverse movements in relevant risk factors, prices, or spreads designed to represent a negative movement greater than, or equal to, the worst ten-day movement over the four years preceding calculation of the loss, or some multiple of that movement based on liquidity. Permitting the use of scenario analysis to calculate the deduction for market risk will provide the broker-dealer with greater flexibility in determining how it may use mathematical models to calculate market risk deductions for securities for which a deduction calculated using VaR would not be appropriate. The minimum deduction for market risk computed for positions using scenario analysis is the same under the final rules as it was in the proposed rules.

The final amendments also change the period over which the greatest adverse ten-day movements of data are evaluated. Paragraph (c)(5) of proposed Appendix E would have required the scenario to include a range of adverse movements of risk factors, prices, or spreads that move by the greatest amounts over the past five years, or a three standard deviation movement in those risk factors, prices, or spreads over a ten-day period. Commenters suggested that the period related to ten-day movements be reduced from five to four years. In response to comments received, the final amendments reduce the period over which the greatest adverse ten-day movements of data are determined to four years. This change is intended to approximate more closely a ten-day movement of prices to a 99% confidence level.

The rule as proposed would have allowed for the use of a three standard deviations alternative if historical data for use in a scenario analysis were limited. Commenters expressed concern that this requirement would restrict the use of scenario analysis when historical data is limited. We are amending the proposed rule to clarify, under paragraph (b)(3) of Appendix E, as adopted, that a broker-dealer may use implied data or price histories of similar securities to calculate the three standard deviation movement if historical data is insufficient.

[36] Paragraph (e)(2)(iii) of proposed E would have required the VaR model to use an effective historical observation period of at least one year and to include periods of market stress in that historical observation period. One commenter observed that a one-year period might not contain periods of market stress. To address this concern, under paragraph (d)(2)(iii) of Appendix E, as adopted, a broker-dealer must consider the effects of market stress in its construction of the model.

[37] Under § 240.15c3–1(c)(11), "[t]he term 'ready market' shall include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom."

[38] Paragraph (c)(5) of proposed Appendix E has been redesignated as paragraph (b)(4) under Appendix E, as adopted.

d. Deductions for Market Risk Under the Standard Net Capital Rule

Paragraph (c)(6) of proposed Appendix E would have required a broker-dealer to compute a deduction for market risk using the "haircut method" of the standard net capital rule for a position not subject to a deduction for market risk computed using VaR models or scenario analysis. Haircuts are calculated under paragraphs (c)(2)(vi), (c)(2)(vii), and applicable appendices of the standard net capital rule, Rule 15c3–1.[39] By requiring a broker-dealer to use the haircut method of the standard net capital rule in appropriate circumstances, the Commission intended that a broker-dealer use paragraph (c)(2)(vii), if applicable. Proposed paragraph (c)(6), however, did not reference paragraph (c)(2)(vii) specifically. Paragraph (b)(4)[40] of Appendix E, as adopted, clarifies that a broker-dealer must compute deductions for market risk under both paragraphs (c)(2)(vi) and (c)(2)(vii) of the standard net capital rule, if applicable. Paragraph (c)(2)(vii), as noted, requires a 100% deduction for positions for which there is no ready market.

4. Computation of the Deduction for Credit Risk

A broker-dealer approved to calculate deductions for market risk using VaR models or scenario analysis must calculate its deduction for credit risk according to paragraph (c)[41] of Appendix E, as adopted, on credit exposures arising from the broker-dealer's positions in derivatives instruments. The deduction for credit risk is the sum of the following three categories of charges: (i) A counterparty exposure charge under paragraph (c)(1), (ii) concentration charges by counterparty under paragraph (c)(2), and (iii) a portfolio concentration charge for all counterparties under paragraph (c)(3). The deductions required for each of these categories are designed to address different components of credit risk.

a. Counterparty Exposure Charge

We are adopting the counterparty exposure charge as proposed, with the exception of the determination of counterparty credit risk weights. For each counterparty, the broker-dealer must compute a counterparty exposure charge equal to the net replacement value in the account of each counterparty that is insolvent, in bankruptcy, or has senior, unsecured long-term debt in default. For counterparties that are not insolvent, in bankruptcy, or in default, the counterparty exposure charge also includes the "credit equivalent amount" of the broker-dealer's exposures to the counterparty, multiplied by the credit risk weight of the counterparty, then multiplied by 8%.[42] The credit equivalent amount of a broker-dealer's exposure to a counterparty is defined in paragraph (c)(4)(i) of Appendix E, as adopted, as the sum of: (1) The broker-dealer's maximum potential exposure ("MPE") to the counterparty multiplied by the appropriate multiplication factor, and (2) the broker-dealer's current exposure to the counterparty. Under paragraph (d)(1)(v)[43] of Appendix E, as adopted, the multiplication factor applicable to MPE generally is determined based on backtesting results of the VaR model used to calculate MPE, except that the initial multiplication factor is one.

Paragraph (c)(4)(ii) of Appendix E defines MPE as VaR of the counterparty's positions with the broker-dealer, after applying netting agreements, taking into account the value of certain collateral received from the counterparty, and taking into account the current replacement value of the counterparty's positions with the broker-dealer. The broker-dealer must calculate MPE using a VaR model that meets the applicable quantitative and qualitative requirements of Appendix E. Paragraph (c)(4)(iii) of Appendix E, as adopted, defines "current exposure" as the replacement value of the counterparty's positions with the broker-dealer, after applying specified netting agreements[44] and taking into account the value of certain collateral[45] received from the counterparty.

In the Proposing Release, the credit risk weights would have ranged from 20% to 150%, depending on the credit rating of the counterparty, which provides a measure of credit risk. For a counterparty not rated by a nationally recognized statistical rating agency ("NRSRO"), the broker-dealer could have applied to the Commission for permission to determine a credit rating for the counterparty using internal calculations and to use that internal rating to determine the credit risk weight of the counterparty. For exposures covered by guarantees, a broker-dealer could have substituted the average of the credit risk weights of the guarantor and the counterparty for the credit risk weight of the counterparty, subject to specified conditions. These proposed credit risk weights were based on the formulas provided in the Foundation Internal Ratings-Based approach to credit risk proposed by the Basel Committee[46] and were derived using a loss given default (the percent of the amount owed by the counterparty the firm expects to lose if the counterparty defaults) of 75%.

We requested comment on the determination of credit risk weights. In particular, we requested comment on whether a broker-dealer should be permitted to apply to the Commission for permission to determine the credit risk weights of counterparties using internal calculations. We also requested comment on whether, in a calculation of credit risk weights based on internal estimates of annual probabilities of default, the proposed table appropriately matched credit risk weights to annual probabilities of default.

Several commenters stated that broker-dealers should be allowed to calculate credit risk weights based on internal estimates of annual probabilities of default, but that a 75% loss given default assumption was too conservative. One commenter stated that the loss given default percentage should be a function of the issuer, industry type, and debt class.

Based on comments received, we are permitting a broker-dealer to request Commission approval to determine counterparty credit risk weights using internal calculations under paragraph (c)(4)(vi)(E) of Appendix E, as adopted. These internally calculated credit risk weights are in addition to the credit risk weights contained in paragraphs (c)(4)(vi)(A) through (C) of Appendix E, as adopted. Paragraph (c)(4)(vi)(E) does not include any specific maturity adjustment factor, although we note that the Basel Standards use a maturity

[39] *See* 17 CFR 240.15c3–1(c)(2)(vi) and (vii).

[40] Proposed paragraph (c)(6) has been redesignated as paragraph (b)(4) under the final rules.

[41] Paragraph (d) of proposed Appendix E has been redesignated as paragraph (c) under Appendix E, as adopted.

[42] The 8% multiplier is consistent with the calculation of credit risk in the OTC derivatives dealers rules and with the Basel Standards and is designed to dampen leverage to help ensure that the firm maintains a safe level of capital.

[43] Paragraph (e) of proposed Appendix E has been redesignated as paragraph (d) of Appendix E, as adopted.

[44] Only netting agreements that meet the requirements of paragraph (c)(4)(iv) of Appendix E may be used to reduce current exposure and maximum potential exposure. For example, the netting agreements must be legally enforceable in each relevant jurisdiction, including in insolvency proceedings.

[45] Only collateral that meets the requirements of paragraph (c)(4)(v) of Appendix E may be used to reduce current exposure and maximum potential exposure.

[46] The New Basel Capital Accord, Basel Committee on Banking Supervision (April 2003).

adjustment factor of 2.5 years in their standard approach. Furthermore, in the Proposing Release, we requested comment on whether a proposed table of credit risk weights appropriately matched credit risk weights to annual probabilities of default. Commenters responded that the matches were not appropriate. Accordingly, rather than provide a table of credit risk weights corresponding to internal estimates of annual probabilities of default in the final rule, we will evaluate the method of determining credit risk weights the broker-dealer proposes in its application.

b. Concentration Charge by Counterparty

The Commission is adopting paragraph (c)(2) of Appendix E, the concentration charge by counterparty,[47] as proposed.[48] This charge accounts for the additional risk resulting from a relatively large exposure to a single party. The charge consists of concentration charges by counterparty that generally would apply when the current exposure of the broker-dealer to a single counterparty exceeds 5% of the tentative net capital of the broker-dealer. The amount of the concentration charge is larger for counterparties with lower credit ratings and ranges from 5% to 50% of the amount of the current exposure of the broker-dealer to the counterparty in excess of 5% of the broker-dealer's tentative net capital. The 5% criterion is based on the OTC derivatives dealer rules and the experience of Commission staff.

c. Portfolio Concentration Charge

The Commission is adopting an amended portfolio concentration charge under paragraph (c)(3)[49] of Appendix E. The portfolio concentration charge for credit risk addresses the risk of holding a relatively large amount of unsecured receivables. Proposed paragraph (d)(9) would have required firms to take a portfolio concentration charge across all counterparties equal to the amount, if any, that the broker-dealer's aggregate current exposure arising from transactions in derivative instruments across all counterparties exceeded 15% of the broker-dealer's tentative net capital. Commenters expressed concern that the portfolio concentration charge would be onerous because it would attach at a relatively low threshold and, consequently, restrict the scope of derivatives activity that could be booked in the broker-dealer in a capital-efficient manner. In response to comments received, the Commission has increased the threshold at which the portfolio concentration charge attaches. Under these final rules, a broker-dealer is subject to a charge on the amount, if any, that the broker-dealer's aggregate current exposure for all counterparties for unsecured exposures exceeds 50%, rather than 15%, of the broker-dealer's tentative net capital. Based on staff experience, we believe that the threshold at which the portfolio concentration charge attaches should help a broker-dealer maintain sufficient liquid capital while allowing the broker-dealer to book derivative transactions in a capital-efficient manner.

5. Qualitative and Quantitative Standards Applicable to Calculations Under Models

Paragraph (e)[50] of proposed Appendix E set forth the qualitative and quantitative requirements that broker-dealers would have been required to comply with to calculate deductions using VaR models.[51] These requirements were intended to make the capital charges based on the VaR measures a more accurate measure of losses that could occur during periods of market stress. We derived the requirements from the OTC derivatives dealer rules and our experience in implementing those rules. The qualitative requirements, listed in paragraph (e)(1) of proposed Appendix E, would have required that: (i) The VaR models used to calculate deductions for market and credit risk be the same models used to report market and credit risk to the firm's senior management and be integrated into the internal risk management system of the firm; (ii) the VaR models be reviewed by the firm periodically and annually by a registered public accounting firm, as that term is defined in the Sarbanes-Oxley Act of 2002;[52] and (iii) for purposes of computing market risk, the multiplication factor be determined based on quarterly backtesting of the VaR models used to calculate market risk and by reference to Table 1 of Appendix E.

The proposed quantitative standards would have required each model to: (i) Use a 99 percent, one-tailed confidence level with price changes equivalent to a ten business-day or one-year movement in rates and prices for purposes of determining market and credit risk, respectively; (ii) use an effective historical observation period of at least one year in length that included periods of market stress; and (iii) take into account and incorporate all significant, identifiable market risk factors applicable to the firm's positions.[53]

In the Proposing Release, we requested comment on the proposed use of mathematical models for regulatory capital purposes, including the proposed quantitative and qualitative requirements and the proposed backtesting procedures for the models. One commenter stated that one year might not contain periods of market stress. To address this concern, the rule as adopted, in addition to the one-year minimum, provides that the broker-dealer must consider the effects of market stress in its construction of the model.

Paragraph (e)(1)(iv)[54] of proposed Appendix E would have required broker-dealers to determine multiplication factors for purposes of computing the credit equivalent amount of the firm's exposure to a counterparty based on results of backtesting of the model used to calculate MPE. This paragraph would have required firms to conduct the backtesting by comparing, for at least 40 counterparties, the daily change in current exposure based on the end of the previous day's positions with the corresponding MPE for the counterparty generated by the model.

One commenter stated that because MPE is based on a one-year time horizon, it is inconsistent to compare it with a one-day change in current exposure. The commenter also stated that the Commission should allow the use of VaR models based on information implied from market prices for one-year horizon potential exposure calculations. According to the commenter, the potential exposure models that utilize implied parameters are in widespread use in the financial industry. We will consider whether a firm should be

[47] Concentration charges are intended to provide a liquidity cushion if a lack of diversification of positions exposes the broker-dealer to additional risk. When evaluating credit risk, a relatively (relative to the amount of the broker-dealer's tentative net capital) large exposure to a single party (the credit rating of that counterparty would, of course, affect the amount of additional risk) would evidence a lack of diversification.

[48] We redesignated paragraph (d)(7) of proposed Appendix E as paragraph (c)(2) of Appendix E, as adopted.

[49] Paragraph (d)(9) of Appendix E, as proposed, has been redesignated as paragraph (c)(3) of Appendix E, as adopted.

[50] Paragraph (e) of proposed Appendix E has been redesignated as paragraph (d) of Appendix E, as adopted.

[51] 17 CFR 240.15c3–1e(e)(1) and (2).

[52] "Registered public accounting firm" is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*) as "a public accounting firm registered with the [Public Company Accounting Oversight] Board in accordance with this Act."

[53] Proposed Rule 15c3–1e(e)(2).

[54] Paragraph (e)(1)(iv) of proposed Appendix E has been redesignated as paragraph (d)(1)(v) of Appendix E, as adopted

permitted to use implied parameters in potential exposure calculations if the firm requests consideration of this issue in its application.

Furthermore, in response to comments received and to strengthen and improve the backtesting requirement we have amended both paragraphs (d)(1)(v)(A) and (B) of Appendix E, as adopted. Under these paragraphs as amended, the MPE horizon is ten business days, rather than one day. The ten-day requirement is consistent with the VaR models broker-dealers use. In conducting backtesting, the broker-dealer must compare the change in current exposure to the counterparty based on its positions held at the beginning of the ten-business day period to the corresponding ten-business day MPE for the counterparty generated by the VaR model.

Moreover, we re-evaluated the requirement that the broker-dealer compare at least 40 counterparties in conducting conduct backtesting. Based on that re-evaluation and staff experience, we determined that to help ensure a sufficient number of data points and, therefore, an appropriate sample for backtesting, the broker-dealer must compare at least 30 counterparties under paragraph (d)(1)(v)(A) of Appendix E, as adopted, rather than 40 counterparties, as proposed.

Paragraph (e)(2)(ii) of proposed Appendix E would have required the VaR model to use a time horizon of one year for purposes of determining MPE. Several commenters stated that the time horizon should be ten business days if the position is marked to market daily and a written agreement enforceable against the counterparty provides that the broker-dealer or its affiliate may call for additional collateral daily.

In response to comments received, a broker-dealer may use a time horizon of not less than ten business days to calculate MPE under paragraph (d)(2)(ii)[55] of Appendix E, as adopted. Generally, if collateral is not posted to, and held by, the broker-dealer, the broker-dealer must use the one-year time horizon when calculating MPE. If, however, there is a valid collateral agreement, the Commission may approve a shorter time horizon based on a review of the broker-dealer's procedures for managing collateral. The broker-dealer also must be able to mark the collateral to market daily and have the ability to call the collateral daily. This modification of the time horizon requirement should help a broker-dealer to maintain a liquid capital base while promoting operational efficiency.

6. Additional Conditions for Noncompliance With Appendices E and G, Model Failures, or Control Failures

We are revising paragraph (f) of proposed Appendix E and redesignating it as paragraph (e) of Appendix E, as adopted. Paragraph (f) of proposed Appendix E would have permitted the Commission, in specified circumstances, to condition a broker-dealer's continued use of the alternative method of computing net capital on the broker-dealer's or its ultimate holding company's compliance with additional conditions. Additional conditions imposed on the broker-dealer could have included, but would not have been limited to, restrictions on the scope of the broker-dealer's business, submission of a plan to increase its net capital or tentative net capital, or calculation of some or all of its deductions for market and credit risk according to the standard net capital method of Rule 15c3–1.

Paragraph (e) of Appendix E, as adopted, clarifies in the rule text that we may require a broker-dealer to calculate some or all of its deductions to net capital under paragraph (c)(2)(vii) of the standard net capital rule, if applicable. As noted above, we stated in Proposing Release that we intended a broker-dealer using the alternative method of computing net capital to use the haircut method of the standard net capital rule to compute appropriate deductions to net capital when the alternative method could not be applied. A broker-dealer calculates haircuts under paragraphs (c)(2)(vi), (c)(2)(vii), and applicable appendices of Rule 15c3–1. Although we did not reference paragraph (c)(2)(vii) in the proposed rule text, we indicated that haircuts were to be used to compute deductions to net capital in specified circumstances, thus requiring a broker-dealer to make the computation under paragraph (c)(2)(vii), if appropriate, together with (c)(2)(vi) and applicable appendices of Rule 15c3–1.

As noted, paragraph (f) of proposed Appendix E also would have permitted the Commission to impose certain additional requirements on the broker-dealer's ultimate holding company, subject to specified conditions. One commenter stated that if the ultimate holding company is a bank holding company that complies with its regulator's capital requirements on a consolidated basis, any capital remedies should be imposed on the broker-dealer and not on the ultimate holding company. Another commenter stated that if the Commission has concerns about the risk models or procedures in the ultimate holding company's capital calculation, it should address the concerns by imposing additional capital charges on the broker-dealer, not by requiring a change in the risk models or procedures.

Paragraph (e) of Appendix E, as adopted, clarifies that the Commission only may impose additional conditions on an ultimate holding company that does not have a principal regulator. If the Commission has concerns with respect to the risk models or risk management system of an ultimate holding company that has a principal regulator, the Commission may impose additional regulatory requirements on the broker-dealer.

Paragraph (e) of Appendix E, as adopted, outlines circumstances under which the Commission may impose additional conditions on the broker-dealer or the ultimate holding company that does not have a principal regulator. First, as discussed above, we added a provision that states that the Commission may impose additional conditions if the broker-dealer must notify the Commission under paragraph (a)(7)(ii) of Rule 15c3–1 that its tentative net capital is below $5 billion. Notification is necessary because this event indicates that the broker-dealer or ultimate holding company might be approaching financial difficulty. Second, we added a provision that allows the Commission to impose additional regulatory requirements on the broker-dealer or an ultimate holding company that does not have a principal regulator if the broker-dealer fails to comply with Appendix E. The authority to impose these requirements is essential to the Commission's ability to address risks to the broker-dealer.

7. Recordkeeping

The Commission did not propose amendments to Rule 17a–3 because that rule already requires a broker-dealer to create and maintain records sufficient for the Commission to examine the broker-dealer adequately, regardless of whether the broker-dealer uses the alternative or standard method of computing net capital. Broker-dealers currently must make various records, including blotters containing an itemized daily record of all purchases and sales of securities, and all receipts and deliveries of securities, cash, and other debits and credits. Under the existing requirements in Rule 17a–3, a broker-dealer can provide the Commission with a separate record of all transactions between itself and all affiliates in the affiliate group. Consistent with the Commission's supervision of inter-group transactions,

[55] Paragraph (e)(2)(ii) of proposed Appendix E has been redesignated as paragraph (d)(2)(ii) of Appendix E, as adopted.

the Commission may obtain and review a record of inter-group transactions as part of its supervisory reviews under Rule 17a–3.

D. Ultimate Holding Company Requirements

Under the rule amendments, an ultimate holding company is subject to requirements under both Appendix E and Appendix G. Appendix E primarily requires the ultimate holding company to submit specified information to the Commission with the broker-dealer's application to use the alternative method of computing net capital. Appendix G outlines the ultimate holding company's obligations with respect to calculation of allowable capital, allowances for certain capital charges, and certain recordkeeping and reporting requirements.

1. Ultimate Holding Company Requirements Under Appendix E

Under Appendix E as proposed, a broker-dealer's ultimate holding company would have submitted specified information to the Commission with the broker-dealer's application to use the alternative method of computing net capital. This information would have been similar to the information that we presently obtain under the OTC derivatives dealer rules, under the risk assessment rules, and voluntarily from the DPG firms and other broker-dealers. We have found this information to be useful in gaining insight into the financial condition, internal risk management control system, risk exposure, and activities of the broker-dealer and its ultimate holding company and material affiliates.[56] The information provided in these documents would have been key considerations in determining the continued viability of the broker-dealer because serious adverse conditions at the ultimate holding company or a material affiliate likely would have exposed the broker-dealer to liquidity or other risks.

In response to comments received, we have revised the final rules to set forth separately the requirements for information that an ultimate holding company that has a principal regulator must submit to the Commission from the requirements for information that an ultimate holding company that does not have a principal regulator must submit to the Commission. These requirements are addressed below in detail.

[56] We will review, on a case-by-case basis, the entities that have been identified in the application as material affiliates.

a. Ultimate Holding Company Undertaking

As a condition to a broker-dealer's use of the alternative method of computing net capital, proposed paragraph (a)(1)(viii) of Appendix E would have required the broker-dealer to include with its application a written undertaking by the broker-dealer's ultimate holding company. Other than with respect to holding companies subject to group-wide supervision by other regulators, we did not receive specific comments on these proposed requirements. Nevertheless, we are revising paragraph (a)(1)(viii) to reflect that we no longer are amending Rule 15c3–4. Moreover, we have revised the final rules to set forth separately, in paragraph (a)(1)(ix), the requirements for an undertaking submitted by an ultimate holding company that has a principal regulator.

i. Ultimate Holding Company That Does Not Have a Principal Regulator

As a condition to its use of the alternative method for computing net capital, paragraph (a)(1)(viii) of Appendix E, as adopted, requires a broker-dealer to file a written undertaking by its ultimate holding company, signed by a duly authorized person at the ultimate holding company, in which the ultimate holding company agrees, among other things, to:

- Comply with all applicable provisions of Appendices E and G to Rule 15c3–1;
- Comply with the provisions of Rule 15c3–4 with respect to a group-wide internal risk management control system for the affiliate group as if it were an OTC derivatives dealer. Paragraph (a)(1)(viii)(C) is discussed in greater detail in the section of this release that addresses Rule 15c3–4;
- As part of its group-wide internal risk management control system, to establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing;[57]
- Permit the Commission to examine the books and records of any affiliate of the ultimate holding company, if the affiliate is not an entity that has a principal regulator;[58]
- If the disclosure to the Commission of any information required as a condition for the broker-dealer to use Appendix E is prohibited by law or otherwise, cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of material affiliates from providing information to the Commission and by discussing the manner in which the broker-dealer and the ultimate holding company propose to provide the Commission with adequate assurances of access to information; and
- Acknowledge that the Commission may implement additional supervisory conditions if the ultimate holding company fails to comply in a material manner with any provision of its undertaking.

Paragraphs (a)(1)(viii)(I) and (J) of proposed Appendix E would have required an ultimate holding company, as a condition to a broker-dealer's use of the alternative method of computing net capital, to consent in its undertaking to submit to the Commission, in advance of making them, any material changes to mathematical models and other methods used to calculate allowances for market, credit, and operational risk, and any material changes to the internal risk management control system for the affiliate group.

We are adopting these requirements as paragraph (a)(9) of Appendix E. We redesignated as paragraph (a)(9) the obligation to submit to the Commission specified material changes for prior approval to emphasize that the obligation is ongoing. Furthermore, to avoid unnecessary or duplicative requirements, paragraph (a)(9) of Appendix E, as adopted, applies only to ultimate holding companies that do not have principal regulators.

ii. Undertaking for an Ultimate Holding Company That Has a Principal Regulator

A number of commenters urged the Commission to reduce certain requirements applicable to ultimate holding companies that already are subject to another regulator's consolidated supervision. These commenters asserted that the requirements, including the undertaking

[57] This parallels requirements in the proposed New Basel Capital Accord, as amended from time to time. *See also* Financial Action Task Force on Money Laundering (FATF) Recommendation 22, and *see generally* the FATF's Special Recommendations on Terrorist Financing (The FATF's documents can be found at *http://www.FATF-GAFI.org*).

[58] The primary purpose of our examination of ultimate holding companies and their affiliates is to verify their financial and operational conditions and to verify whether the internal risk management controls and the methodologies for calculating allowable capital and allowances for market, credit, and operational risk are consistent with those controls and methodologies approved by the Commission. We will not examine an entity that has a principal regulator, and we will not examine an ultimate holding company that has a principal regulator or the non broker-dealer affiliates of such a holding company.

required as part of the application process, could lead to the imposition of duplicative and possibly inconsistent requirements on these ultimate holding companies by the Commission and their current regulators.

In response to these comments and to avoid duplicative or inconsistent requirements, the Commission has amended paragraph (a)(1) to create a new sub-paragraph (ix) that specifies the more limited undertaking that a broker-dealer must submit if its ultimate holding company has a principal regulator, as that term is defined in new paragraph 15c3–1(c)(13). This undertaking, however, still enables the Commission to obtain information sufficient to evaluate the risk that the ultimate holding company may pose to the broker-dealer.

As a condition to its use of the alternative method for computing net capital, paragraph (a)(1)(ix) of Appendix E, as adopted, requires a broker-dealer to file a written undertaking by its ultimate holding company that has a principal regulator, signed by a duly authorized person at the ultimate holding company, in which the ultimate holding company agrees, among other things, to:

- Comply with applicable provisions of Appendices E and G to Rule 15c3–1;
- Make available to the Commission information about the ultimate holding company that the Commission finds necessary to evaluate the financial and operational risk within the ultimate holding company and to evaluate compliance with the conditions of eligibility of the broker-dealer to compute net capital under the alternative method of Appendix E; and
- Acknowledge that the Commission may impose additional supervisory conditions on the broker-dealer, described in detail below, if the ultimate holding company fails to comply in a material manner with any provision of its undertaking.

b. Information To Be Submitted by the Ultimate Holding Company

Paragraph (a)(2) of proposed Appendix E would have required an ultimate holding company to consent to provide specified information to the Commission with an affiliated broker-dealer's application as a condition of the broker-dealer's use of the alternative method of computing net capital. Among other things, the ultimate holding company would have consented to include an organizational chart that identified the ultimate holding company, the broker or dealer, and the material affiliates. According to some commenters, the Commission "may wish to only require broker-dealers to submit an organizational chart that identifies the holding company, the broker-dealer, and the material, unregulated affiliates of the broker-dealer * * * and such other affiliate organizational information as it may request from time to time." These commenters suggested that the Commission eliminate the alphabetical list in paragraph (a)(2)(ii) of Appendix E, as proposed, because large financial services firms may have hundreds of affiliates and information and the commenters believed that information on these affiliates would not assist the Commission in its understanding of the risks to broker-dealers.

Paragraph (a)(2)(ii) of Appendix E, as adopted, retains the requirement that the ultimate holding company consent to provide an alphabetical list to the Commission of its affiliates (the "affiliated group"). The Commission needs a comprehensive list of entities that make up the affiliate group to understand, as completely as possible, the organizational structure of which the broker-dealer is a part. Moreover, management of the ultimate holding company should have ready access to a comprehensive list of affiliates and a designation of whether the affiliates have a financial regulator as part of its internal risk management systems.

We also are making technical amendments to paragraph (a)(2)(iii) of Appendix E, as adopted. Paragraph (a)(2)(iii) of Appendix E, as proposed, would have required an ultimate holding company to consent to provide "an organizational chart that identifies the holding company, the broker or dealer, and the material affiliates of the broker or dealer." Paragraph (a)(2)(ii), both as proposed and adopted, requires that the ultimate holding company consent to provide information about affiliates material to the ultimate holding company, not the broker-dealer. Likewise, we intended paragraph (a)(2)(iii) to require an ultimate holding company to provide an organizational chart that identifies the material affiliates of the ultimate holding company, not the broker-dealer. Accordingly, paragraph (a)(2)(iii) of Appendix E, as adopted, requires the ultimate holding company's organizational chart to identify affiliates material to the ultimate holding company.

Commenters also suggested that an ultimate holding company that has a principal regulator should not be required to provide all of the information to the Commission that proposed paragraph (a)(2) of Appendix E would have required. According to the commenters, an ultimate holding company that has a principal regulator already might provide some of the information required under proposed paragraph (a)(2) to its principal regulator and, therefore, the information requirements could lead to duplicative or inconsistent requirements.

To avoid potentially duplicative or inconsistent requirements, paragraph (a)(2), as adopted, applies only to an ultimate holding company that does not have a principal regulator. The Commission has revised the rules to set forth separately, in paragraph (a)(3), the documents that an ultimate holding company that has a principal regulator must submit. The following sections describe the requirements under paragraphs (a)(2) and (a)(3).

i. Ultimate Holding Company That Does Not Have a Principal Regulator

Paragraph (a)(2) of Appendix E, as adopted, specifies the information that an ultimate holding company that does not have a principal regulator must submit, as a condition of Commission approval, with the broker-dealer's application for exemption from the standard net capital rule. That information includes the following:

- A narrative description of the business and organization of the ultimate holding company;
- An alphabetical list of the affiliates of the broker-dealer ("affiliate group"), with an identification of the financial regulator, if any, with whom the affiliate is registered and a designation of those affiliates that are material to the ultimate holding company ("material affiliates");
- An organizational chart that identifies the ultimate holding company, the broker-dealer, and the material affiliates;
- Consolidated and consolidating financial statements;
- Certain sample capital calculations made according to Appendix G to Rule 15c3–1;
- A description of the categories of positions held by the ultimate holding company and affiliates;
- A description of the methods the ultimate holding company intends to use for computing allowances for market,[59] credit, and operational risk;

[59] One commenter argued that the proposed requirement to submit a description of all mathematical models was overly broad and seemed excessive and unnecessary. In response, the Commission eliminated the word "all" because, although we require a description of and intend to review all models used to calculate deductions for market and credit risk, we do not intend to require a firm to describe each pricing model because we may not review all pricing models during the application process.

• A description of any differences between the models used by the ultimate holding company and those used by the broker-dealer to compute deductions for specified risks on the same instrument or counterparty;
• A description of the risk management control system the ultimate holding company uses to manage group-wide risk and how that system satisfies the requirements of Rule 15c3–4; and
• Sample risk reports that the ultimate holding company provides to its senior management.

ii. Ultimate Holding Company That Has a Principal Regulator

New paragraph (a)(3) of Appendix E, as adopted, specifies the more limited information that an ultimate holding company that has a principal regulator must include, as a condition of Commission approval, with the broker-dealer's application for exemption from the standard net capital rule. That information includes the following:
• A narrative description of the business and organization of the ultimate holding company;
• An alphabetical list of the affiliates of the broker-dealer with an identification of the financial regulator, if any, by whom the affiliate is regulated and a designation of those affiliates that are material to the ultimate holding company;
• An organizational chart that identifies the ultimate holding company, the broker-dealer, and the material affiliates;
• Consolidated and consolidating financial statements;
• A capital measurement report as provided to its principal regulator;
• A description of any differences between the models used by the ultimate holding company and those used by the broker-dealer to compute capital charges on the same instrument or counterparty; and
• Sample risk reports that the ultimate holding company provides to its senior management.

Receipt of these documents is intended to provide the Commission with insight into the ultimate holding company and the risks that it may pose to the broker-dealer without intruding upon the jurisdiction of the ultimate holding company's principal regulator.

Because each ultimate holding company manages its internal risk differently, the Commission, during the application process, must assess each ultimate holding company's business and internal risk management control systems to determine if approval of the application is appropriate. The ultimate holding company information that we require a broker-dealer to file as a condition of approval of the application for the exemption from the standard net capital rule allows us to evaluate these management control systems.

iii. Other Information

Paragraph (a)(3) of proposed Appendix E[60] would have required a broker-dealer to provide supplemental information about it or its ultimate holding company upon Commission request. The Commission would have requested supplemental information to complete its review of the broker-dealer's application to use the alternative method of computing net capital. In certain circumstances, such as consideration of the particular business or organizational structure of the ultimate holding company and its affiliates, the Commission could have conditioned its approval on obtaining additional information or documents necessary to assess adequately the risks to the ultimate holding company and to the broker-dealer. Accordingly, we are adopting paragraph (a)(4) of Appendix E as proposed. Paragraph (a)(4) requires a broker-dealer to supplement it application with other information or documents relating to the internal risk management control system, mathematical models, and financial position of the broker-dealer or the ultimate holding company that the Commission may request to complete its review of the application.

2. Ultimate Holding Company Requirements Under Appendix G

As a condition of Commission approval, the ultimate holding company of a broker-dealer applying to use the alternative method of computing net capital must undertake to comply with the requirements listed in Appendix G to Rule 15c3–1, as required by paragraphs (a)(1)(viii) or (a)(1)(ix) of Appendix E. Under Appendix G, the ultimate holding company that does not have a principal regulator must compute allowable capital and allowances for market, credit, and operational risk on a consolidated basis for the affiliated group; provide the Commission with certain monthly, quarterly, and annual reports; maintain certain books and records relating to the ultimate holding company's consolidated and consolidating financial reports and internal risk management controls; and notify the Commission upon the occurrence of certain events. These conditions are designed to help the Commission assess the financial and operational health of the ultimate holding company and its potential impact on the risk exposure of the broker-dealer.

a. Calculation of Allowable Capital and Allowances for Market, Credit, and Operational Risk by an Ultimate Holding Company That Does Not Have a Principal Regulator

Under paragraph (a) of Appendix G, as adopted, an ultimate holding company must calculate allowable capital and allowances for market, credit, and operational risk on a consolidated basis for the affiliate group as a condition of the broker-dealer's use of the alternative method of computing net capital. The calculations are designed to be consistent with the Basel Standards, which should allow for greater comparability of ultimate holding companies to international securities firms and banking institutions and allow monitoring of the financial condition of the affiliate group, which may impact the financial stability of the broker-dealer.

We believe the rules contain prudent parameters for measuring allowable capital and risk allowances for the ultimate holding company. For example, the rules limit the amount of subordinated debt that may be included in allowable capital, require the VaR model used to calculate the allowance for market risk to be based on a ten business-day movement in rates and prices, and require the VaR measure to be multiplied by a factor of at least three.

i. Group-Wide Allowable Capital Calculation

a. Components of Allowable Capital

Under paragraph (a)(1) of proposed Appendix G, the ultimate holding company would have calculated allowable capital on a consolidated basis for the affiliate group. Consistent with the Basel Standards, allowable capital would have included common shareholders' equity (less goodwill, deferred-tax assets, and certain other intangible assets), certain cumulative and non-cumulative preferred stock,[61] and certain properly subordinated debt. As set forth in detail in the rule, the cumulative and non-cumulative

[60] Paragraph (a)(3) of proposed Appendix E has been redesignated as paragraph (a)(4) of Appendix E, as adopted.

[61] To qualify for inclusion in allowable capital, the cumulative and noncumulative preferred stock cannot have a maturity date, cannot be redeemed at the option of the holder, and cannot contain any other provisions that would require future redemption of the issue. In addition, the issuer must be able to defer or eliminate dividends. Preferred stock that meets these conditions has characteristics of capital (as opposed to debt).

preferred stock and subordinated debt would have been subject to additional limitations based on comparisons of the individual components of allowable capital.

In response to comments received, the Commission has expanded the definition of allowable capital in paragraph (a)(1) of Appendix G, as adopted, to include hybrid capital instruments and certain deferred-tax assets. Commenters noted that the Basel Standards and the Federal Reserve's definition of Tier 1 and Tier 2 capital include hybrid capital instruments and certain deferred-tax assets. To be more consistent with both the Basel Standards and the Federal Reserve's definition of Tier 1 and Tier 2 capital, an ultimate holding company may include in allowable capital both those hybrid capital instruments that the Federal Reserve allows for inclusion in Tier 2 capital and specified deferred-tax assets, subject to certain limitations.[62] This increased consistency should promote greater comparability of financial information among firms.

Paragraph (a)(1)(iii)(B) of proposed Appendix G would have permitted inclusion of subordinated debt in allowable capital subject to specified criteria intended to help assure that the subordinated debt provides a long-term source of working capital to the holding company and that it has many of the characteristics of capital. We did not receive comments on inclusion of subordinated debt in allowable capital and we adopt paragraph (a)(1)(iii)(B) of Appendix G as proposed.

In the Proposing Release, the Commission solicited comment on whether long-term debt, subject to appropriate limitations, should be included in allowable capital. A number of commenters argued in favor of inclusion. Those commenters noted that economic considerations primarily determine the type of debt issued, including the term, structure, and cost of borrowing. Some broker-dealer affiliates of holding companies, consequently, have relied upon long-term debt for management of their capital structures.

Other commenters suggested that long-term debt be included as allowable capital during a phase-out period. They suggested that a swift phase-out of long-term debt would be difficult. If each of the ultimate holding companies interested in this program simultaneously issued subordinated debt to replace long-term debt, these new, large issues could impact capital markets negatively, increasing funding costs.

To maintain consistency with the Basel Standards, holding companies may not include long-term capital in allowable capital. We understand, however, that an ultimate holding company might not be able to convert significant amounts of long-term debt to subordinated debt quickly without incurring significant costs and causing market disruptions. Accordingly, as part of the broker-dealer's application to compute deductions for specified risks under Appendix E, an ultimate holding company may request to phase-out the inclusion of long-term debt as allowable capital over a period of up to three years, if the long-term debt meets the criteria specified in paragraph (a)(1)(iii)(C) of Appendix G, as adopted. We believe that the three-year phase-out period is appropriate based on staff experience. After three years, a broker-dealer may submit an amendment to its application and request that the Commission grant the ultimate holding company up to two additional years to complete the phase-out of long-term debt. The Commission will determine if the amount of the ultimate holding company's long-term debt and market conditions warrant an extension.

b. The "Aggregate" or "Building Block" Approach to Calculation of Allowable Capital

Some commenters suggested that the Commission permit calculation of allowable capital using the "aggregate," or "building block," approach, rather than a calculation on a consolidated basis. Under the building block approach, an ultimate holding company would have sufficient allowable capital if available capital exceeds the sum of its subsidiaries' functional regulatory capital requirements.

In response to comments received, the broker-dealer may request in its initial application that the ultimate holding company be permitted to use the building block approach to computing allowable capital.[63] The request must describe a proposed building block allowable capital calculation approach that is consistent with the methods described in the Joint Forum's July 2001 paper entitled, "Capital Adequacy Principles."[64] Use of these principles is appropriate because they outline internationally agreed-upon standards for calculating consolidated capital.

In aggregating the capital requirements of its subsidiaries, an ultimate holding company would use the existing capital adequacy calculations prepared for each entity according to the methodology prescribed by its principal regulator. Unregulated entities, including both subsidiaries and the ultimate holding company, would be subject to proxy capital requirements calculated according to the Basel Standards. The ultimate holding company then would compare the sum of the capital requirements to total capital resources.

ii. Group-Wide Calculation of Allowance for Market Risk

Paragraph (a)(2) of proposed Appendix G would have required daily calculation of a group-wide allowance for market risk. Commenters requested that the Commission no longer require an ultimate holding company to calculate a group-wide allowance for market risk daily because an ultimate holding company only must report this information to the Commission monthly. In response to comments received, paragraph (a)(2) of Appendix G, as adopted, no longer requires computation of the allowance for market risk on a daily basis. Rather, paragraph (c)(4) of Appendix G, as adopted, requires an ultimate holding company to compute and report its group-wide allowance for market risk monthly. Nevertheless, as part of the qualitative and quantitative requirements for the use of models, an ultimate holding company must compute VaR on a daily basis as part of its internal risk management system.

We also are modifying paragraph (a)(2)(i) of Appendix G to clarify the method that an ultimate holding company must use to calculate allowances for market risk using VaR models. Under Appendix G, as adopted, an ultimate holding company calculates a group-wide allowance for market risk on all proprietary positions using a VaR model, then multiplies the VaR of those positions by an appropriate multiplication factor to provide an adequate measure of capital during periods of market stress. The VaR model used must meet the qualitative and quantitative requirements of paragraph (d) of Appendix E, as adopted.[65] Likewise, the ultimate holding company must use a multiplication factor from

[62] An ultimate holding company may include hybrid capital instruments and deferred-tax assets subject to the terms and conditions contained in 12 CFR 225, Appendix A.

[63] Use of the building block approach generally would increase capital at the holding company level.

[64] Capital Adequacy Principles and Supplement to Capital Adequacy Principles Papers, Joint Forum Compendium of Documents, Basel Committee on Banking Supervision (July 2001).

[65] *See supra*, discussion of the broker-dealer's calculation of its deduction for market risk using a VaR model under Appendix E.

Table 1 of paragraph (d) of Appendix E. The use of VaR is intended to be generally consistent with the calculation of the deduction for market risk for a broker-dealer under Appendix E and with the calculation of allowances for market risk under the Basel Standards.

iii. Group-Wide Calculation of Allowance for Credit Risk

We are modifying certain requirements for calculating the allowance for credit risk under paragraph (a)(3) of Appendix E, as adopted. Paragraph (a)(3) of proposed Appendix G would have required an ultimate holding company to calculate an allowance for credit risk for certain assets on the consolidated balance sheet and certain off-balance sheet items under either paragraph (a)(3)(i) or paragraph (a)(3)(ii). An ultimate holding company would have calculated the allowance for credit risk under paragraph (a)(3)(i) by multiplying the credit equivalent amount of each asset or off-balance sheet item by the appropriate credit risk weight[66] of that asset or off-balance sheet item, then multiplying that result by 8%.[67] We are adopting the calculation of the allowance for credit risk in paragraph (a)(3)(i) of Appendix G as proposed, although we are revising the methods of determining the credit equivalent amount and credit risk weights.

Paragraph (a)(3)(i)(A)(*2*) of proposed Appendix G would have required a 5% credit conversion factor for margin loans. Several commenters stated that this factor was too high. According to one commenter, most margin loans are held in broker-dealers, where the application of customer margin requirements often exceed Federal Reserve requirements, and actual losses over many decades have been very small. Another commenter stated that the proposed conversion factor should be eliminated. A commenter also asserted that margin loans that are marked to market and subject to collateral calls daily should be considered economically equivalent to secured financing transactions and should be eligible for VaR-based exposure treatment.

After considering the comments, we are not including the 5% credit conversion factor for margin loans contained in proposed paragraph (a)(3)(i)(A)(*2*). An ultimate holding company may apply to use the VaR-based exposure treatment under paragraph (a)(3)(i)(B) as a "similar collateralized transaction." For unrated counterparties, the Commission could determine, after a review of the description of the margin loans in the application of the broker-dealer, that the margin loans could be treated as a pool with a very low loss history. In this case, the ultimate holding company could use internal estimates of exposure at default that consider the loss history for the pool.

Under proposed paragraph (a)(3)(i)(B), the credit equivalent amount of the ultimate holding company's exposure to a counterparty would have consisted of the ultimate holding company's current exposure to the counterparty and its maximum potential exposure, multiplied by the appropriate multiplication factor. We are adopting paragraph (a)(3)(i)(B) as proposed.

We are revising the definitions of "current exposure" and "maximum potential exposure" and adopting those revised definitions in paragraphs (a)(3)(i)(D) and (a)(3)(i)(E), respectively, of Appendix G. Paragraph (a)(3)(i)(C) of proposed Appendix G would have defined an ultimate holding company's current exposure to a counterparty as the current replacement value of a counterparty's positions, after applying specified netting agreements with the counterparty, taking into account the value of collateral from the counterparty, and subtracting the fair market value of any credit derivatives that specifically changed the exposure to the counterparty.

Under paragraph (a)(3)(i)(D) of Appendix G, as adopted, the definition of current exposure does not include a provision under which the ultimate holding company must subtract the fair market value of any credit derivatives that specifically change the exposure to a counterparty. Subtraction of the fair market value of credit derivatives could have reduced the allowance for credit risk without consideration of the ultimate holding company's credit risk exposure to the credit derivative counterparty. As part of the broker-dealer's application to use the alternative method for computing net capital or in an amendment to the application, however, the ultimate holding company may request Commission approval to reduce allowances for credit risk through the use of credit derivatives.[68] Under paragraph (a)(3)(i)(D) of Appendix G, as adopted, the Commission will consider credit risk exposure to the credit derivative counterparty in determining whether to approve the ultimate holding company's application to reduce the allowance for credit risk through the use of credit derivatives.

The Commission also is revising the definition of maximum potential exposure under paragraph (a)(3)(i)(E) of Appendix G, as adopted. Paragraph (a)(3)(i)(D) of proposed Appendix G would have defined the MPE of a member of the affiliate group to a counterparty as the increase in the net replacement value of the counterparty's positions with the member of the affiliate group, after applying certain netting agreements, taking into account the value of certain collateral pledged to and held by the member of the affiliate group, and subtracting the fair market value of any credit derivatives that specifically change the ultimate holding company's exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty) that is obtained using an approved VaR model meeting the applicable qualitative and quantitative requirements of paragraph (e) of Appendix E.[69]

As adopted, paragraph (a)(3)(i)(E) does not require an ultimate holding company to subtract the fair market value of any credit derivatives that change the ultimate holding company's exposure to a counterparty in calculating MPE. The Commission revised this language for the same reasons described in the section on the

[66] One commenter sought clarification on determination of credit risk weights under paragraphs (a)(3)(i)(F) and (H). Specifically, the commenter asked whether credit risk weights should be adjusted by a maturity adjustment factor to account for the effective maturity of exposures. The Commission is not adopting a maturity adjustment factor for ultimate holding companies. An ultimate holding company that determines credit risk weights according to the New Basel Capital Accord, however, may use any applicable maturity adjustment factor permitted under the Accord. There is no maturity adjustment factor applicable to broker-dealers.

[67] This is derived from the calculation of credit risk under the OTC derivatives dealers rules (*See* 17 CFR 240.15c3–1f(d)(2)). In addition, use of the 8% basic multiplier to calculate credit risk is consistent with the Basel Standards.

[68] The credit derivative must be one that: (i) Provides credit protection equivalent to a guarantee, (ii) is used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, and (iii) is not held for market timing purposes.

[69] Under the quantitative requirements, a VaR model used to calculate MPE must use a 99 percent, one-tailed confidence level with price changes equivalent to a *five-day* movement in rates and prices for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions (*see* paragraph (c)(1)(i)(E) of Appendix G) and equivalent to a *one-year* movement in rates and prices for other positions (*see* paragraph (e)(2(ii) of Appendix E) as opposed to a *ten business-day* movement in rates and prices for VaR models used to calculate the allowance for market risk. *See* paragraph (d)(2)(i) of Appendix E. Based on a review of the firm's procedures for managing collateral and if the collateral is marked to market daily and the firm has the ability to call for additional collateral daily, the Commission may approve a time horizon of not less than ten business days. *See* paragraph (d)(2)(ii) of Appendix E.

amendments to current exposure. Furthermore, under paragraph (a)(3)(i)(E), as adopted, an ultimate holding company must calculate MPE for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions using a time horizon of not less than five days, rather than five days, as proposed. This revision clarifies that the Commission intended the time horizon to be a minimum period instead of an absolute period.

We note that under Appendix G, as adopted, an ultimate holding company may calculate MPE using a VaR model that meets the applicable qualitative and quantitative requirements of paragraph (d), rather than by using a "notional add-on" under the Basel Standards. We believe that the VaR approach is a more precise method of calculating MPE than using a "notional add-on." Large U.S. broker-dealers and their affiliates with comprehensive internal risk management systems generally already have systems in place to calculate MPE using VaR models.

The Commission also is revising the methods of determining credit risk weights contained in paragraph (a)(3)(i)(F) of proposed Appendix G. Under proposed paragraph (a)(3)(i)(F), an ultimate holding company would have been required to use credit risk weights published by the Basel Committee. Paragraph (a)(3)(i)(F) of Appendix G, as adopted, permits an ultimate holding company to determine credit risk weights based on internal calculations, including internal estimates of the maturity adjustment. These determinations must be consistent with the Basel Standards. The ultimate holding company must follow the standards set forth in paragraph (c)(4)(vi)(E) of Appendix E in determining credit risk weights based on internal calculations.

Paragraph (a)(3)(i)(G) of proposed Appendix G would have permitted an ultimate holding company to determine credit ratings using internal calculations for counterparties that are not rated by an NRSRO. We are adopting paragraph (a)(3)(i)(G) of Appendix G as proposed, although we note that the ultimate holding company must follow the standards set forth in paragraph (c)(4)(vi)(D) of Appendix E in determining credit ratings based using internal calculations and that those determinations must be consistent with the Basel Standards. We are amending the provisions related to determination of credit risk weights and credit ratings applicable to the ultimate holding company to align them with the credit risk weight and credit risk provisions applicable to the broker-dealer. This alignment is intended to promote managerial and cost efficiencies.

Paragraph (a)(3) of proposed Appendix G would have required an ultimate holding company to calculate the group-wide allowance for credit risk daily. Commenters suggested that daily computation of the group-wide allowance for credit risk was unnecessary because the ultimate holding company only must report this information to the Commission monthly. In response to comments received, paragraph (a)(3) of Appendix G, as adopted, no longer requires daily computation of the allowance for credit risk. Rather, paragraph (c)(4) of Appendix G, as adopted, requires an ultimate holding company to compute and report its group-wide allowance for credit risk monthly. Nevertheless, as part of the qualitative and quantitative requirements for the use of models, an ultimate holding company must compute current exposure daily as part of its internal risk management system.

The Commission adopts the remaining provisions of paragraph (a)(3) of Appendix G as proposed.

iv. Group-Wide Calculation of Allowance for Operational Risk

Proposed paragraph (a)(4) would have required the calculation of the allowance for operational risk to be consistent with the proposed New Basel Capital Accord. The Basel Committee has proposed three methods for calculating an allowance for operational risk: The basic approach, the standardized approach, and the advanced measurement approach. The basic and standardized approach calculations are based on fixed percentages. Under the basic approach, the allowance is 15% of consolidated annual revenues, net of interest expense, averaged over the past three years. For the standardized approach, the allowance for operational risk is a percentage of revenues, net of interest expense, ranging from 12% to 18% for each of eight business lines. The advanced measurement approach requires a system for tracking and controlling operational risk and provides that the allowance for operational risk is the largest operational loss that might be expected over a one-year period with 99.9% confidence.

Commenters argued that the basic and standardized approaches to calculating operational risk under The New Basel Capital Accord are not risk-based and that the advanced measurement approach is too subjective (because of scarce data and skewing from infrequent extreme events) to be used to compute an allowance for operational risk. In addition, another commenter asserted that the proposed capital regime should include a flexible framework with respect to any calculation of operational risk.

We are adopting rules governing allowances for operational risk as proposed. It is important to account for the operational risk that the ultimate holding company and its affiliates may pose to the broker-dealer. Moreover, the rules are intended to provide ultimate holding companies with flexibility by permitting the computation of allowances for operational risk in accordance with the standards published by the Basel Committee, as modified from time to time. We recognize, however, that the New Basel Capital Accord has not been adopted in its final form and that we may need to tailor our operational risk requirements. If, in finalizing the new Basel Capital Accord, the Basel Committee changes the operational risk computations or charges, we will review and consider amending our rules.

v. Trading Book Issues

In the Proposing Release, we requested comment on the use of mathematical models for regulatory capital purposes. Several commenters stated that the use of VaR or other risk-based capital models should be available for all securities that meet the definition of "trading book" (including initial public offering securities and below investment grade securities). The trading book[70] includes positions in financial instruments and commodities that are held for trading or for purposes of hedging other positions in the trading book, that are frequently valued, and that are part of a portfolio that is actively managed. Some securities firms believe that under this definition, a trading book would include funded loans and assets purchased in anticipation of a securitization. Commenters were concerned that unnecessarily high "banking book"[71] capital charges might be imposed on positions that are marked to market daily and that a hedge might be treated separately from the underlying position, which could be unduly punitive. That is, commenters were concerned that banking books charges might be

[70] *See* paragraphs 642–647 of Consultative Document to the New Basel Capital Accord (April 2003).

[71] Generally, a "banking book" would consist of positions that a firm does not mark to market or intend to sell as part of its business. *See* paragraphs 642–647 the New Basel Capital Accord.

imposed on trading book positions. According to commenters, categorization of trading book positions as banking book positions could significantly impact the firms' capital charges. In response to comments received, we note that in reviewing firms' proposed methods of calculating deductions for market and credit risk, we intend to apply the definitions of trading book and banking book contained in the Basel Standards.

vi. Ultimate Holding Companies That Have Principal Regulators

In response to comments, we are modifying the proposed rules to permit certain ultimate holding companies to submit to the Commission capital measurements created for other regulators. Ultimate holding companies that have principal regulators may be required to compute and report to their principal regulators a capital measurement similar to that required by paragraphs (a)(1) through (a)(4) of Appendix G. Paragraph (b)(2)(i)(B) of Appendix G, as adopted, allows an ultimate holding company that has a principal regulator to submit that capital measurement to the Commission on a quarterly basis. This provision should reduce regulatory burdens on the ultimate holding company while permitting the Commission to evaluate the risks that the ultimate holding company and its material affiliates may pose to the broker-dealer.

vii. General Discussion of Basel Pillars

These amendments apply a capital reporting requirement consistent with the Basel Standards to the ultimate holding company. The proposed New Basel Capital Accord specifies three "pillars" for the group-wide supervision of internationally active banks and financial enterprises. The first pillar, "minimum regulatory capital" requirements, requires calculations for credit and operational risk and, for firms with significant trading activity, market risk. The second pillar, "supervisory review," requires that capital be assessed relative to overall risks and that supervisors review and take action in response to those assessments.

The third pillar of the current draft of the New Basel Capital Accord requires certain disclosures that are intended to allow market participants to assess key pieces of information about, for example, the capital, risk exposures, and risk assessment processes of the institution. Enhanced public disclosure practices are an integral part of the proposed New Basel Capital Accord. The purpose of the third pillar is to complement the minimum capital requirements and the supervisory review process by encouraging market discipline. Specific disclosure requirements would apply to all institutions that use the proposed New Basel Capital Accord and would encompass capital, credit risk, credit risk mitigation, securitization, market risk, operational risk, and interest rate risk. However, the proposed New Basel Capital Accord has not yet been finalized.

We requested comment on whether U.S. broker-dealers, their holding companies, and affiliates should be required to make additional disclosures to meet the requirements of the third pillar of the proposed New Basel Capital Accord. Two commenters indicated that the Commission should not require additional, specific disclosures from broker-dealers and their ultimate holding companies.

The securities industry has taken important steps to enhance public disclosure of material risks. For example, in June 1999, the Counterparty Risk Management Group ("CRMG") (representing 12 major securities firms and banks) published a report on *Improving Counterparty Risk Management Practices.*[72] In addition, a private-sector Working Group on Public Disclosure (representing 11 major securities firms and banks), issued a report in January 2001.[73] The group recommended enhanced and more frequent public disclosure of financial information by banking and securities organizations. It also stated that financial information should be disclosed based on a firm's internal methodologies and exposure categories, and that quantitative information on a firm's risk exposure should be balanced with qualitative information describing its risk management process.

The Commission staff has taken a leading role to enhance public disclosure by financial intermediaries. It was a member of the Multidisciplinary Working Group on Enhanced Disclosure (Fisher II working group) that provided advice to its sponsoring organizations[74] on steps that would advance the state of financial institutions' disclosures of financial risks to enhance the role of market discipline. More recently, Commission staff chaired a Joint Forum[75] Working Group on Enhanced Disclosure ("Working Group"), established by the Basel Committee, IAIS and IOSCO, that is following up on the recommendations contained in the Fisher II report.[76] The Working Group expects to publish its report shortly.

Some issues remain, however. For instance, broker-dealers are interested in finding a balance so they do not have to disclose sensitive proprietary information. Because the proposed New Basel Capital Accord has not yet been finalized, we do not believe it would be appropriate to adopt additional disclosure requirements as part of these amendments.

b. Reporting Requirements for the Ultimate Holding Company

We are modifying the ultimate holding company reporting requirements contained in the Proposing Release. As a condition of Commission approval of a broker-dealer's use of the alternative method of computing net capital, paragraph (b) of proposed Appendix G would have required an ultimate holding company to file certain reports with the Commission. The Commission needs the information in the reports from the ultimate holding company to monitor the financial condition, internal risk management control system, and activities of the ultimate holding company. These reports will allow the Commission to monitor the condition of the affiliate group to detect any events or trends that may adversely affect the broker-dealer. Failure to require the reports would undermine the Commission's ability to monitor the financial condition of the ultimate

[72] CRMG was formed in January 1999, after the near collapse of Long-Term Capital Management. The group's ultimate mission was to redevelop standards for strengthening risk management practices at banks, securities firms, and other dealers to avoid similar difficulties in the future. Its findings were publicly released on June 21, 1999, and are available at: *http://financialservices.house.gov/banking/62499crm.pdf.* A hearing was held on June 24, 1999, regarding the group's findings and recommendations, before the U.S. House of Representatives, Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, Committee on Banking and Financial Services. A transcript of the hearing, at which the CRMG chairs gave testimony, is available at: *http://commdocs.house.gov/committees/bank/hba57791.000/hba57791_0f.htm.*

[73] Walter V. Shipley, retired chairman of Chase Manhattan Bank, chaired the working group. His letter to the Board of Governor's of the Federal Reserve System, summarizing the group's findings, is available at: *http://www.federalreserve.gov/boarddocs/press/general/2001/20010111/DisclosureGroupLetter.pdf* (Jan. 11, 2001).

[74] The Basel Committee, the Committee on the Global Financial System of the G–10 central banks ("CGFS"), the International Association of Insurance Supervisors ("IAIS") and the International Organisation of Securities Commissions ("IOSCO").

[75] The Joint Forum was established in 1996 under the aegis of the Basel Committee, IOSCO, and the IAIS to address issues common to the banking, securities and insurance sectors.

[76] Final Report of the Multidisciplinary Working Group on Enhanced Disclosure (April 26, 2001). The report is available at: *http://www.bis.org/publ/joint01.pdf.*

holding companies and could jeopardize the financial stability of broker-dealers using the alternative method of computing net capital. Moreover, requiring timely financial and other risk information that identifies which business line or affiliated entity may have incurred particular risks is necessary to identify areas for Commission focus.[77]

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(1) of proposed Appendix G would have required its ultimate holding company to file a monthly report with the Commission within 17 business days after the end of the month (the FOCUS reporting period). The monthly report would have included certain consolidated financial and credit risk information, including a consolidated balance sheet and income statement (with notes to the financial statements), a graph for each business line reflecting the daily intra-month VaR calculations, and certain reports that the ultimate holding company regularly provides to its senior management to assist in monitoring and managing risk.

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(2) of proposed Appendix G would have required an ultimate holding company to file a quarterly report within 35 calendar days after the end of each quarter that included, in addition to the information required in the monthly filing, consolidating financial information, the results of backtesting of models used to compute its allowances for market and credit risk, a description of all material pending legal or arbitration proceedings required to be reported pursuant to generally accepted accounting principles ("GAAP"), and certain short-term borrowings. In the Proposing Release, we stated that requiring reports to be filed within 35 calendar days after the end of each quarter provided a filing timeframe similar to those for quarterly reports due from companies required to file information, documents, and reports pursuant to section 13(a) or 15(d) of the Exchange Act.

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(3) of Appendix G would have required the ultimate holding company to provide to the Commission, upon request, other reports necessary to monitor the financial condition of the ultimate holding company and its affiliates to determine if those entities presented risks to the broker-dealer.

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(4) of proposed Appendix G would have required the ultimate holding company to file an annual audited report with the Commission. Proposed paragraph (b)(4) would have required the annual audited report to include consolidated financial statements and to be audited by a registered public accounting firm.

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(5) of proposed Appendix G would have required the ultimate holding company to file a supplemental report prepared by a registered public accounting firm, in accordance with agreed-upon procedures,[78] regarding management controls. In the Proposing Release, we stated that by performing an independent review of the firm's financial condition and risk management practices, auditors would have an important role in the Commission's regulatory framework by helping to assure that the broker-dealer and the ultimate holding company complied with the conditions of the exemption.

We requested comment in the Proposing Release concerning the reporting requirements for ultimate holding companies. Several commenters stated that the Commission should require fewer reports from an entity that has a consolidated regulator. In addition, one commenter stated that "notes to the financial statements" should consist of significant highlights of the financial statements.

A commenter also stated that the requirement for the quarter-end coinciding with a firm's fiscal year end be amended to align with the dates by which public companies are required to submit their annual report on Form 10–K. Another commenter stated that the 17- and 35-day requirements were too aggressive because the proposed reports will require detailed risk and capital information that typically is not readily available and takes greater time to produce. The commenter asserted that the rules should conform the content and timing of reporting requirements applicable to other Commission public reporting requirements. A commenter argued that footnotes to the financial statements should only be required with quarterly reports.

In response to comments received, we are amending the ultimate holding company reporting requirements. Paragraph (b) of Appendix G, as adopted, separates reporting requirements applicable to ultimate holding companies that do not have principal regulators into paragraph (b)(1) and those applicable to ultimate holding companies that have principal regulators into paragraph (b)(2). In light of the supervision that their principal regulators provide, ultimate holding companies that have principal regulators are subject to fewer reporting requirements than those that do not have principal regulators.

In response to comments received, we have extended the ultimate holding company's deadline for filing monthly reports under paragraph (b)(1)(i) to 30 calendar days after month-end from 17 business days after month-end.[79] We agree that an extension of the filing deadline is appropriate because an ultimate holding company must include detailed information, potentially from a number of affiliates, in these reports. The extension, moreover, does not delay significantly the time at which the Commission will receive the reports and, therefore, should provide the Commission with timely and accurate information about risks that the ultimate holding company and its affiliates may pose to the broker-dealer. Furthermore, under paragraph (b)(1)(i), a monthly report need not be filed for a month-end that coincides with a fiscal quarter-end because the quarterly report required to be filed under (b)(1)(ii) would include the information that otherwise would be contained in the monthly report.

As a condition to the broker-dealer's use of the alternative method of computing net capital, paragraph (b)(1)(i) also requires an ultimate holding company that does not have a principal regulator to include footnotes to the financial statement. In response to comments received, we are clarifying this requirement. Although we prefer that ultimate holding companies submit quarterly consolidated financials statements that include GAAP footnotes, we understand that the GAAP footnotes

[77] All reports required under paragraph (b) of Appendix G must be filed with the Division of Market Regulation at the Commission's principal office in Washington, DC.

[78] Paragraph (b)(5)(iii) of proposed Appendix G would have required the ultimate holding company to file with the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which its subsidiary broker-dealer that uses the alternative method of computing net capital has its principal place of business, the agreed-upon procedures agreed to by the ultimate holding company and the accountant. Moreover, before the commencement of each subsequent review, the ultimate holding company would have been required to notify the Commission of any change in procedures.

[79] Only ultimate holding companies that are not ultimate holding companies that have principal regulators must file monthly reports.

are not always available. Firms therefore must supply financial statements that include footnote explanations either in accordance with GAAP, when available, or as necessary for a complete understanding of the financial statements.

We have revised paragraph (b)(1)(ii) of Appendix G, as adopted. Paragraph (b)(1)(ii) clarifies that the quarterly reports must contain all of the information included in the monthly reports, as well as consolidating balance sheets and income statements and other specified information. We have not extended the deadline for filing the quarterly reports, however. The information that the ultimate holding company includes in the quarterly report must be as recent as practicable to allow the Commission to evaluate potential risks that the ultimate holding company and its affiliates may pose to the broker-dealer. Any extension of the deadline creates the risk that the Commission will receive information that is stale and, therefore, does not reflect accurately the risks to the broker-dealer. Furthermore, the deadline for submission of the quarterly reports already is five days longer than the deadline for submission of monthly reports.

Paragraphs (b)(1)(i) and (ii) of Appendix G, as adopted, allow an ultimate holding company that does not have a principal regulator to delay filing certain information that generally must be included in its monthly and quarterly reports under specified circumstances. Under paragraph (b)(1)(i), an ultimate holding company is not required to include consolidated balance sheets and income statements with the monthly report due during the first month of the fiscal year. The ultimate holding company may file this information at a later time to which the ultimate holding company and the Commission agree. Ultimate holding companies may delay submitting this information to the Commission because the information has not yet been made public in the ultimate holding company's annual report on Form 10–K. Likewise, under paragraph (b)(1)(ii), the consolidated and consolidating balance sheets and income statements need not be included in quarterly reports filed for the last quarter of the fiscal year. The consolidating balance sheets and income statements that otherwise would have been included in the quarterly report shall be filed simultaneously with the annual report, but need not be audited.[80] These provisions allow ultimate holding companies that are publicly traded to coordinate their filings of financial information with other reports that they submit to the Commission.

Paragraph (b)(2) of Appendix G, as adopted, contains the reporting requirements that an ultimate holding company that has a principal regulator must comply with as a condition to the broker-dealer's use of the alternative method of computing net capital. Paragraph (b)(2) requires the ultimate holding company to file a quarterly report that contains consolidated and consolidating balance sheets and income statements for the ultimate holding company; its most recent capital measurements under the Basel Standards, as reported to its principal regulator; and certain risk reports, as the Commission may request, provided to persons responsible for managing group-wide risk. The ultimate holding company also must provide an annual audited report as of the end of its fiscal year when required to be filed with any regulator. These requirements permit the Commission to review the financial and operational risk of the ultimate holding company and its affiliates to assess the risk that those entities may pose to the broker-dealer. The reporting requirements, however, should help to avoid duplicative or inconsistent requirements because the ultimate holding company already may provide the information in the quarterly and annual reports to its regulators.

As discussed, proposed paragraph (b)(3) of Appendix G would have required the ultimate holding company, as a condition of its broker-dealer's exemption from the standard net capital rule, to provide to the Commission, upon request, other reports necessary to monitor the financial condition of the ultimate holding company and its affiliates. We are eliminating this provision because the undertaking contained in Appendix E already imposes that same requirement on ultimate holding companies.

Paragraph (b)(6) of proposed Appendix G would have required an ultimate holding company, as a condition to the broker-dealer's ability use of the alternative method of computing net capital under Appendix E, to file reports required under paragraph (b)(1) and (b)(2) of this Appendix with the Commission at its offices in Washington, DC. We are modifying proposed paragraph (b)(6) and redesignating it as paragraph (b)(3). Paragraph (b)(3) of Appendix G, as adopted, retains the filing requirements of proposed paragraph (b)(6). It also advises ultimate holding companies seeking confidential treatment of reports filed under paragraph (b) of Appendix G to mark each page or segregable portion of each page with the words "Confidential Treatment Requested."

Paragraph (b)(4) of proposed Appendix G has been redesignated as paragraph (b)(1)(iii)(A) under Appendix G, as adopted. Paragraph (b)(5) of proposed Appendix G has been redesignated as paragraph (b)(4) of Appendix G, as adopted. This provision states that the Commission will accord confidential treatment, to the extent permitted by law, to the reports that ultimate holding companies file with the Commission under Appendix G.

c. Records To Be Made and Preserved by the Ultimate Holding Company

We are modifying the provisions of Appendix G related to the records that an ultimate holding company must make as a condition to a broker-dealer's use of the alternative method of computing net capital. We are revising paragraph (c) to limit its application to ultimate holding companies that do not have principal regulators. We amended this requirement to avoid imposing inconsistent or duplicative requirements on ultimate holding companies that have principal regulators. Commenters informed us that these regulators already impose recordkeeping requirements on the ultimate holding companies.

We are adding a requirement, however, that an ultimate holding company that does not have a principal regulator make a record of the calculations of allowable capital and allowances for market, credit, and operational risk computed on at least a monthly, consolidated basis. We are adopting the remaining provisions of paragraph (c) as proposed.

We require creation of these records to assist the Commission in determining whether the ultimate holding company is complying with the terms of the broker-dealer's exemption from the standard net capital rule. Most or all of these records already are generated for internal management purposes because a prudent firm that manages risk on a group-wide basis would make and maintain these records in the ordinary course of its business. The Commission will accept the records in the format used by the ultimate holding companies. The records must show that the ultimate holding company has conducted stress tests of the affiliate

[80] Audited consolidated balance sheets and income statements will be included in the annual audited report.

group's funding and liquidity in response to certain events, including a credit downgrade of the ultimate holding company or an inability of the ultimate holding company to obtain unsecured, short-term financing; the results of those stress tests; a record showing that the ultimate holding company has a contingency plan to respond to those events; and a record of the basis for determining credit risk weights in certain circumstances. The tests are intended to identify possible liquidity and funding stress scenarios that could impose significant financial distress on the ultimate holding company that, in turn, could jeopardize the financial stability of the broker-dealer.

We also are revising paragraph (d) of proposed Appendix G. Proposed paragraph (d) would have required an ultimate holding company to maintain, for a period of not less than three years, the records it would have been required to make under paragraph (c)(1) of Appendix G; applications, reports, notices and other documents filed with the Commission under Appendices E or G; and written policies and procedures concerning its internal risk management system.

Paragraph (d)(1)(iv) of Appendix G, as adopted, only requires an ultimate holding company that does not have a principal regulator to maintain records of all written policies and procedures concerning the group-wide internal risk management control system established under paragraph (a)(1)(viii)(C) of Appendix E, as adopted. The Commission narrowed the scope of this provision to avoid duplicative or inconsistent requirements. The remaining provisions of paragraph (d) of Appendix G are adopted as proposed. The requirement to preserve records for three years is based on the retention periods in Exchange Act Rule 17a–4 and we believe that this same period of time is sufficient to meet the Commission's supervisory needs.

d. Notification Requirements for the Ultimate Holding Company

The Commission is revising paragraph (e) of proposed Appendix G. Proposed paragraph (e) would have conditioned the broker-dealer's use of the alternative method of computing net capital on the ultimate holding company's consent to specified notice provisions. Under proposed paragraphs (e)(1) and (2), an ultimate holding company would have agreed to notify the Commission promptly upon the occurrence of certain events, including the occurrence of any backtesting exception of VaR models that would require the ultimate holding company to use a higher multiplication factor; a computation showing the affiliate group's allowable capital was less than 110% of the total of its allowances for market, credit, and operational risk; a declaration of bankruptcy by an affiliate; the downgrading of the credit rating of an affiliate or of certain debt of an affiliate; or the receipt of certain regulatory notices regarding an affiliate. The ultimate holding company would have filed a notification if there were a material change in the organization of the affiliate group, the material affiliate status of any affiliate in the affiliate group, or the major business functions of any material affiliate.

Paragraph (e) of Appendix G, as adopted, modifies the notification requirements applicable to ultimate holding companies. Under the final rules, certain notification provisions apply to both types of ultimate holding companies and some apply only to ultimate holdings companies that do not have principal regulators. As a condition to a broker-dealer's use of the alternative method of computing net capital, an ultimate holding company, regardless of whether it has a principal regulator, must notify the Commission promptly (within 24 hours) under paragraphs (e)(1)(i) through (iii) if certain early warning indicators of low capital occur;[81] it files a Form 8–K with the Commission; or a material affiliate declares bankruptcy or otherwise becomes insolvent.

In addition to the notification requirements contained in paragraph (e)(1), an ultimate holding company that does not have a principal regulator also must notify the Commission under paragraphs (e)(2)(i) through (iii), as a condition to the broker-dealer's net capital exemption, if an NRSRO materially reduces its assessment of the creditworthiness of a material affiliate or of the credit rating(s) assigned to one or more outstanding short or long-term obligation of a material affiliate; a financial regulator or self-regulatory organization takes significant enforcement or regulatory action against a material affiliate; or any backtesting exception occurs under section 240.15c–1e(d)(1)(iii) or (iv) that would increase the ultimate holding company's multiplication factor in calculating its allowances for market or credit risk.

These notification provisions are designed to give the Commission advance warning of situations that may pose material financial and operational risks to the ultimate holding company and the broker-dealer and are integral to Commission supervision of broker-dealers that use Appendix E. The reduced requirements applicable to an ultimate holding company that has a principal regulator, as set forth in paragraph (e)(1), are necessary to avoid imposing duplicative or inconsistent requirements.

E. Amendments to Rule 15c3–4

The Commission proposed to amend Rule 15c3–4. Rule 15c3–4 requires an OTC derivatives dealer to establish, document, and maintain a system of internal risk management controls that consider specified factors and are subject to periodic review by management. Under the Proposing Release, the Commission would have amended Rule 15c3–4 to apply to broker-dealers that use the alternative method of computing net capital under Appendix E and to affiliated ultimate holding companies.

The Commission is not amending Rule 15c3–4. Instead, under paragraph (a)(7)(iii) of Rule 15c3–1, as adopted, a broker-dealer that uses the alternative method of computing net capital must comply with Rule 15c3–4 with respect to all of its business activities as if it were an OTC derivatives dealer, subject to certain limitations.[82] Similarly, under paragraph (a)(1)(viii)(C) of Appendix E, as adopted, as a condition to its broker-dealer's use of the alternative method of computing net capital, an ultimate holding company that does not have a principal regulator must comply with Rule 15c3–4 with respect to all of its business activities as if were an OTC derivatives dealer, subject to certain limitations.[83] Paragraphs (a)(7)(iii) of Rule 15c3–1 and (a)(1)(viii)(C) of Appendix E require the broker-dealer or ultimate holding company to comply with Rule 15c3–4 with respect to all business activities. That is, compliance with Rule 15c3–4 is not limited to OTC derivatives transactions.[84] The Commission is not amending Rule 15c3–4 because we determined that we could accomplish our goal—compliance with the rule—in a more streamlined manner by requiring compliance with

[81] The Commission and the ultimate holding company will determine what the appropriate indicators of low capital are as part of the application process.

[82] Paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) would not apply to a broker-dealer that uses the alternative method of computing net capital or to ultimate holding companies that do not have a principal regulator because those paragraphs relate solely to limitations on the types of transactions an OTC derivatives dealer may undertake.

[83] *See* footnote 82.

[84] *See* 17 CFR 240.15c3–4(c)(5)(x), (c)(5)(xi), (d)(1), (d)(5), and (d)(10).

the rule, rather than by amending the rule.

Participants in the securities markets are exposed to various risks, including market, credit, funding, legal, and operational risk. These risks result, in part, from the diverse range of financial instruments that broker-dealers now trade. Risk management controls within a broker-dealer promote the stability of the firm and, consequently, the stability of the marketplace. A firm that adopts and follows appropriate risk management controls reduces its risk of significant loss, which also reduces the risk of spreading the losses to other market participants or throughout the financial markets as a whole. Furthermore, as a prudent business practice, large securities firms have developed risk management systems to manage risk on a consolidated basis at the ultimate holding company level. To understand how risks are managed at the broker-dealer, regulators must understand how risks are managed at the ultimate holding company.

F. Amendment to Rule 17a–4, Broker-Dealer Record Preservation Requirements

We are amending Rule 17a–4 to add paragraph (b)(12). This amendment requires a broker-dealer that uses the alternative method of computing net capital to preserve certain records required to be made under the final rules. Paragraph (d)(7)(iv) of proposed Appendix E would have required a broker-dealer to make and preserve a record related to its determination of credit ratings. We amended proposed paragraph (d)(7)(iv) and redesignated it as paragraph (c)(4)(vi)(D) of Appendix E, as adopted. Paragraph (c)(4)(vi)(D) requires a broker-dealer to keep a record related to the determination of credit ratings, but the preservation requirement for that record has been moved to Rule 17a–4(b)(12). The final rules also add paragraph (c)(4)(vi)(E) to Appendix E. Paragraph (c)(4)(vi)(E) is a new provision that permits a broker-dealer to determine credit risk weights based on internal calculations and requires the broker-dealer to make a record of this calculation to assist the Commission in monitoring financial and other risks to the broker-dealer. Rule 17a–4(b)(12) requires a broker-dealer to preserve the record of the calculation of credit risk weights. We placed the record preservation requirements for paragraphs (c)(4)(vi)(D) and (E) in Rule 17a–4(b)(12) because Rule 17a–4 is the broker-dealer record retention rule.

G. Amendments to Rule 17a–5; Broker-Dealer Reporting Requirements

The Commission is adopting amendments to Rule 17a–5 as proposed, except as described below. The amendments to Exchange Act Rule 17a–5 require a broker-dealer that uses the alternative method of computing net capital to file certain reports with the Commission in addition to the reports that all broker-dealers must file under the rule. These reports provide current, detailed information regarding the financial position of the firm, which will assist us in understanding its risk profile. The Commission will use the information collected under the amendment to monitor the financial condition, internal risk management control system, and activities of a broker-dealer that elects the alternative method.

These additional reports include a monthly report detailing, among other things, the broker-dealer's derivatives revenues, certain market and credit risk information, and regular risk reports supplied to firm management, as well as quarterly reports on, among other things, how well the firm's daily VaR and maximum potential exposure calculations correspond to the daily net trading loss and backtesting results of mathematical models. As part of its annual audit, the broker-dealer also must include a supplemental report concerning management controls prepared by a registered public accounting firm in accordance with procedures agreed-upon by the broker-dealer and the accountant before the audit.[85]

Under paragraphs (a)(5)(i)(E)(*2*) and (*4*) of paragraph 17a–5, as revised and adopted, the broker-dealer no longer must report the five largest exposures to financial institutions for current exposure and maximum potential exposure. We have re-evaluated this requirement and believe that receipt of these reports on a monthly basis is not likely to aid the Commission in evaluating a broker-dealer's risk exposure. The remaining amendments to Rule 17a–5 are adopted as proposed.

H. Amendments to Rule 17a–11; Broker-Dealer Notification Requirements

We are revising the proposed amendments to Rule 17a–11. Exchange Act Rule 17a–11 requires a broker-dealer to notify the Commission and its designated examining authority of certain events within specified time periods. The occurrence of the events that require Commission notification indicate that the firm may be experiencing financial or operational difficulty.

The amendments to Rule 17a–11, as proposed, would have imposed additional notification requirements on broker-dealers that use the alternative method of computing net capital. Under these amendments, the broker-dealer would have notified the Commission if it became aware of certain credit rating downgrades relating to the broker-dealer or an affiliate of the broker-dealer; it received a notice of non-compliance from a regulatory authority; it became aware of a situation that may have had a material adverse effect on the ultimate holding company or on an affiliate of the holding company; or a backtesting exception of its mathematical models occurred that required the broker-dealer to use a higher multiplication factor in the calculation of its deductions for market or credit risk.

The revisions to Rule 17a–11, as adopted, amend only paragraphs (b)(2) and (h). Paragraph (b)(2) of Rule 17a–11, as adopted, requires a broker-dealer that computes its net capital under the alternative method of Appendix E to notify the Commission if its tentative net capital falls below the amount specified in Rule 15c3–1, which is $1 billion under Rule 15c3–1e(a)(7)(i). The notice must specify the broker-dealer's net capital and tentative net capital requirements and the current amount of its net capital and tentative net capital. We eliminated the other proposed amendments to Rule 17a–11 because they were redundant. Those proposed amendments would have required a broker-dealer to provide information to the Commission that its ultimate holding company must provide as a condition to the broker-dealer's use of the alternative method of computing net capital.

Paragraph (h), as adopted, notes that there is a notification provision in paragraph (a)(7)(ii) of Rule 15c3–1. That provision requires a broker-dealer to notify the Commission that same day if its tentative net capital falls below $5 billion. These notification provisions are necessary for the Commission to monitor the financial position of a broker-dealer that uses the alternative method of computing net capital.

I. Amendments to Rules 17h–1T and 17h–2T

The Commission is amending Rules 17h–1T and 17h–2T. Rule 17h–1T requires a broker-dealer to maintain and

[85] The broker-dealer must file a description of the agreed-upon procedures agreed to by the broker-dealer and the accountant and a notification of subsequent changes in those agreed-upon procedures, if any, with the Commission's principal office in Washington, DC.

preserve records and other information concerning its ultimate holding company and affiliates, if the affiliates are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires broker-dealers to report to the Commission the information required to be maintained and preserved under Rule 17h–1T. Under the proposed amendments, all broker-dealers using the alternative method of computing net capital would have been exempt from Rules 17h–1T and 17h–2T. The amendments to these rules, as adopted, exempt only broker-dealers that use the alternative method of computing net capital and are affiliated with ultimate holding companies that do not have principal regulators. This exemption is appropriate because an ultimate holding company that does not have a principal regulator would be required to make and retain documents substantially similar to the documents required by Rule 17h–1T and to make reports to the Commission that are substantially similar to those required by Rule 17h–2T. Under the rules as adopted, an ultimate holding company that has a principal regulator is not required to make and maintain these documents and, therefore, exemptions from Rules 17h–1T and 17h–2T are not appropriate.

J. Amendments to Section 240.19 and Rule 30–3

We have amended § 200.19a to expand the responsibilities of the Director of Division of Market Regulation to include administering the Commission's rules related to supervised investment bank holding companies and consolidated supervised entities, including the assessment of the internal risk management controls and mathematical models used to calculate net capital and allowances for market, credit, and operational risk.

The Commission also has adopted amendments to Rule 30–3 of its Rules of Organization and Program Management.[86] Through this rule, the Commission delegates authority to the Director of the Division of Market Regulation ("Director"). The amendments delegate the authority to the Director to: (i) Review amendments to applications of broker-dealers filed pursuant to Appendix E and Appendix G and to approve the amendments, unconditionally or subject to specified terms and conditions; (ii) grant extensions and exemptions from the notification requirements of paragraph (e) of Appendix G, unconditionally or subject to specified terms and conditions; (iii) impose additional conditions, pursuant to paragraph (e) of Appendix E, on a broker-dealer or on the ultimate holding company of a broker-dealer; (iv) require that a broker or dealer or the ultimate holding company of a broker or dealer provide information to the Commission pursuant to paragraphs (a)(1)(viii)(G), (a)(1)(ix)(C), and (a)(4) of Appendix E and paragraphs (b)(1)(i)(H) and (b)(2)(i)(C) of Appendix G; and (v) determine, pursuant to paragraph (a)(10)(ii) of Appendix E, that the notice that a broker-dealer provides to the Commission will become effective for a shorter or longer period of time.

The Commission is delegating its authority to the Director for the limited purposes described above. These delegations of authority are intended to conserve Commission resources. The Commission anticipates that the delegation of authority will facilitate the implementation of the rule amendments. The staff, however, may submit matters to the Commission for consideration as it deems appropriate.[87]

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that these amendments to Rule 30–3 relate solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before their effective date, are unnecessary.

IV. Paperwork Reduction Act

As discussed in the Proposing Release, certain provisions of the rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[88] The Commission submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The OMB approved the information collections. The titles and OMB control numbers for the collections of information are: (1) Net capital requirements for brokers or dealers, OMB No. 3235–0200; (2) Rule 15c3–4, Internal risk management control systems for certain brokers or dealers, OMB No. 3235–0497; (3) Rule 17a–5, Reports to be made by certain brokers and dealers, OMB No. 3235–0123; (4) Rule 17a–11, Notification procedures for brokers and dealers, OMB No. 3235–0085; (5) Rule 17h–1T, Risk assessment recordkeeping requirements for associated persons of brokers and dealers, OMB No. 3235–0410; and (6) Rule 17h–2T, Risk assessment reporting requirements for brokers and dealers, OMB No. 3235–0410.

The rule amendments provide a voluntary alternative method for computing certain deductions from net capital for market and credit risk under the Exchange Act for certain broker-dealers that are part of an ultimate holding company that has a group-wide internal risk management system and that consents, as a condition of the net capital treatment, to group-wide Commission supervision. The alternative net capital computation involves the use of internally developed mathematical models that the firm uses to measure risk.

As noted in the Proposing Release, the collection of information obligations imposed by the rule amendments is mandatory. However, applying for approval to use the alternative capital calculation is voluntary. The information collected, retained, and/or filed pursuant to the rule amendments will be accorded confidential treatment to the extent permitted by law.

The Commission will use the information collected under the rule amendments to monitor the financial condition, internal risk management control system, and activities of broker-dealers that elect to use the alternative method of computing net capital and their ultimate holding companies and affiliates. In particular, the amendments allow the Commission access to important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer. Failure to require the collections of information included in the rule amendments would undermine the Commission's ability to monitor the financial condition of these firms and could jeopardize the financial stability of broker-dealers using the alternative method of computing net capital.

The Proposing Release solicited comments on the proposed collections of information. We received no comments that addressed the PRA submission. However, we did receive comments on other aspects of the proposed amendments. The Commission is adopting rule amendments that contain various modifications to the proposed amendments. As discussed below, some of those modifications, as well as comments received on other aspects of

[86] 17 CFR 200.30–3.

[87] 17 CFR 200.30–3(e) and 200.30–3(g).

[88] 44 U.S.C. 3501 *et seq.*

the proposed amendments result in changes to the PRA estimates.

Under proposed paragraph (a)(7) of Rule 15c3–1, a broker-dealer that maintained tentative net capital of at least $1 billion and net capital of at least $500 million could apply to the Commission for permission to use the alternative method of calculating net capital. Under paragraph (a)(7) as adopted, a broker-dealer is also required to notify the Commission if its tentative net capital falls below $5 billion. If a broker-dealer is required to provide that notice to the Commission, the Commission may impose additional regulatory conditions, as set forth in paragraph (e) of Appendix E, on either the broker-dealer or, if the ultimate holding company of the broker-dealer is not an ultimate holding company that has a principal regulator, on the ultimate holding company. The PRA burden associated with this notification requirement is included in the PRA burden for Rule 17a–11, which is discussed below.

We noted in the Proposing Release that, according to March 31, 2003 FOCUS filings, 28 registered broker-dealers reported that they had tentative net capital of at least $1 billion and net capital of at least $500 million. Based on discussions with industry representatives, we believed that only broker-dealers with at least $1 billion in deductions pursuant to Rule 15c3–1(c)(2)(vi) (also known as "haircuts") would find it cost effective to use the alternative capital computation. As of March 2003, based on FOCUS filings, there were 12 such broker-dealers. Therefore, the PRA estimates were based on the assumption that 12 broker-dealers would apply to use the alternative net capital computation.

According to September 30, 2003 FOCUS filings, only six registered broker-dealers reported that they had tentative net capital of at least $5 billion. Some firms, however, make certain deductions in arriving at the FOCUS tentative net capital figure (for example, relating to securities without a ready market) that would not be subtracted in the calculation of tentative net capital for purposes of the rule amendments. Based on the final rule amendments, the comments received in response to the proposal, and these facts, we now estimate that 11 broker-dealers will apply to use the alternative net capital computation.

In addition, based on comments received, the Commission has modified the proposed rules to establish exemptions from certain requirements for an ultimate holding company of a broker-dealer using the alternative method of computing net capital that is "an ultimate holding company that has a principal regulator." These exemptions are intended to avoid duplicative or inconsistent regulation of these entities. Of the 11 broker-dealers that we now estimate will apply under the rule amendments, we estimate that six have an ultimate holding company that has a principal regulator. The streamlined supervisory regime for these financial holding companies affects application requirements, internal risk management control system requirements, and examination and reporting requirements, and generally results in lower PRA burden estimates.

The estimates are based on information from a variety of sources, including information that Commission staff receives through the risk assessment rules and meetings with and reports from member firms of the Derivatives Policy Group ("DPG") and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules.

Some of the changes in our estimates result from use of certain updated data. The revised PRA burden estimates are discussed below for each rule amendment.

A. Rule 15c3–1. Net Capital Requirements for Brokers or Dealers

Exchange Act Rule 15c3–1 requires broker-dealers to maintain minimum levels of net capital computed in accordance with the rule's provisions. These net capital reserves are intended to ensure that broker-dealers have sufficient capital to protect the assets of customers and to meet their responsibilities to other broker-dealers.

The Commission has added Appendix E to the rule to provide an alternative method for determining certain deductions from net capital for market and credit risk for certain broker-dealers that manage risk on a group-wide basis and that submit to group-wide Commission supervision.

As part of the application to use Appendix E, the broker-dealer and its ultimate holding company must submit various documents to the Commission. The documents the broker-dealer must submit as part of the application are the same regardless of whether the ultimate holding company of the broker-dealer is an ultimate holding company that has a principal regulator, except that the scope of the written undertaking of the ultimate holding company is reduced if the ultimate holding company has a principal regulator. If the ultimate holding company has a principal regulator, however, the ultimate holding company is required to submit fewer documents with the application of the broker-dealer than an ultimate holding company that does not have a principal regulator. For example, an ultimate holding company that has a principal regulator will not be required to submit a description of the risk management control system for the affiliate group and will not be required to submit sample capital measurement calculations and descriptions of those calculations. An ultimate holding company that has a principal regulator will be required to submit a capital measurement that it has reported to its principal regulator.

In the Proposing Release, we estimated that each broker-dealer that applied under the rule amendments would spend approximately 1,000 hours to create and compile the various documents to be included with the application and to work with the Commission staff through the application process. This included approximately 100 hours for an in-house attorney to complete a review of the application. We received no comments on these estimates and we believe that whether or not the ultimate holding company of a broker-dealer has a principal regulator, the PRA burden associated with the application process still will be approximately 1,000 hours because the documents to be submitted by the broker-dealer are substantially the same in either case. As we now estimate that approximately 11 firms will apply under the rule amendments, instead of the 12 firm-estimate we used in the Proposing Release, the new one-time PRA burden associated with the application process is approximately 11,000 hours.

As we noted in the Proposing Release, firms we expect to apply to use Appendix E already have developed the VaR models that they will use to calculate market and credit risk under these rules and already have developed internal risk management control systems. This conclusion is based on information Commission staff receives through the risk assessment rules and meetings with and reports from the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules. On the other hand, we note that the rule amendments contain additional requirements that firms may not yet have incorporated into their models and control systems.

In the Proposing Release, we estimated that a broker-dealer using Appendix E would spend approximately 5,600 hours per year to

review the models it uses to compute market and credit risk and approximately 160 hours each quarter, or approximately 640 hours per year, to backtest the models. We believe that whether or not the ultimate holding company of a broker-dealer has a principal regulator, the PRA burden would be the same. Consequently, we estimate that the total burden under the rule amendments for reviewing and backtesting mathematical models for the 11 broker-dealers we now expect to apply will be approximately 69,000 hours per year ((5,600 + 640) × 11 = 68,640).

Under proposed Appendix G to Rule 15c3–1, the ultimate holding company of a broker-dealer using the alternative method of computing net capital was required to calculate allowable capital and allowances for market, credit, and operational risk monthly on a consolidated basis; file certain monthly, quarterly, and annual reports with the Commission; make, keep current, and preserve certain records; and notify the Commission of certain events. As we noted in the Proposing Release, capital measurement, reporting, and recordkeeping conditions are necessary to allow the Commission to oversee properly a broker-dealer that uses Appendix E and to monitor the financial and operational condition of its affiliate group. In particular, the reporting requirements of Appendix G are necessary to keep the Commission informed of, among other things, the financial condition, financial and operational risk exposures, backtesting results, and management controls of the ultimate holding company and affiliates of the broker-dealer and whether the holding company is in compliance with the conditions of the broker-dealer's exemption. These reports will help the Commission to anticipate the effect on the ultimate holding company and affiliates of the broker-dealer of significant economic events and their impact on the broker-dealer.

The Commission has modified the capital measurement and reporting conditions in the final rule amendments for an ultimate holding company of a broker-dealer using the alternative method of computing net capital that has a principal regulator. For such an ultimate holding company, there is no requirement to calculate allowable capital and allowances for market, credit, and operational risk monthly. Also, the ultimate holding company is not required to file monthly reports with the Commission. An ultimate holding company that has a principal regulator must file quarterly reports containing consolidated and consolidating financial statements, a capital measurement it provides to its principal regulator, and certain regular risk reports provided to the persons responsible for managing group-wide risk as the Commission may request. The holding company also must file an annual report consisting of audited consolidating and consolidated financial statements and a report of the holding company's capital measurement, as provided to its principal regulator.

In addition, the Commission has modified the reporting requirements in the final rule amendments for an ultimate holding company that does not have a principal regulator. The deadlines for the submission of the monthly and annual reports have been extended and certain financial information does not have to be filed with the monthly or quarterly reports if the information has not yet been made public in the ultimate holding company's annual report on Form 10–K. These changes should not materially affect the PRA burden estimates for the ultimate holding company that does not have a principal regulator.

In the Proposing Release, based on Commission experience and discussions with industry participants, we estimated that the calculation of allowable capital and allowances for market, credit, and operational risk would require approximately 90 hours per month, or approximately 1,080 hours per year. In addition, we estimated that it would require approximately 5,600 hours per year to review and update the mathematical models that the ultimate holding company uses to make these calculations. Finally, we estimated that it would require approximately 160 hours each quarter, or approximately 640 hours each year, to backtest the models.

The models used by the broker-dealer and the ultimate holding company to calculate risk on similar classes of products will generally be the same models. However, we expect that the ultimate holding company will use models in its risk calculations for additional products. These additional products could include, for example, loans and loan commitments, structured financial products, or various types of derivatives business not conducted in the broker-dealer.

For the five ultimate holding companies that do not have a principal regulator whose broker-dealers we expect to apply to operate under the rule amendments, our burden estimate for each ultimate holding company to comply with the capital measurement and mathematical model review, updating, and backtesting requirements of the rule amendments has not changed. Thus, the total burden on these five ultimate holding companies is approximately 37,000 hours per year ((5,600 + 640 + 1,080) × 5 = 36,600).

The rule amendments do not require an ultimate holding company that has a principal regulator to compute allowable capital or allowances for market, credit, and operational risk or to review, update, and backtest its mathematical models. As a result, we conclude that there is no PRA burden on these ultimate holding companies as a result of the capital measurement requirements of the rule amendments. The ultimate holding company must provide its principal regulator with a capital measurement, and must review, update, and backtest the mathematical models it uses to derive that measurement.

In the Proposing Release, we estimated that the average amount of time necessary to prepare and file the monthly reports required by Appendix G would be approximately 8 hours per month, or approximately 96 hours per year, that the average amount of time necessary to prepare and file the quarterly reports would be about 16 hours per quarter, or approximately 64 hours per year, and that the average amount of time necessary to prepare and file the annual audit reports would be approximately 200 hours per year. These estimates were described in the Proposing Release and elicited no comments. For each of the five broker-dealer ultimate holding companies that do not have principal regulators, our PRA burden estimate for preparing and filing the reports required under the rule amendments is unchanged. Therefore, for these holding companies, the PRA burden is approximately 1,800 hours per year ((96 + 64 + 200) × 5 = 1,800).

For ultimate holding companies that have a principal regulator, the ultimate holding company will be required only to send to the Commission reports it has prepared for other purposes. No monthly reports are required under the rule amendments, and the quarterly and annual reports consist of reports the ultimate holding company has provided to persons in the ultimate holding company responsible for managing risk or reports the ultimate holding company provides to its principal regulator. Therefore, we expect that the PRA burden for an ultimate holding company with a principal regulator as a result of the reporting requirements under the amendments will be approximately 40 hours per year. For the six ultimate holding companies that have a principal

regulator, the total burden will therefore be approximately 240 hours per year.

In the Proposing Release, we stated that we expected that any additional burden associated with the requirements of Appendix G relating to making, keeping, and preserving records would be minimal because a prudent firm that manages risk on a group-wide basis would make and preserve these records in the ordinary course of its business. We estimated that the average one-time burden of making and preserving these records would be approximately 40 hours and that the average annual burden would be approximately 290 hours.

As the record creation and record preservation requirements under the final rule amendments for an ultimate holding company that does not have a principal regulator have not been changed from the proposal, we estimate that the one-time burden for the five ultimate holding companies will be 40 * 5 = 200 hours and the annual burden will be approximately 290 * 5 = 1,450 hours.

The final rule amendments do not impose record creation requirements on an ultimate holding company that has a principal regulator, so there will be no burden on the ultimate holding company for record creation as a result of the rule amendments. An ultimate holding company that has a principal regulator must preserve only any application or documents and all reports and notices filed with the Commission under the rule amendments and any written responses received from the Commission. We do not expect that an ultimate holding company with a principal regulator will incur any PRA burden as a result of the record preservation requirements of the rule amendments because the principal regulator will already require preservation of these records.

The notification provisions of Appendix G are designed to give the Commission advance warning of situations that may pose material financial and operational risks to the broker-dealer and its ultimate holding company and affiliates. These provisions are integral to Commission supervision of broker-dealers that use Appendix E. We estimated in the Proposing Release that it would require a total of approximately one hour per year for all 12 of the ultimate holding companies of the broker-dealers we expected to apply under the proposal to comply with the notification provisions of Appendix G. We have not changed that estimate for the ultimate holding companies of the 11 broker-dealers we now expect to apply under the rule amendments.[89]

Rule 15c3–4 requires an OTC derivatives dealer that uses Appendix F to calculate certain its net capital to establish, document, and maintain a system of internal risk management controls. In the Proposing Release, we proposed amendments to Rule 15c3–4 to expand its coverage to broker-dealers that use Appendix E, and we proposed that the ultimate holding company of the broker-dealer, as a condition to a broker-dealer's use of the alternative method of computing net capital, would be required to comply with Rule 15c3–4 with respect to an internal risk management control system for the affiliate group. The final rule amendments do not include amendments to Rule 15c3–4. However, under the final amendments to Rule 15c3–1, a broker-dealer that uses Appendix E to calculate net capital must comply with applicable provisions of Rule 15c3–4 as though it were an OTC derivatives dealer that uses Appendix F and ultimate holding company that does not have a principal regulator must agree to comply with applicable provisions of Rule 15c3–4 with respect to an internal risk management control system for the affiliate group. Under the final rule amendments, however, an ultimate holding company that has a principal regulator is no longer required to agree to comply with Rule 15c3–4 with respect to a group-wide internal risk management control system because the principal regulator already imposes risk management control system requirements on the ultimate holding company. The additional PRA burden for Rule 15c3–4 of 3,000 hours was proposed and approved. That burden, adjusted as discussed below, is now included in the PRA burden for Rule 15c3–1.

Rule 15c3–4 requires that in implementing its internal risk management control system policies and procedures, the broker-dealer must document its system of internal risk management controls. In particular, such a firm must document its consideration of certain issues affecting its business when designing its internal controls. The broker-dealer also must prepare and maintain written guidelines that discuss its internal risk management control system.

The rule amendments are an integral part of the Commission's financial responsibility program for broker-dealers whose applications under Appendix E are approved by the Commission. The information to be collected under Exchange Act Rule 15c3–4 is essential to the regulation and oversight of major securities firms that voluntarily elect to use Appendix E. More specifically, requiring a broker-dealer that elects to use Appendix E (and the ultimate holding company of the broker-dealer, if the holding company does not have a principal regulator) to document the planning, implementation, and periodic review of its risk management controls is designed to ensure that all pertinent risk management issues are considered, that the risk management controls are implemented properly, and that they continue to adequately address the risks faced by major securities firms.

The 11 broker-dealers we now expect to apply under these rules and their ultimate holding companies already have developed internal risk management control systems. Each broker-dealer, however, (and the ultimate holding company of the broker-dealer, if the ultimate holding company does not have a principal regulator) will have to take some additional steps to review and enhance its control system for purposes of the final rule amendments. This assessment is based on examinations of and discussions with the firms. We expect that the amount of time necessary to accomplish this will vary by broker-dealer. In the Proposing Release, we estimated that of the 12 broker-dealers we expected to apply under the amendments, six would spend approximately 1,000 hours and six would spend approximately 3,600 hours to amodify their internal risk management control systems for purposes of the rule amendments. In addition, we estimated that each of the 12 broker-dealers would spend approximately 250 hours per year reviewing and updating its risk management control system.

We now estimate that 11 broker-dealers will apply under the final rule amendments and that, although the amount of time required to modify its internal risk management control system to comply with the final rule amendments will vary, we estimate that on average a broker-dealer (and its ultimate holding company, if

[89] The Commission received approximately 841 Rule 17a–11 notifications from 562 broker-dealers during calendar year 2003, when there were approximately 6,800 active broker-dealers registered with the Commission. Thus, approximately 8% of registered broker-dealers filed a Rule 17a–11 notice in 2003 (562 / 6,800 = .0826). Therefore, we estimate that of the 11 ultimate holding companies of broker-dealers we expect to apply under the rule amendments, approximately one may be required to file notice under this provision. We estimate that, consistent with the Rule 17a–11 PRA burden estimate, it will take approximately one hour to prepare and file that notice.

applicable) will spend approximately 2,000 hours to accomplish this task. The total burden is therefore approximately 22,000 hours on a one-time basis. As in the Proposing Release, we expect that it will take an average of approximately 250 hours per year for each firm to review and update its internal risk management control system, for a total annual burden of 2,750 hours (250 * 11 = 2,750).

B. Rule 17a–4. Records To Be Preserved by Certain Exchange Members, Brokers and Dealers

The final rules add an amendment to Rule 17a–4, which was not contained in the proposed rule amendments. The amendment requires a broker-dealer taking advantage of the alternative capital calculation to preserve records made under paragraphs (c)(4)(vi)(D) and (E) of Appendix E. These records relate to the broker-dealer's determination of credit ratings and credit risk weights, respectively.

Paragraph (c)(4)(vi)(E) was not contained in the proposed rule amendments. The Proposing Release, however, would have required a broker-dealer to preserve the record made pursuant to paragraph (c)(4)(vi)(D) (designated as paragraph (d)(7)(iv) in the Proposing Release). Rule 17a–4 is the broker-dealer record retention rule and it is therefore appropriate to amend Rule 17a–4 to require a broker-dealer to preserve the records made under paragraphs (c)(4)(vi)(D) and (E). We estimate that it will take an average of approximately one hour per year for the 11 broker-dealers we expect to apply under the rule amendments to comply with this record preservation requirement, for a total burden of 11 hours per year for the 11 broker-dealers.

C. Rule 17a–5. Reports To Be Made by Certain Brokers and Dealers

The amendments to Exchange Act Rule 17a–5 require broker-dealers using Appendix E to submit monthly, quarterly, and annual reports to the Commission. The amendments are an integral part of our financial responsibility program for broker-dealers electing to use Appendix E. The information to be collected under the amendments to Rule 17a–5 are essential to the regulation of these broker-dealers and will assist us and the SROs responsible for reviewing the activities of these broker-dealers to monitor and enforce compliance with applicable Commission rules, including rules pertaining to financial responsibility. These periodic reports will also aid the Commission in evaluating the activities conducted by these broker-dealers and in anticipating, where possible, how these firms could be affected by significant economic events.

In the Proposing Release, we estimated that the average amount of time necessary to prepare and file the additional monthly reports required by this amendment to Rule 17a–5 would be about 4 hours per month, or approximately 48 hours per year; that the average amount of time necessary to prepare and file the additional quarterly reports would be about 8 hours per quarter, or approximately 32 hours per year; and that the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required would be approximately 40 hours per year. The final amendments to Rule 17a–5 are similar to those proposed. We therefore estimate for the 11 broker-dealers we now expect to apply under the rule amendments that the total annual burden is approximately 1,320 hours ((48 + 32 + 40)* 11 = 1,320).

D. Rule 17a–11. Notification Procedures for Brokers and Dealers

We are revising the proposed amendments to Rule 17a–11. Exchange Act Rule 17a–11 requires that a broker-dealer provide notification of certain events to the Commission and its designated examining authority within specified time periods. The events that require Commission notification indicate that the firm may be experiencing financial or operational difficulty.

The amendments to Rule 17a–11, as proposed, would have imposed additional notification requirements on broker-dealers that use the alternative method of computing net capital. Under these amendments, the broker-dealer would have notified the Commission if it became aware of certain credit rating downgrades relating to the broker-dealer, or an affiliate of the broker-dealer; it received a notice of non-compliance from a regulatory authority; it became aware of a situation that may have had a material adverse effect on the ultimate holding company or on a material affiliate of the holding company; or a backtesting exception of its mathematical models occurred that required the broker-dealer to use a higher multiplication factor in the calculation of its deductions for market or credit risk.

The revisions to Rule 17a–11, as adopted, amend only paragraphs (b)(2) and (h). Paragraph (b)(2) of Rule 17a-11, as adopted, requires a broker-dealer that computes its net capital under the alternative method of Appendix E to notify the Commission if its tentative net capital falls below $1 billion, the required minimum under Rule 15c3–1e(a)(7)(i). The notice must specify the broker-dealer's net capital and tentative net capital requirements and the current amount of its net capital and tentative net capital. Paragraph (h), as adopted, notes that there is a notification provision in Rule 15c3–1e(a)(7)(ii). That provision requires a broker-dealer to notify the Commission that same day if its tentative net capital falls below $5 billion. These notification provisions are necessary for the Commission to monitor the financial position of a broker-dealer that uses the alternative method of computing net capital.

Although they are of supervisory concern, the events requiring notification under the rule amendments are expected to be rare. In the Proposing Release, we based our estimate of the number of broker-dealers who might be required to file notice pursuant to the amendments on the number of Rule 17a–11 notices we received in calendar year 2002. We are now basing our estimate on year 2003 data.

The Commission received approximately 841 Rule 17a–11 notices from 562 broker-dealers during calendar year 2003. At that time, there were approximately 6,800 active broker-dealers registered with the Commission, so we estimate that approximately 8% of active broker-dealers filed a Rule 17a–11 notice during calendar year 2003 (562/6,800 = .0826). Therefore, we estimate that, of the 11 broker-dealers we now expect to apply under the rule amendments, approximately one may be required to file notice pursuant to these amendments. In the Proposing Release, we estimated that it would take approximately one hour per year to prepare and file such a notice. As the notification requirements of the final amendments to Rule 17a–11 are similar, we have not changed that estimate.

E. Rules 17h–1T and 17h–2T. Risk Assessment Recordkeeping Requirements for Associated Persons of Brokers and Dealers and Risk Assessment Reporting Requirements for Brokers and Dealers

Rules 17h–1T and 17h–2T require that certain broker-dealers make records of and file quarterly reports with the Commission regarding the financial condition, organization, and risk management practices of their affiliated group. The current burden estimate for Rules 17h–1T and 17h–2T is approximately 10 hours per year for each respondent. The proposed amendments to Rules 17h–1T and 17h–2T exempted a broker-dealer that used Appendix E from the rules to the extent

that the ultimate holding company of the broker or dealer maintained the information pursuant to Appendix G.

In the final rule amendments, only a broker-dealer with an ultimate holding company that does not have a principal regulator is exempted from Rules 17h–1T and 17h–2T. As we estimate that five broker-dealers that have holding companies that do not have a principal regulator will apply under the rule amendments, the savings will be approximately 50 hours per year.

F. Conclusion

Based on the above analysis, we estimate that the total additional PRA burden as a result of the final rule amendments is approximately 33,200 hours on a one-time basis and approximately 113,600 hours per year. We estimate that the PRA burden will be reduced by approximately 50 hours per year as a result of the rule amendments.

V. Costs and Benefits of the Rule Amendments

A. Introduction

The rule amendments provide a voluntary, alternative method for computing net capital deductions for market and credit risk under the Exchange Act for certain broker-dealers that are part of an ultimate holding company that has a group-wide internal risk management control system and that consents, as a condition of the net capital treatment, to group-wide Commission supervision. The alternative net capital computation involves the use of internally developed mathematical models that the firm uses to measure risk.

The Commission is sensitive to the costs and benefits that result from its rules. We have identified certain costs and benefits associated with the rule amendments.

The Proposing Release solicited comments relating to the costs and benefits associated with the proposed rule amendments. We received no comments that addressed the costs and benefits of the proposal. However, we did receive comments on other aspects of the proposed amendments. The Commission is adopting rule amendments that contain various modifications to the proposed amendments. As discussed below, some of those modifications, as well as comments received on other aspects of the proposed amendments, result in changes to the costs and benefits of the rule amendments.

Under proposed paragraph (a)(7) of Rule 15c3–1, a broker-dealer that maintained tentative net capital of at least $1 billion and net capital of at least $500 million could apply to the Commission for permission to use the alternative method of calculating net capital. Under paragraph (a)(7) as adopted, a broker-dealer is also required to notify the Commission if its tentative net capital falls below $5 billion. If a broker-dealer is required to provide that notice to the Commission, the Commission may impose additional regulatory conditions on either the broker-dealer or, if the ultimate holding company of the broker-dealer does not have a principal regulator, on the ultimate holding company.

We noted in the Proposing Release that, based on discussions with industry representatives, we believed that 12 broker-dealers would have sufficient net capital deductions pursuant to Rule 15c3–1(c)(2)(vi) (also known as "haircuts") to find it cost effective to use the alternative capital computation. Therefore, the cost-benefit analysis was based on the assumption that 12 broker-dealers would apply to use the alternative capital computation.

According to September 30, 2003 FOCUS filings, only six registered broker-dealers reported that they had tentative net capital of at least $5 billion. Some firms, however, make certain deductions in arriving at the FOCUS tentative net capital figure (for example, relating to securities without a ready market) that would not be subtracted in the calculation of tentative net capital for purposes of the rule amendments. Based on the final rule amendments, the comments received in response to the proposal, and these facts, we now estimate that 11 broker-dealers will apply to use the alternative net capital computation.

In addition, the Commission has modified the proposed rules to establish a streamlined group-wide supervisory regime for an ultimate holding company of a broker-dealer taking advantage of the rule amendments that is "an ultimate holding company that has a principal regulator" to avoid duplicative or inconsistent regulation of these entities. Of the 11 broker-dealers we now estimate will apply under the rule amendments, we estimate that six have an ultimate holding company that has a principal regulator. The streamlined supervisory regime for these holding companies reduces application requirements, internal risk management control system requirements, and examination and reporting requirements, and generally results in lower costs.

The estimates are based on information from a variety of sources, including information that Commission staff receives through the risk assessment rules and meetings with and reports from member firms of the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules.

Some of the changes to our estimates result from use of certain updated data. The revised cost and benefit estimates are discussed below for each rule amendment.

B. Benefits

We anticipate that cost savings will result in several areas. If permitted to operate under the amendments, a broker-dealer will become subject to specifically tailored capital and other requirements. The broker-dealer will be able to compute certain of its deductions for market and credit risk using internally developed mathematical models that the firm uses to manage risk and to report risks to the Commission using internal reports that the firm already generates for risk management purposes. The incorporation of mathematical risk management techniques into the capital calculation should enable such a broker-dealer to reallocate capital from the broker-dealer to affiliates that may receive a higher return than the broker-dealer.

A major benefit for the broker-dealer will be lower deductions from net capital for market and credit risk that we expect will result from the use of the alternative method. This benefit, however, is difficult to quantify. While reductions in net capital requirements will likely result from the use of the alternative method, broker-dealers typically maintain higher levels of capital than the rules require. Also, the mix of positions held by the broker-dealer may change if the regulatory cost of holding certain positions is reduced. Finally, the reduction in net capital deductions will vary significantly among broker-dealers based on the size and risk of their portfolios.

We expect that firms with larger net capital deductions will realize a larger percentage reduction than firms with smaller capital deductions. In the Proposing Release, we estimated that broker-dealers taking advantage of the alternative capital computation would realize an average reduction in capital deductions of approximately 40%. We estimated that a broker-dealer could reallocate capital to fund business activities for which the rate of return would be approximately 20 basis points (0.2%) higher.

According to third quarter 2003 FOCUS data, the 11 firms we expect to apply under the rule amendments could realize a total reduction in haircuts of approximately $13 billion. We estimate that they will realize a total annual benefit of approximately $26 million (.2% * $13 billion = $26 million).

Firms that do business in the EU have indicated that they may need to demonstrate that they are subject to consolidated supervision at the ultimate holding company level that is "equivalent" to EU consolidated supervision. Without a demonstration of "equivalent" supervision, we understand that the affiliate institution located in the EU may either be subject to additional net capital deductions or be required to form a sub-holding company in the EU. We expect that the Commission supervision contemplated by these amendments will meet this standard. As a result, we believe these amendments will minimize duplicative regulatory burdens on firms that do not have ultimate holding companies that have a principal regulator that are active in the EU as well as in other jurisdictions that may have similar laws.

Based on staff experience, we estimate that it would cost approximately $8 million per year for a firm to form and maintain a sub-holding company in the EU. Consequently, for the five broker-dealers we expect will apply under these amendments that do not have an ultimate holding company that has a principal regulator, not being required to form and maintain a sub-holding company in the EU would save the firms a total of approximately $40 million per year.

Rules 17h–1T and 17h–2T require that certain broker-dealers make records of and file quarterly reports with the Commission regarding the financial condition, organization, and risk management practices of their affiliated group. The current PRA estimate for Rules 17h–1T and 17h–2T is approximately 19 hours per year for each respondent. The proposed amendments to Rules 17h–1T and 17h–2T exempted a broker-dealer that used Appendix E from the rules to the extent that the ultimate holding company of the broker or dealer maintained the information pursuant to Appendix G.

In the final rule amendments, only a broker-dealer that has an ultimate holding company that does not have a principal regulator is exempted from Rules 17h–1T and 17h–2T. As we estimate that five broker-dealers will apply under the rule amendments that have ultimate holding companies that do not have a principal regulator, the savings are approximately 50 hours per year. We expect that a financial reporting manager will do this work. The staff estimates that the hourly salary of a financial reporting manager is $92 per hour.[90] We estimate that the total cost savings for the 5 firms will be approximately $4,600 per year (50 * $92 = $4,600).

To the extent that firms electing this regulatory system improve their internal risk management control systems, we expect that the firms will realize a benefit in the form of reduced borrowing costs. This benefit will vary widely depending on the risk management practices the firms already have in place. For some firms that already have formally documented group-wide control systems, there may be no benefit.

We believe that this regulatory system also will result in benefits to regulators and, as a result, to financial markets. The Commission will have access to group-wide information concerning the operation and financial condition of the broker-dealer's ultimate holding company and affiliates. This information will help the Commission to assess whether the activities or financial condition of the ultimate holding company or affiliates may pose risks to the financial health of the broker-dealer and should therefore promote the stability of the financial markets.

Also, the broker-dealer must comply with stringent requirements concerning its internal risk management control system. We expect that these requirements will reduce the risk of significant losses by the broker-dealer. The internal risk management control system requirements also should reduce the risk that the problems of one firm will spread, causing defaults by other firms and undermining securities markets as a whole.

C. Costs

Firms electing the alternative capital computation will incur various costs. In estimating the total costs associated with the amendments on the broker-dealer, we have included the costs arising from each rule amendment.

As part of the application to use Appendix E, the broker-dealer and its ultimate holding company must submit various documents to the Commission. We estimate that each broker-dealer that applies to calculate its net capital under the amendments will spend approximately 1,000 hours to create and compile the various documents to be included with the application and to work with the Commission staff through the application process. The staff anticipates that this will include approximately 100 hours for an in-house attorney and 900 hours for a senior compliance staff member. The staff estimates that the hourly salary of an attorney is $82 per hour,[91] for a total cost for the 11 firms of approximately $90,000 ($82 * 100 * 11 = $90,200). The staff estimates that the hourly salary of a senior compliance staff person is $71 per hour,[92] for a total cost of approximately $703,000 ($71 * 900 * 11 = $702,900).

We note that broker-dealers we expect to apply to use Appendix E already have developed the VaR models that they will use to calculate market and credit risk under the amendments and already have developed internal risk management control systems. This conclusion is based on information Commission staff receives through the risk assessment rules and meetings with and reports from the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules. On the other hand, we note that the amendments contain additional requirements that broker-dealers may not yet have incorporated into their models and control systems.

We estimate that a broker-dealer using Appendix E will spend approximately 5,600 hours per year to review and update the models it uses to compute market and credit risk and approximately 160 hours each quarter, or approximately 640 hours per year, to backtest the models. We believe that whether or not the ultimate holding company of a broker-dealer is an ultimate holding company that has a principal regulator, this time requirement would be the same. Consequently, we estimate that it would take approximately 69,000 hours per year ((5,600 + 640) * 11 = 68,640) to review, update, and backtest mathematical models for the 11 broker-dealers we now expect to apply under the amendments and that a financial

[90] Generally, to calculate an hourly cost, the staff takes the median (or, if no median is provided, the mean) salary provided in the latest annual Securities Industry Association's Report on Management and Professional Earnings in the Securities Industry ("SIA Report") for the position cited, divides that amount by 1,800 hours (in the average work year), then multiplies the result by 135% to account for employee overhead costs. For a Financial Reporting Manager, the hourly cost is computed as follows: $123,000 salary per year (based on end of year 2003 SIA Report figures)/1800 hours per year * 1.35 = $92 per hour.

[91] SIA Report (Attorney) + 35% overhead (based on end-of-year 2003 figures) ($109,000 per year/1800 hours/year * 1.35 = $82 per hour).

[92] SIA Report (Senior Compliance Staff) + 35% overhead (based on end-of-year 2003 figures) ($94,700 per year/1800 hours/year * 1.35 = $71 per hour).

reporting specialist will do the work. The staff estimates that the hourly salary of a financial reporting manager is $92 per hour,[93] for a total cost of approximately $6.3 million per year ($92 * 69,000 = $6,348,000).

Under proposed Appendix G to Rule 15c3–1, the ultimate holding company of a broker-dealer using the alternative capital computation would have been required to calculate allowable capital and allowances for market, credit, and operational risk monthly on a consolidated basis, file certain monthly, quarterly, and annual reports with the Commission, make, keep current, and preserve certain records, and notify the Commission of certain events. As we noted in the Proposing Release, capital measurement, reporting, and recordkeeping conditions are necessary to allow the Commission to oversee properly a broker-dealer that uses Appendix E and to monitor the financial and operational condition of its affiliate group. In particular, the proposed reporting requirements of Appendix G are necessary to keep the Commission informed of, among other things, the financial condition, financial and operational risk exposures, backtesting results, and management controls of the ultimate holding company and affiliates of the broker-dealer and whether the ultimate holding company is in compliance with the conditions of the broker-dealer's exemption. These reports will help the Commission to anticipate the effect on the ultimate holding company and affiliates of significant economic events and their impact on the broker-dealer.

The Commission has modified the capital measurement and reporting conditions in the final rule amendments for an ultimate holding company that is an ultimate holding company that has a principal regulator. For such an ultimate holding company, there is no requirement to calculate allowable capital and allowances for market, credit, and operational risk monthly. Also, the ultimate holding company is not required to file monthly reports with the Commission. An ultimate holding company that has a principal regulator must file quarterly reports containing consolidated and consolidating financial statements, a capital measurement it provides to its principal regulator, and certain regular risk reports provided to the persons responsible for managing group-wide risk as the Commission may request. The ultimate holding company also must file an annual report consisting of audited consolidating and consolidated financial statements and a report of the ultimate holding company's capital measurement, as provided to its principal regulator.

In addition, the Commission has modified the reporting requirements in the final rule amendments for an ultimate holding company that does not have a principal regulator. The deadlines for the submission of the monthly and annual reports have been extended and certain financial information does not have to be filed with the monthly or quarterly reports if the information has not yet been made public in the holding company's annual report on Form 10–K. These changes should not materially affect the burden estimates for the ultimate holding company that does not have a principal regulator.

In the Proposing Release, based on Commission experience and discussions with industry participants, we estimated that the calculation of allowable capital and allowances for market, credit, and operational risk would require approximately 90 hours per month, or approximately 1,080 hours per year. In addition, we estimated that it would require approximately 5,600 hours per year to review and update the mathematical models the holding company uses to make these calculations. Finally, we estimated that it would require approximately 160 hours each quarter, or approximately 640 hours each year, to backtest the models.

The broker-dealer and the ultimate holding company generally will use the same models to calculate risk on similar classes of products. However, we expect that the ultimate holding company will use models in its risk calculations for additional products. These additional products could include, for example, loans and loan commitments, structured financial products, or various types of derivatives business not conducted in the broker-dealer.

For the five ultimate holding companies that do not have a principal regulator whose broker-dealers we expect to apply to operate under the rule amendments, our estimates from the Proposing Release have not changed. We estimate that to compute allowable capital and allowances for market, credit, and operational risk for the five ultimate holding companies would take approximately 5,400 hours (1,080 * 5 = 5,400). We expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $55 per hour.[94] The total annual cost is approximately $300,000 ($55 * 5,400 = $297,000). In addition, we estimate that it would require approximately 5,600 hours per year to review and update the mathematical models used to make these calculations, or approximately 28,000 hours per year for the five ultimate holding companies, and we expect that a financial reporting manager would do the work. The staff estimates that the hourly salary of a financial reporting manager is $92 per hour.[95] The total annual cost is approximately $2.6 million ($92 * 28,000 = $2,576,000). Finally, we estimate that it will require approximately 640 hours per year per firm to backtest the models, or approximately 3,200 hours for the five ultimate holding companies, and we expect that a junior research analyst would do the work. The staff estimates that the hourly salary of a junior research analyst is $50 per hour,[96] for a total annual cost of approximately $160,000 ($50 * 3,200 = $160,000).

The rule amendments do not require an ultimate holding company that has a principal regulator to compute allowable capital or allowances for market, credit, and operational risk or to review, update, and backtest its mathematical models. As a result, we conclude that there will be minimal costs, if any, to such ultimate holding companies as a result of the capital measurement requirements of the rule amendments. The ultimate holding company must provide its principal regulator with a capital measurement, and must review, update, and backtest the mathematical models it uses to derive that measurement.

In the Proposing Release, we estimated that the average amount of time necessary to prepare and file the monthly reports required by Appendix G would be approximately 8 hours per month, or approximately 96 hours per year, that the average amount of time necessary to prepare and file the quarterly reports would be about 16 hours per quarter, or approximately 64 hours per year, and that the average amount of time necessary to prepare and file the annual audit reports would be

[93] SIA Report (Financial Reporting Manager) + 35% overhead (based on end-of-year 2003 figures) ($123,000 per year/1800 hours/year * 1.35 = $92 per hour).

[94] SIA Report (Senior Accountant) + 35% overhead (based on end-of-year 2003 figures) ($72,850 per year/1800 hours/year * 1.35 = $55 per hour).

[95] SIA Report (Financial Reporting Manager) + 35% overhead (based on end-of-year 2003 figures) ($123,000 per year/1800 hours/year * 1.35 = $92 per hour).

[96] SIA Report (Junior Research Analyst) + 35% overhead (based on end-of-year 2003 figures) ($67,200 per year/1800 hours/year * 1.35 = $50 per hour).

approximately 200 hours per year. These estimates were described in the Proposing Release and elicited no comments. For the five broker-dealer ultimate holding companies that do not have principal regulators, our estimate for the amount of time necessary for preparing and filing the reports required under the rule amendments is unchanged. Therefore, for these firms, it will take a total of approximately 1,800 hours ((96 + 64 + 200) * 5 = 1,800) to comply with these requirements.

For ultimate holding companies that have a principal regulator, the ultimate holding company must send to the Commission only the reports it has prepared for other purposes. No monthly reports are required under the rule amendments, and the quarterly and annual reports consist of reports the ultimate holding company has provided to persons in the ultimate holding company responsible for managing risk or reports the ultimate holding company provides to its principal regulator. Therefore, we expect that the time required for an ultimate holding company with a principal regulator as a result of the reporting requirements under the amendments will be minimal. We estimate that this time requirement is approximately 40 hours per year. For the six broker-dealers with ultimate holding companies that have principal regulators that we expect to apply under the rule amendments, the total time required will therefore be approximately 240 hours per year.

We expect that a senior accountant will do the work necessary to comply with the reporting requirements of the rule amendments. The staff estimates that the hourly salary of a senior accountant is $55 per hour,[97] for a total annual cost of approximately $110,000 ((1,800 + 240) * $55 = $112,200).

In the Proposing Release, we stated that we expected that any additional cost associated with the requirements of Appendix G relating to making, keeping, and preserving records would be minimal because a prudent firm that manages risk on a group-wide basis would make and preserve these records in the ordinary course of its business. We estimated that the average time required to make and preserve these records would be approximately 40 hours and that the average annual time requirement would be approximately 290 hours.

As the record creation and record preservation requirements under the final rule amendments for an ultimate holding company that does not have a principal regulator have not been changed from the proposal, we estimate that for the five ultimate holding companies it would take approximately 200 hours (40 * 5 = 200) on a one-time basis and approximately 1450 hours per year (290 * 5 = 1,450) to comply with these requirements. We expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $55 per hour,[98] for a total one-time cost of approximately $11,000 (200 *55 = $11,000) and a total annual cost of approximately $80,000 (1,450 * $55 = $79,750).

The final rule amendments do not impose record creation requirements on an ultimate holding company that has a principal regulator, so there will be no costs to the ultimate holding company for record creation as a result of the rule amendments. An ultimate holding company that has a principal regulator must preserve only any application or documents and all reports and notices filed with the Commission under the rule amendments and any written responses received from the Commission. We expect that an ultimate holding company that has a principal regulator will incur minimal costs, if any, as a result of the record preservation requirements of the rule amendments because the principal regulator will already require preservation of these records.

We estimated in the Proposing Release that it would require a total of approximately one hour per year for all 12 of the ultimate holding companies of the broker-dealers we expected to apply under the proposal to comply with the notification provisions of Appendix G. We have not changed that estimate for the ultimate holding companies of the 11 broker-dealers we now expect to apply under the rule amendments.[99] We expect that a senior compliance staff person will do the work. The staff estimates that the hourly salary of a senior compliance staff person is $71 per hour,[100] for a total annual cost for each of the 11 firms of approximately $71.

Rule 15c3–4 requires an OTC derivatives dealer that uses Appendix F to calculate net capital to establish, document, and maintain a system of internal risk management controls. In the Proposing Release, we proposed amendments to Rule 15c3–4 to expand its coverage to broker-dealers that use Appendix E, and we proposed that the ultimate holding company of the broker-dealer agree to comply with Rule 15c3–4 with respect to an internal risk management control system for the affiliate group. The final rule amendments do not include amendments to Rule 15c3–4. However, under Rule 15c3–1(a)(7)(iii), as adopted, a broker-dealer that uses Appendix E to calculate net capital must comply with applicable provisions of Rule 15c3–4 as though it were an OTC derivatives dealer that uses Appendix F. The final rule amendments also continue to require an ultimate holding company that does not have a principal regulator to agree to comply with applicable provisions of Rule 15c3–4 with respect to an internal risk management control system for the affiliate group. Under the final rule amendments, however, an ultimate holding company that has a principal regulator is no longer required to agree to comply with Rule 15c3–4 with respect to a group-wide internal risk management control system because the principal regulator already imposes risk management control system requirements on the ultimate holding company.

Rule 15c3–4 requires that in implementing its internal risk management control system policies and procedures, the broker-dealer must document its system of internal risk management controls. In particular, such a firm must document its consideration of certain issues affecting its business when designing its internal controls. The broker-dealer also must prepare and maintain written guidelines that discuss its internal risk management control system.

The rule amendments are an integral part of the Commission's financial responsibility program for broker-dealers whose applications under Appendix E are approved by the Commission. The information to be collected under Exchange Act Rule 15c3–4 is essential to the regulation and

[97] SIA Report (Senior Accountant) + 35% overhead (based on end-of-year 2003 figures) ($72,850 per year/1800 hours/year * 1.35 = $55 per hour).

[98] SIA Report (Senior Accountant) + 35% overhead (based on end-of-year 2003 figures) ($72,850 per year/1800 hours/year * 1.35 = $55 per hour).

[99] The Commission received approximately 841 Rule17a–11 notifications from 562 broker-dealers during calendar year 2003, when there were approximately 6,800 active broker-dealers registered with the Commission. Thus, approximately 8% of registered broker-dealers filed a Rule 17a–11 notice in 2003 (562/6,800 = .0826). Therefore, we estimate that of the 11 ultimate holding companies of broker-dealers we expect to apply under the rule amendments, approximately one may be required to file notice under this provision. We estimate that it will take approximately one hour to prepare and file that notice.

[100] SIA Report (Senior Compliance Staff) + 35% overhead (based on end-of-year 2003 figures) ($94,700 per year/1800 hours/year * 1.35 = $71 per hour).

oversight of major securities firms that voluntarily elect to use Appendix E. More specifically, requiring a broker-dealer that elects to use Appendix E (and the ultimate holding company of the broker-dealer, if the holding company does not have a principal regulator) to document the planning, implementation, and periodic review of its risk management controls is designed to ensure that all pertinent risk management issues are considered, that the risk management controls are implemented properly, and that they continue to address adequately the risks faced by major securities firms.

The 11 broker-dealers we now expect to apply to use Appendix E and their ultimate holding companies already have developed internal risk management control systems. Each broker-dealer, however, (and the ultimate holding company of the broker-dealer, if the holding company does not have a principal regulator) must take some additional steps to review and enhance its control system for purposes of the final rule amendments. This assessment is based on examinations of and discussions with the firms. We expect that the amount of time necessary to accomplish this will vary by broker-dealer. In the Proposing Release, we estimated that of the 12 broker-dealers we expected to apply under the amendments, six would spend approximately 1,000 hours each and six would spend approximately 3,600 hours each to modify their internal risk management control system for purposes of the rule amendments. In addition, we estimated that each of the 12 broker-dealers would spend approximately 250 hours per year reviewing and updating its risk management control system.

We now estimate that 11 broker-dealers will apply under the final rule amendments and that, although the amount of time required to modify its internal risk management control system to comply with paragraph (a)(7)(iii) of Rule 15c3–1 will vary, we estimate that, on average, a broker-dealer (and its holding company, if applicable) will spend approximately 2,000 hours to accomplish this task, for a total of 22,000 hours for the 11 firms. We estimate that each of the 11 broker-dealers will spend an average of approximately 250 hours per year reviewing and updating its internal risk management control system for a total for the 11 broker-dealers of 2,750 hours per year (250 * 11 = 2,750). We expect that a senior compliance staff person will do the work. The staff estimates that the hourly salary of a senior compliance staff person is $71 per hour,[101] for a total one-time cost of approximately $1,600,000 (22,000 * 71 = $1,562,000) and a total annual cost of approximately $195,000 (2,750 * 71 = $195,250).

The information technology systems used by broker-dealers to manage risk, make and retain records, and report and calculate capital differ widely depending on the size of the firm and the types of business it engages in. Based on discussions with the firms, we believe that the 11 broker-dealers we expect to apply under the amendments have strong information technology systems. These information technology systems may be in varying stages of readiness to enable the holding company to meet the requirements of the amendments, however, so the cost of modifying their information technology systems to meet these requirements could vary significantly for the 11 firms. In the Proposing Release, we estimated that, on average, it would cost a broker-dealer an average of approximately $27.5 million to modify its systems. To take account of the fact that these firms regularly update their information technology systems for business purposes, we have lowered our estimate of the average amount that it would cost broker-dealers to modify their systems to meet the requirements of the rule amendments. We now estimate that it will cost broker-dealers an average of approximately $8 million each to modify their information technology systems to meet the requirements of the rule amendments, for a total for the 11 broker-dealers of approximately $88 million.

The final rule amendments add an amendment to Rule 17a–4, which was not contained in the proposed rule amendments. The amendment requires a broker-dealer using the alternative method of computing net capital to preserve records made under paragraphs (c)(4)(vi)(D) and (E) of Appendix E. These records relate to the broker-dealer's determination of credit ratings and credit risk weights, respectively.

Paragraph (c)(4)(vi)(E) was not contained in the proposed rule amendments. The Proposing Release, however, would have required a broker-dealer to preserve the record made pursuant to paragraph (c)(4)(vi)(D) (designated as paragraph (d)(7)(iv) in the Proposing Release). Rule 17a–4 is the broker-dealer record retention rule and it is therefore appropriate to amend Rule 17a–4 to require a broker-dealer to preserve the records made under paragraphs (c)(4)(vi)(D) and (E). We estimate that it will take an average of approximately one hour per year for the 11 broker-dealers we expect to apply under the rule amendments to comply with this record preservation requirement, for a total of 11 hours per year for the 11 broker-dealers, and we expect that a senior compliance staff person will do the work. The staff estimates that the average salary for a senior compliance staff person is $71 per hour[102] for a total annual cost of approximately $800 ($71 * 11 = $781).

The amendments to Exchange Act Rule 17a–5 require broker-dealers using Appendix E to submit monthly, quarterly, and annual reports to the Commission. The amendments are an integral part of our financial responsibility program for broker-dealers electing to use Appendix E. The information to be collected under the amendments to Rule 17a–5 are essential to the regulation of these broker-dealers and will assist us and the SROs responsible for reviewing the activities of these firms to monitor and enforce compliance with applicable Commission rules, including rules pertaining to financial responsibility. These periodic reports also will aid the Commission in evaluating the activities conducted by these broker-dealers and in anticipating, where possible, how these firms could be affected by significant economic events.

In the Proposing Release, we estimated that the average amount of time necessary to prepare and file the additional monthly reports required by this amendment to Rule 17a–5 would be about 4 hours per month, or approximately 48 hours per year; that the average amount of time necessary to prepare and file the additional quarterly reports would be about 8 hours per quarter, or approximately 32 hours per year; and that the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required would be approximately 40 hours per year. The final amendments to Rule 17a–5 are similar to those proposed. We therefore estimate for the 11 broker-dealers we now expect to apply under the rule amendments that the total annual time required is approximately 1,320 hours per year ((48 + 32 + 40)* 11 = 1,320). We expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior

[101] SIA Report (Senior Compliance Staff) + 35% overhead (based on end-of-year 2002 figures) ($75,464 per year/1800 hours/year * 1.35 = $56.60 per hour).

[102] SIA Report (Senior Compliance Staff) + 35% overhead (based on end-of-year 2003 figures) ($94,700 per year/1800 hours/year * 1.35 = $71 per hour).

accountant is $55 per hour,[103] for a total annual cost of approximately $73,000 (1,320 * $55 = $72,600).

We are revising the proposed amendments to Rule 17a–11. Exchange Act Rule 17a–11 requires that a broker-dealer provide notification of certain events to the Commission and its designated examining authority within specified time periods. The events that require Commission notification indicate that the firm may be experiencing financial or operational difficulty.

The amendments to Rule 17a–11, as proposed, would have imposed additional notification requirements on broker-dealers that use the alternative method of computing net capital. Under these amendments, the broker-dealer would have notified the Commission if it became aware of certain credit rating downgrades relating to the broker-dealer or an affiliate of the broker-dealer; it received a notice of non-compliance from a regulatory authority; it became aware of a situation that may have had a material adverse effect on the ultimate holding company or on an affiliate of the holding company; or a backtesting exception of its mathematical models occurred that required the broker-dealer to use a higher multiplication factor in the calculation of its deductions for market or credit risk.

The revisions to Rule 17a–11, as adopted, amend only paragraphs (b)(2) and (h). Paragraph (b)(2) of Rule 17a–11, as adopted, requires a broker-dealer that computes its net capital under the alternative method of Appendix E to notify the Commission if its tentative net capital falls below $1 billion, the required minimum under Rule 15c3–1e(a)(7)(i). The notice must specify the broker-dealer's net capital and tentative net capital requirements and the current amount of its net capital and tentative net capital. Paragraph (h), as adopted, notes that there is a notification provision in Rule 15c3–1e(a)(7)(ii). That provision requires a broker-dealer to notify the Commission that same day if its tentative net capital falls below $5 billion. These notification provisions are necessary for the Commission to monitor the financial position of a broker-dealer that uses the alternative method of computing net capital.

Although they are of supervisory concern, the events requiring notification under the rule amendments are expected to be rare. In the Proposing Release, we based our estimate of the number of broker-dealers who might be required to file notice pursuant to the amendments on the number of Rule 17a–11 notices we received in calendar year 2002. We are now basing our estimate on year 2003 data.

The Commission received approximately 841 Rule 17a–11 notices from 562 broker-dealers during calendar year 2003. At that time, there were approximately 6,800 active broker-dealers registered with the Commission, so we estimate that approximately 8% of active broker-dealers filed a Rule 17a–11 notice during calendar year 2003 (562 / 6,800 = .0826). Therefore, we estimate that, of the 11 broker-dealers we now expect to apply under the rule amendments, approximately one may be required to file notice pursuant to these amendments. In the Proposing Release, we estimated that it would take approximately one hour to prepare and file such a notice. As the notification requirements of the final amendments to Rule 17a–11 are similar, we estimate that it will take approximately one hour to prepare and file such a notice and that a senior compliance staff person will do the work. The staff estimates that the hourly salary of a senior compliance staff person is $71 per hour,[104] for a total annual cost of approximately $71.

D. Conclusion

Based on the above analysis, we estimate that the quantifiable benefits of the rule amendments are approximately $66 million per year. We estimate that the quantifiable costs of the rule amendments are approximately $10 million per year and approximately $90 million on a one-time basis.

VI. Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[105] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest or for the protection of investors, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[106] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission believes that the amendments should promote efficiency, competition, and capital formation. The amendments are intended to reduce regulatory costs for broker-dealers by allowing very highly capitalized firms that have developed sophisticated internal risk management systems and procedures, such as mathematical risk measurement models, to use those risk management systems and procedures (with any modifications required by the amendments) for regulatory purposes. The Commission believes that it would not be cost effective for a firm that does not maintain the requisite capital levels to develop the systems and procedures required under the amendments. The amendments should provide eligible broker-dealers an opportunity to increase operational efficiency by aligning their supervisory risk assessment and their computation of certain net capital deductions more closely with the sophisticated methods the firms already use to manage their business risk and capital, while at the same time requiring that the firms maintain sufficient capital. The incorporation of mathematical risk management techniques into the calculation of net capital deductions should enable such a broker-dealer to reallocate capital from the broker-dealer to affiliates that may receive a higher return than the broker-dealer. In addition, the amendments should enhance the ability of U.S. securities firms to compete effectively in global securities markets.

VII. Regulatory Flexibility Act Certification

The Commission has certified, pursuant to section 605(b) of the Regulatory Flexibility Act,[107] that the amendments to Rules 15c3–1, 17a–4, 17a–5, 17a–11, 17h–1T, and 17h–2T would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the Proposing Release. We received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

VIII. Statutory Authority

The Commission is amending Title 17, Chapter II of the Code of Federal Regulations pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) (particularly sections 15(c), 17, 23, 24(b), and 36 thereof (15 U.S.C. 78o(c), 78q(a), 78w, 78x(b), and 78mm)).

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[103] SIA Report (Senior Accountant) + 35% overhead (based on end-of-year 2003 figures) ($72,850 per year/1800 hours/year * 1.35 = $55 per hour).

[104] SIA Report (Senior Compliance Staff) + 35% overhead (based on end-of-year 2003 figures) ($94,700 per year/1800 hours/year * 1.35 = $71 per hour).

[105] 15 U.S.C. 78c(f).

[106] 15 U.S.C. 78w(a)(2).

[107] 5 U.S.C. 605(b).

List of Subjects

17 CFR Part 200

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

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for Part 200, subpart A, is revised to read as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*11*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.19a is amended by adding two sentences following the third sentence in the introductory text to read as follows:

§ 200.19a Director of the Division of Market Regulation.

* * * In addition, these responsibilities include administering the Commission's rules related to supervised investment bank holding companies and ultimate holding companies of brokers or dealers that compute deductions for market and credit risk pursuant to § 240.15c3–1e of this chapter. This supervision includes the assessment of internal risk management controls and mathematical models used to calculate net capital and allowances for market, credit, and operational risks. * * *

* * * * *

■ 3. Section 200.30–3 is amended by:

■ a. Removing the period after paragraph (a)(7)(v) and in its place adding "; and"; and

■ b. Adding paragraph (a)(7)(vi).

The addition reads as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(7) * * *

(vi) (A) To review amendments to applications of brokers or dealers filed pursuant to § 240.15c3–1e and § 240.15c3–1g of this chapter and to approve such amendments, unconditionally or subject to specified terms and conditions;

(B) To grant extensions and exemptions from the notification requirements of § 240.15c3–1g(e) of this chapter, unconditionally or subject to specified terms and conditions;

(C) To impose additional conditions, pursuant to § 240.15c3–1e(e) of this chapter, on a broker or dealer that computes certain of its net capital deductions pursuant to § 240.15c3–1e of this chapter or on an ultimate holding company of the broker or dealer that is not an ultimate holding company that has a principal regulator, as defined in § 240.15c3–1(c)(13)(ii) of this chapter;

(D) To require that a broker or dealer or the ultimate holding company of the broker or dealer provide information to the Commission pursuant to § 240.15c3–1e(a)(1)(viii)(G), § 240.15c3–1e(a)(1)(ix)(C), § 240.15c3–1e(a)(4), § 240.15c3–1g(b)(1)(i)(H), and § 240.15c3–1g(2)(i)(C) of this chapter; and

(E) To determine, pursuant to § 240.15c3–1e(a)(10)(ii), that the notice that a broker or dealer must provide to the Commission pursuant to § 240.15c3–1e(a)(10)(i) of this chapter will become effective for a shorter or longer period of time.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7202 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Section 240.15c3–1 is amended by:

■ a. Removing the authority citations following § 240.15c3–1;

■ b. Revising the undesignated section heading preceding paragraph (a)(7);

■ c. Adding text to paragraph (a)(7);

■ d. Revising the undesignated section heading preceding paragraph (c)(13);

■ e. Adding text to paragraph (c)(13); and

■ f. Adding two sentences to the end of paragraph (c)(15).

The additions and revisions read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) * *

Alternative Net Capital Computation for Broker-Dealers That Elect To Be Supervised on a Consolidated Basis

(7) In accordance with Appendix E to this section (§ 240.15c3–1e), the Commission may approve, in whole or in part, an application or an amendment to an application by a broker or dealer to calculate net capital using the market risk standards of Appendix E to compute a deduction for market risk on some or all of its positions, instead of the provisions of paragraphs (c)(2)(vi) and (c)(2)(vii) of this section, and using the credit risk standards of Appendix E to compute a deduction for credit risk on certain credit exposures arising from transactions in derivatives instruments, instead of the provisions of paragraph (c)(2)(iv) of this section, subject to any conditions or limitations on the broker or dealer the Commission may require as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer that has been approved to calculate its net capital under Appendix E must:

(i) At all times maintain tentative net capital of not less than $1 billion and net capital of not less than $500 million;

(ii) Provide notice that same day in accordance with § 240.17a–11(g) if the broker's or dealer's tentative net capital is less than $5 billion. The Commission may, upon written application, lower the threshold at which notification is necessary under this paragraph (a)(7)(ii), either unconditionally or on specified terms and conditions, if a broker or dealer satisfies the Commission that notification at the $5 billion threshold is unnecessary because of, among other factors, the special nature of its business, its financial position, its internal risk management system, or its compliance history; and

(iii) Comply with § 240.15c3–4 as though it were an OTC derivatives dealer with respect to all of its business activities, except that paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) of § 240.15c3–4 shall not apply.

* * * * *

(c) * * *

Entities That Have a Principal Regulator

(13)(i) For purposes of § 240.15c3–1e and § 240.15c3–1g, the term *entity that has a principal regulator* shall mean a person (other than a natural person) that is not a registered broker or dealer (other than a broker or dealer registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), provided that the person is:

(A) An insured depository institution as defined in section 3(c)(2) of the

Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

(B) Registered as a futures commission merchant or an introducing broker with the Commodity Futures Trading Commission;

(C) Registered with or licensed by a State insurance regulator and issues any insurance, endowment, or annuity policy or contract;

(D) A foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)) that has its headquarters in a jurisdiction for which any foreign bank has been approved by the Board of Governors of the Federal Reserve System to conduct business pursuant to the standards set forth in 12 CFR 211.24(c), provided such foreign bank represents to the Commission that it is subject to the same supervisory regime as the foreign bank previously approved by the Board of Governors of the Federal Reserve System;

(E) Not primarily in the securities business, and the person is:

(*1*) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 through 633); or

(*2*) A corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601 through 604a); or

(F) A person that the Commission finds is another entity that is subject to comprehensive supervision, has in place appropriate arrangements so that information that the person provides to the Commission is sufficiently reliable for the purposes of determining compliance with § 240.15c3–1e and § 240.15c3–1g, and it is appropriate to consider the person to be an entity that has a principal regulator considering all relevant circumstances, including the person's mix of business.

(ii) For purposes of § 240.15c3–1e, § 240.15c3–1g, § 240.17h–1T, and § 240.17h2T, the term *ultimate holding company that has a principal regulator* shall mean a person (other than a natural person) that:

(A) Is a financial holding company or a company that is treated as a financial holding company under the Bank Holding Company Act of 1956 (12 U.S.C. 1840 *et seq.*), or

(B) The Commission determines to be an ultimate holding company that has a principal regulator, if that person is subject to consolidated, comprehensive supervision; there are in place appropriate arrangements so that information that the person provides to the Commission is sufficiently reliable for the purposes of determining compliance with § 240.15c3–1e and § 240.15c3–1g; and it is appropriate to consider the person to be an ultimate holding company that has a principal regulator in view of all relevant circumstances, including the person's mix of business.

* * * * *

(15) * * * For purposes of paragraph (a)(7) of this section, the term *tentative net capital* means the net capital of the broker or dealer before deductions for market and credit risk computed pursuant to § 240.15c3–1e or paragraph (c)(2)(vi) of this section, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of this section. Tentative net capital shall include securities for which there is no ready market, as defined in paragraph (c)(11) of this section, if the use of mathematical models has been approved for purposes of calculating deductions from net capital for those securities pursuant to § 240.15c3–1e.

* * * * *

■ 6. Section 240.15c3–1e is revised to read as follows:

§ 240.15c3–1e Deductions for market and credit risk for certain brokers or dealers (Appendix E to 17 CFR 240.15c3–1).

Preliminary Note: Appendices E and G to the net capital rule set forth a program that allows a broker or dealer to use an alternative approach to computing net capital deductions, subject to the conditions described in the Appendices, including supervision of the broker's or dealer's ultimate holding company under the program. The program is designed to reduce the likelihood that financial and operational weakness in the holding company will destabilize the broker or dealer, or the broader financial system. The focus of this supervision of the ultimate holding company is its financial and operational condition and its risk management controls and methodologies.

Application

(a) A broker or dealer may apply to the Commission for authorization to compute deductions for market risk pursuant to this Appendix E in lieu of computing deductions pursuant to §§ 240.15c3–1(c)(2)(vi) and (c)(2)(vii) and to compute deductions for credit risk pursuant to this Appendix E on credit exposures arising from transactions in derivatives instruments (if this Appendix E is used to calculate deductions for market risk on these instruments) in lieu of computing deductions pursuant to § 240.15c3–1(c)(2)(iv):

(1) A broker-dealer shall submit the following information to the Commission with its application:

(i) An executive summary of the information provided to the Commission with its application and an identification of the ultimate holding company of the broker or dealer;

(ii) A comprehensive description of the internal risk management control system of the broker or dealer and how that system satisfies the requirements set forth in § 240.15c3–4;

(iii) A list of the categories of positions that the broker or dealer holds in its proprietary accounts and a brief description of the methods that the broker or dealer will use to calculate deductions for market and credit risk on those categories of positions;

(iv) A description of the mathematical models to be used to price positions and to compute deductions for market risk, including those portions of the deductions attributable to specific risk, if applicable, and deductions for credit risk; a description of the creation, use, and maintenance of the mathematical models; a description of the broker's or dealer's internal risk management controls over those models, including a description of each category of persons who may input data into the models; if a mathematical model incorporates empirical correlations across risk categories, a description of the process for measuring correlations; a description of the backtesting procedures the broker or dealer will use to backtest the mathematical model used to calculate maximum potential exposure; a description of how each mathematical model satisfies the applicable qualitative and quantitative requirements set forth in paragraph (d) of this Appendix E; and a statement describing the extent to which each mathematical model used to compute deductions for market and credit risk will be used as part of the risk analyses and reports presented to senior management;

(v) If the broker or dealer is applying to the Commission for approval to use scenario analysis to calculate deductions for market risk for certain positions, a list of those types of positions, a description of how those deductions will be calculated using scenario analysis, and an explanation of why each scenario analysis is appropriate to calculate deductions for market risk on those types of positions;

(vi) A description of how the broker or dealer will calculate current exposure;

(vii) A description of how the broker or dealer will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable;

(viii) A written undertaking by the ultimate holding company of the broker or dealer, if it is not an ultimate holding company that has a principal regulator, in a form acceptable to the Commission, signed by a duly authorized person at the ultimate holding company, to the effect that, as a condition of Commission approval of the application of the broker or dealer to compute deductions for market and credit risk pursuant to this Appendix E, the ultimate holding company agrees to:

(A) Comply with all applicable provisions of this Appendix E;

(B) Comply with all applicable provisions of § 240.15c3–1g;

(C) Comply with the provisions of § 240.15c3–4 with respect to an internal risk management control system for the affiliate group as though it were an OTC derivatives dealer with respect to all of its business activities, except that paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) of § 240.15c3–4 shall not apply;

(D) As part of the internal risk management control system for the affiliate group, establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing;

(E) Permit the Commission to examine the books and records of the ultimate holding company and any of its affiliates, if the affiliate is not an entity that has a principal regulator;

(F) If the disclosure to the Commission of any information required as a condition for the broker or dealer to compute deductions for market and credit risk pursuant to this Appendix E could be prohibited by law or otherwise, cooperate with the Commission, to the extent permissible, including by describing any secrecy laws or other impediments that could restrict the ability of material affiliates to provide information on their operations or activities and by discussing the manner in which the ultimate holding company and the broker or dealer propose to provide the Commission with adequate information or assurances of access to information;

(G) Make available to the Commission information about the ultimate holding company or any of its material affiliates that the Commission finds is necessary to evaluate the financial and operational risk within the ultimate holding company and its material affiliates and to evaluate compliance with the conditions of eligibility of the broker or dealer to compute deductions to net capital under the alternative method of this Appendix E;

(H) Make available examination reports of principal regulators for those affiliates of the ultimate holding company that are not subject to Commission examination; and

(I) Acknowledge that, if the ultimate holding company fails to comply in a material manner with any provision of its undertaking, the Commission may, in addition to any other conditions necessary or appropriate in the public interest or for the protection of investors, increase the multiplication factors the ultimate holding company uses to calculate allowances for market and credit risk, as defined in § 240.15c3–1g(a)(2) and (a)(3) or impose any condition with respect to the broker or dealer listed in paragraph (e) of this Appendix E; and

(ix) A written undertaking by the ultimate holding company of the broker or dealer, if the ultimate holding company has a principal regulator, in a form acceptable to the Commission, signed by a duly authorized person at the ultimate holding company, to the effect that, as a condition of Commission approval of the application of the broker or dealer to compute deductions for market and credit risk pursuant to this Appendix E, the ultimate holding company agrees to:

(A) Comply with all applicable provisions of this Appendix E;

(B) Comply with all applicable provisions of § 240.15c3–1g;

(C) Make available to the Commission information about the ultimate holding company that the Commission finds is necessary to evaluate the financial and operational risk within the ultimate holding company and to evaluate compliance with the conditions of eligibility of the broker or dealer to compute net capital under the alternative method of this Appendix E; and

(D) Acknowledge that if the ultimate holding company fails to comply in a material manner with any provision of its undertaking, the Commission may, in addition to any other conditions necessary or appropriate in the public interest or for the protection of investors, impose any condition with respect to the broker or dealer listed in paragraph (e) of this Appendix E;

(2) As a condition of Commission approval, the ultimate holding company of the broker or dealer, if it is not an ultimate holding company that has a principal regulator, shall include the following information with the application:

(i) A narrative description of the business and organization of the ultimate holding company;

(ii) An alphabetical list of the affiliates of the ultimate holding company (referred to as the "affiliate group," which shall include the ultimate holding company), with an identification of the financial regulator, if any, that regulates the affiliate, and a designation of the members of the affiliate group that are material to the ultimate holding company ("material affiliates");

(iii) An organizational chart that identifies the ultimate holding company, the broker or dealer, and the material affiliates;

(iv) Consolidated and consolidating financial statements of the ultimate holding company as of the end of the quarter preceding the filing of the application;

(v) Sample computations for the ultimate holding company of allowable capital and allowances for market risk, credit risk, and operational risk, determined pursuant to § 240.15c3–1g(a)(1)–(a)(4);

(vi) A list of the categories of positions that the affiliate group holds in its proprietary accounts and a brief description of the method that the ultimate holding company proposes to use to calculate allowances for market and credit risk, pursuant to § 240.15c3–1g(a)(2) and (a)(3), on those categories of positions;

(vii) A description of the mathematical models to be used to price positions and to compute the allowance for market risk, including those portions of the allowance attributable to specific risk, if applicable, and the allowance for credit risk; a description of the creation, use, and maintenance of the mathematical models; a description of the ultimate holding company's internal risk management controls over those models, including a description of each category of persons who may input data into the models; if a mathematical model incorporates empirical correlations across risk categories, a description of the process for measuring correlations; a description of the backtesting procedures the ultimate holding company will use to backtest the mathematical model used to calculate maximum potential exposure; a description of how each mathematical model satisfies the applicable qualitative and quantitative requirements set forth in paragraph (d) of this Appendix E; a statement describing the extent to which each mathematical model used to compute allowances for market and credit risk is used as part of the risk analyses and

reports presented to senior management; and a description of any positions for which the ultimate holding company proposes to use a method other than VaR to compute an allowance for market risk and a description of how that allowance would be determined;

(viii) A description of how the ultimate holding company will calculate current exposure;

(ix) A description of how the ultimate holding company will determine the credit risk weights of counterparties and internal credit ratings of counterparties, if applicable;

(x) A description of how the ultimate holding company will calculate an allowance for operational risk under § 240.15c3–1g(a)(4);

(xi) For each instance in which a mathematical model used by the broker or dealer to calculate a deduction for market risk or to calculate maximum potential exposure for a particular product or counterparty differs from the mathematical model used by the ultimate holding company to calculate an allowance for market risk or to calculate maximum potential exposure for that same product or counterparty, a description of the difference(s) between the mathematical models;

(xii) A comprehensive description of the risk management control system for the affiliate group that the ultimate holding company has established to manage affiliate group-wide risk, including market, credit, liquidity and funding, legal and compliance, and operational risks, and how that system satisfies the requirements of § 240.15c3–4; and

(xiii) Sample risk reports that are provided to the persons at the ultimate holding company who are responsible for managing group-wide risk and that will be provided to the Commission pursuant to § 240.15c3–1g(b)(1)(i)(H);

(3) As a condition of Commission approval, the ultimate holding company of the broker or dealer, if the ultimate holding company has a principal regulator, shall include the following information with the broker's or dealer's application:

(i) A narrative description of the business and organization of the ultimate holding company;

(ii) An alphabetical list of the affiliates of the ultimate holding company (referred to as the "affiliate group," which shall include the ultimate holding company), with an identification of the financial regulator, if any, that regulates the affiliate, and a designation of those affiliates that are material to the ultimate holding company ("material affiliates");

(iii) An organizational chart that identifies the ultimate holding company, the broker or dealer, and the material affiliates;

(iv) Consolidated and consolidating financial statements of the ultimate holding company as of the end of the quarter preceding the filing of the application;

(v) The most recent capital measurements of the ultimate holding company, as reported to its principal regulator, calculated in accordance with the standards published by the Basel Committee on Banking Supervision, as amended from time to time;

(vi) For each instance in which a mathematical model to be used by the broker or dealer to calculate a deduction for market risk or to calculate maximum potential exposure for a particular product or counterparty differs from the mathematical model used by the ultimate holding company to calculate an allowance for market risk or to calculate maximum potential exposure for that same product or counterparty, a description of the difference(s) between the mathematical models; and

(vii) Sample risk reports that are provided to the persons at the ultimate holding company who are responsible for managing group-wide risk and that will be provided to the Commission under § 240.15c3–1g(b)(1)(i)(H);

(4) The application of the broker or dealer shall be supplemented by other information relating to the internal risk management control system, mathematical models, and financial position of the broker or dealer or the ultimate holding company of the broker or dealer that the Commission may request to complete its review of the application;

(5) The application shall be considered filed when received at the Commission's principal office in Washington, DC. A person who files an application pursuant to this section for which it seeks confidential treatment may clearly mark each page or segregable portion of each page with the words "Confidential Treatment Requested." All information submitted in connection with the application will be accorded confidential treatment, to the extent permitted by law;

(6) If any of the information filed with the Commission as part of the application of the broker or dealer is found to be or becomes inaccurate before the Commission approves the application, the broker or dealer must notify the Commission promptly and provide the Commission with a description of the circumstances in which the information was found to be or has become inaccurate along with updated, accurate information;

(7) The Commission may approve the application or an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest or for the protection of investors, after determining, among other things, whether the broker or dealer has met the requirements of this Appendix E and is in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations, and whether the ultimate holding company of the broker or dealer is in compliance with the terms of its undertakings, as provided to the Commission;

(8) A broker or dealer shall amend its application to calculate certain deductions for market and credit risk under this Appendix E and submit the amendment to the Commission for approval before it may change materially a mathematical model used to calculate market or credit risk or before it may change materially its internal risk management control system;

(9) As a condition to the broker's or dealer's calculation of deductions for market and credit risk under this Appendix E, an ultimate holding company that does not have a principal regulator shall submit to the Commission, as an amendment to the broker's or dealer's application, any material changes to a mathematical model or other methods used to calculate allowances for market, credit, and operational risk, and any material changes to the internal risk management control system for the affiliate group. The ultimate holding company must submit these material changes to the Commission before making them;

(10) As a condition for the broker or dealer to compute deductions for market and credit risk under this Appendix E, the broker or dealer agrees that:

(i) It will notify the Commission 45 days before it ceases to compute deductions for market and credit risk under this Appendix E; and

(ii) The Commission may determine by order that the notice will become effective after a shorter or longer period of time if the broker or dealer consents or if the Commission determines that a shorter or longer period of time is necessary or appropriate in the public interest or for the protection of investors; and

(11) Notwithstanding paragraph (a)(10) of this section, the Commission, by order, may revoke a broker's or

dealer's exemption that allows it to use the market risk standards of this Appendix E to calculate deductions for market risk, instead of the provisions of § 240.15c3–1(c)(2)(vi) and (c)(2)(vii), and the exemption to use the credit risk standards of this Appendix E to calculate deductions for credit risk on certain credit exposures arising from transactions in derivatives instruments, instead of the provisions of § 240.15c3–1(c)(2)(iv), if the Commission finds that such exemption is no longer necessary or appropriate in the public interest or for the protection of investors. In making its finding, the Commission will consider the compliance history of the broker or dealer related to its use of models, the financial and operational strength of the broker or dealer and its ultimate holding company, the broker's or dealer's compliance with its internal risk management controls, and the ultimate holding company's compliance with its undertakings.

Market Risk

(b) A broker or dealer whose application, including amendments, has been approved under paragraph (a) of this Appendix E shall compute a deduction for market risk in an amount equal to the sum of the following:

(1) For positions for which the Commission has approved the broker's or dealer's use of value-at risk ("VaR") models, the VaR of the positions multiplied by the appropriate multiplication factor determined according to paragraph (d)(1)(iii) of this Appendix E, except that the initial multiplication factor shall be three, unless the Commission determines, based on a review of the broker's or dealer's application or an amendment to the application under paragraph (a) of this Appendix E, including a review of its internal risk management control system and practices and VaR models, that another multiplication factor is appropriate;

(2) For positions for which the VaR model does not incorporate specific risk, a deduction for specific risk to be determined by the Commission based on a review of the broker's or dealer's application or an amendment to the application under paragraph (a) of this Appendix E and the positions involved;

(3) For positions for which the Commission has approved the broker's or dealer's application to use scenario analysis, the greatest loss resulting from a range of adverse movements in relevant risk factors, prices, or spreads designed to represent a negative movement greater than, or equal to, the worst ten-day movement over the four years preceding calculation of the greatest loss, or some multiple of the greatest loss based on the liquidity of the positions subject to scenario analysis. If historical data is insufficient, the deduction shall be the largest loss within a three standard deviation movement in those risk factors, prices, or spreads over a ten-day period, multiplied by an appropriate liquidity adjustment factor. Irrespective of the deduction otherwise indicated under scenario analysis, the resulting deduction for market risk must be at least $25 per 100 share equivalent contract for equity positions, or one-half of one percent of the face value of the contract for all other types of contracts, even if the scenario analysis indicates a lower amount. A qualifying scenario must include the following:

(i) A set of pricing equations for the positions based on, for example, arbitrage relations, statistical analysis, historic relationships, merger evaluation, or fundamental valuation of an offering of securities;

(ii) Auxiliary relationships mapping risk factors to prices; and

(iii) Data demonstrating the effectiveness of the scenario in capturing market risk, including specific risk; and

(4) For all remaining positions, the deductions specified in §§ 240.15c3–1(c)(2)(vi), (c)(2)(vii), and applicable appendices to § 240.15c3–1.

Credit Risk

(c) A broker or dealer whose application, including amendments, has been approved under paragraph (a) of this Appendix E shall compute a deduction for credit risk on transactions in derivative instruments (if this Appendix E is used to calculate a deduction for market risk on those instruments) in an amount equal to the sum of the following:

(1) A counterparty exposure charge in an amount equal to the sum of the following:

(i) The net replacement value in the account of each counterparty that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default; and

(ii) For a counterparty not otherwise described in paragraph (c)(1)(i) of this Appendix E, the credit equivalent amount of the broker's or dealer's exposure to the counterparty, as defined in paragraph (c)(4)(i) of this Appendix E, multiplied by the credit risk weight of the counterparty, as defined in paragraph (c)(4)(vi) of this Appendix E, multiplied by 8%;

(2) A concentration charge by counterparty in an amount equal to the sum of the following:

(i) For each counterparty with a credit risk weight of 20% or less, 5% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer;

(ii) For each counterparty with a credit risk weight of greater than 20% but less than 50%, 20% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and

(iii) For each counterparty with a credit risk weight of greater than 50%, 50% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and

(3) A portfolio concentration charge of 100% of the amount of the broker's or dealer's aggregate current exposure for all counterparties in excess of 50% of the tentative net capital of the broker or dealer;

(4) *Terms.* (i) The *credit equivalent amount* of the broker's or dealer's exposure to a counterparty is the sum of the broker's or dealer's maximum potential exposure to the counterparty, as defined in paragraph (c)(4)(ii) of this Appendix E, multiplied by the appropriate multiplication factor, and the broker's or dealer's current exposure to the counterparty, as defined in paragraph (c)(4)(iii) of this Appendix E. The broker or dealer must use the multiplication factor determined according to paragraph (d)(1)(v) of this Appendix E, except that the initial multiplication factor shall be one, unless the Commission determines, based on a review of the broker's or dealer's application or an amendment to the application approved under paragraph (a) of this Appendix E, including a review of its internal risk management control system and practices and VaR models, that another multiplication factor is appropriate;

(ii) The *maximum potential exposure* is the VaR of the counterparty's positions with the broker or dealer, after applying netting agreements with the counterparty meeting the requirements of paragraph (c)(4)(iv) of this Appendix E, taking into account the value of collateral from the counterparty held by the broker or dealer in accordance with paragraph (c)(4)(v) of this Appendix E, and taking into account the current replacement value of the counterparty's positions with the broker or dealer;

(iii) The *current exposure* of the broker or dealer to a counterparty is the current replacement value of the counterparty's positions with the broker or dealer, after applying netting agreements with the counterparty

meeting the requirements of paragraph (c)(4)(iv) of this Appendix E and taking into account the value of collateral from the counterparty held by the broker or dealer in accordance with paragraph (c)(4)(v) of this Appendix E;

(iv) *Netting agreements.* A broker or dealer may include the effect of a netting agreement that allows the broker or dealer to net gross receivables from and gross payables to a counterparty upon default of the counterparty if:

(A) The netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings;

(B) The gross receivables and gross payables that are subject to the netting agreement with a counterparty can be determined at any time; and

(C) For internal risk management purposes, the broker-dealer monitors and controls its exposure to the counterparty on a net basis;

(v) *Collateral.* When calculating maximum potential exposure and current exposure to a counterparty, the fair market value of collateral pledged and held may be taken into account provided:

(A) The collateral is marked to market each day and is subject to a daily margin maintenance requirement;

(B) The collateral is subject to the broker's or dealer's physical possession or control;

(C) The collateral is liquid and transferable;

(D) The collateral may be liquidated promptly by the firm without intervention by any other party;

(E) The collateral agreement is legally enforceable by the broker or dealer against the counterparty and any other parties to the agreement;

(F) The collateral does not consist of securities issued by the counterparty or a party related to the broker or dealer or to the counterparty;

(G) The Commission has approved the broker's or dealer's use of a VaR model to calculate deductions for market risk for the type of collateral in accordance with this Appendix E; and

(H) The collateral is not used in determining the credit rating of the counterparty;

(vi) *Credit risk weights of counterparties.* A broker or dealer that computes its deductions for credit risk pursuant to this Appendix E shall determine the credit risk weight of a counterparty as follows:

(A) 20% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt or commercial paper in one of the two highest rating categories by an NRSRO or equivalent internal rating, if applicable;

(B) 50% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt in the third and fourth highest rating categories by an NRSRO or equivalent internal rating, if applicable;

(C) 150% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt below the fourth highest rating category by an NRSRO or equivalent internal rating, if applicable;

(D) As part of its initial application or in an amendment, the broker or dealer may request Commission approval to determine credit ratings using internal calculations for counterparties that are not rated by an NRSRO, and the broker or dealer may use these internal credit ratings in lieu of ratings issued by an NRSRO for purposes of determining credit risk weights. Based on the strength of the broker's or dealer's internal credit risk management system, the Commission may approve the application. The broker or dealer must make and keep current a record of the basis for the credit rating for each counterparty;

(E) As part of its initial application or in an amendment, the broker or dealer may request Commission approval to determine credit risk weights based on internal calculations, including internal estimates of the maturity adjustment. Based on the strength of the broker's or dealer's internal credit risk management system, the Commission may approve the application. The broker or dealer must make and keep current a record of the basis for the credit risk weight of each counterparty;

(F) For the portion of a current exposure covered by a written guarantee where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the broker or dealer can demand immediate payment from the guarantor after any payment is missed without having to make collection efforts, the broker or dealer may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty; and

(G) As part of its initial application or in an amendment, the broker or dealer may request Commission approval to reduce deductions for credit risk through the use of credit derivatives.

VaR Models

(d) To be approved, each VaR model must meet the following minimum qualitative and quantitative requirements:

(1) *Qualitative requirements.*

(i) The VaR model used to calculate market or credit risk for a position must be integrated into the daily internal risk management system of the broker or dealer;

(ii) The VaR model must be reviewed both periodically and annually. The periodic review may be conducted by the broker's or dealer's internal audit staff, but the annual review must be conducted by a registered public accounting firm, as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*); and

(iii) For purposes of computing market risk, the broker or dealer must determine the appropriate multiplication factor as follows:

(A) Beginning three months after the broker or dealer begins using the VaR model to calculate market risk, the broker or dealer must conduct backtesting of the model by comparing its actual daily net trading profit or loss with the corresponding VaR measure generated by the VaR model, using a 99 percent, one-tailed confidence level with price changes equivalent to a one business-day movement in rates and prices, for each of the past 250 business days, or other period as may be appropriate for the first year of its use;

(B) On the last business day of each quarter, the broker or dealer must identify the number of backtesting exceptions of the VaR model, that is, the number of business days in the past 250 business days, or other period as may be appropriate for the first year of its use, for which the actual net trading loss, if any, exceeds the corresponding VaR measure; and

(C) The broker or dealer must use the multiplication factor indicated in Table 1 of this Appendix E in determining its market risk until it obtains the next quarter's backtesting results;

TABLE 1.—MULTIPLICATION FACTOR BASED ON THE NUMBER OF BACKTESTING EXCEPTIONS OF THE VAR MODEL

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(iv) For purposes of incorporating specific risk into a VaR model, a broker or dealer must demonstrate that it has methodologies in place to capture liquidity, event, and default risk adequately for each position.

Furthermore, the models used to calculate deductions for specific risk must:

(A) Explain the historical price variation in the portfolio;

(B) Capture concentration (magnitude and changes in composition);

(C) Be robust to an adverse environment; and

(D) Be validated through backtesting; and

(v) For purposes of computing the credit equivalent amount of the broker's or dealer's exposures to a counterparty, the broker or dealer must determine the appropriate multiplication factor as follows:

(A) Beginning three months after it begins using the VaR model to calculate maximum potential exposure, the broker or dealer must conduct backtesting of the model by comparing, for at least 80 counterparties with widely varying types and sizes of positions with the firm, the ten-business day change in its current exposure to the counterparty based on its positions held at the beginning of the ten-business day period with the corresponding ten-business day maximum potential exposure for the counterparty generated by the VaR model;

(B) As of the last business day of each quarter, the broker or dealer must identify the number of backtesting exceptions of the VaR model, that is, the number of ten-business day periods in the past 250 business days, or other period as may be appropriate for the first year of its use, for which the change in current exposure to a counterparty exceeds the corresponding maximum potential exposure; and

(C) The broker or dealer will propose, as part of its application, a schedule of multiplication factors, which must be approved by the Commission based on the number of backtesting exceptions of the VaR model. The broker or dealer must use the multiplication factor indicated in the approved schedule in determining the credit equivalent amount of its exposures to a counterparty until it obtains the next quarter's backtesting results, unless the Commission determines, based on, among other relevant factors, a review of the broker's or dealer's internal risk management control system, including a review of the VaR model, that a different adjustment or other action is appropriate;

(2) *Quantitative requirements.* (i) For purposes of determining market risk, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices;

(ii) For purposes of determining maximum potential exposure, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a one-year movement in rates and prices; or based on a review of the broker's or dealer's procedures for managing collateral and if the collateral is marked to market daily and the broker or dealer has the ability to call for additional collateral daily, the Commission may approve a time horizon of not less than ten business days;

(iii) The VaR model must use an effective historical observation period of at least one year. The broker or dealer must consider the effects of market stress in its construction of the model. Historical data sets must be updated at least monthly and reassessed whenever market prices or volatilities change significantly; and

(iv) The VaR model must take into account and incorporate all significant, identifiable market risk factors applicable to positions in the accounts of the broker or dealer, including:

(A) Risks arising from the non-linear price characteristics of derivatives and the sensitivity of the market value of those positions to changes in the volatility of the derivatives' underlying rates and prices;

(B) Empirical correlations with and across risk factors or, alternatively, risk factors sufficient to cover all the market risk inherent in the positions in the proprietary or other trading accounts of the broker or dealer, including interest rate risk, equity price risk, foreign exchange risk, and commodity price risk;

(C) Spread risk, where applicable, and segments of the yield curve sufficient to capture differences in volatility and imperfect correlation of rates along the yield curve for securities and derivatives that are sensitive to different interest rates; and

(D) Specific risk for individual positions.

Additional Conditions

(e) As a condition for the broker or dealer to use this Appendix E to calculate certain of its capital charges, the Commission may impose additional conditions on the broker or dealer, which may include, but are not limited to restricting the broker's or dealer's business on a product-specific, category-specific, or general basis; submitting to the Commission a plan to increase the broker's or dealer's net capital or tentative net capital; filing more frequent reports with the Commission; modifying the broker's or dealer's internal risk management control procedures; or computing the broker's or dealer's deductions for market and credit risk in accordance with § 240.15c3–1(c)(2)(vi), (c)(2)(vii), and (c)(2)(iv), as appropriate. If it is not an ultimate holding company that has a principal regulator, the Commission also may require, as a condition of continuation of the exemption, the ultimate holding company of the broker or dealer to file more frequent reports or to modify its group-wide internal risk management control procedures. If the Commission finds it is necessary or appropriate in the public interest or for the protection of investors, the Commission may impose additional conditions on either the broker-dealer, or the ultimate holding company, if it is an ultimate holding company that does not have a principal regulator, if:

(1) The broker or dealer is required by § 240.15c3–1(a)(7)(ii) to provide notice to the Commission that the broker's or dealer's tentative net capital is less than $5 billion;

(2) The broker or dealer or the ultimate holding company of the broker or dealer fails to meet the reporting requirements set forth in § 240.17a–5 or 240.15c3–1g(b), as applicable;

(3) Any event specified in § 240.17a–11 occurs;

(4) There is a material deficiency in the internal risk management control system or in the mathematical models used to price securities or to calculate deductions for market and credit risk or allowances for market and credit risk, as applicable, of the broker or dealer or the ultimate holding company of the broker or dealer;

(5) The ultimate holding company of the broker or dealer fails to comply with its undertakings that the broker or dealer has filed with its application pursuant to paragraph (a)(1)(viii) or (a)(1)(ix) of this Appendix E;

(6) The broker or dealer fails to comply with this Appendix E; or

(7) The Commission finds that imposition of other conditions is necessary or appropriate in the public interest or for the protection of investors.

■ 7. Section 240.15c3–1g is added to read as follows:

§ 240.15c3–1g Conditions for ultimate holding companies of certain brokers or dealers (Appendix G to 17 CFR 240.15c3–1).

As a condition for a broker or dealer to compute certain of its deductions to capital in accordance with § 240.15c3–1e, pursuant to its undertaking, the ultimate holding company of the broker or dealer shall:

Conditions Regarding Computation of Allowable Capital and Risk Allowances

(a) If it is not an ultimate holding company that has a principal regulator, as that term is defined in § 240.15c3–1(c)(13), calculate allowable capital and allowances for market, credit, and operational risk on a consolidated basis as follows:

(1) *Allowable capital.* The ultimate holding company must compute allowable capital as the sum of:

(i) Common shareholders' equity on the consolidated balance sheet of the holding company less:

(A) Goodwill;

(B) Deferred tax assets, except those permitted for inclusion in Tier 1 capital by the Board of Governors of the Federal Reserve System ("Federal Reserve") (12 CFR 225, Appendix A);

(C) Other intangible assets; and

(D) Other deductions from common stockholders' equity as required by the Federal Reserve in calculating Tier 1 capital (as defined in 12 CFR 225, Appendix A);

(ii) Cumulative and non-cumulative preferred stock, except that the amount of cumulative preferred stock may not exceed 33% of the items included in allowable capital pursuant to paragraph (a)(1)(i) of this Appendix G, excluding cumulative preferred stock, provided that:

(A) The stock does not have a maturity date;

(B) The stock cannot be redeemed at the option of the holder of the instrument;

(C) The stock has no other provisions that will require future redemption of the issue; and

(D) The issuer of the stock can defer or eliminate dividends;

(iii) The sum of the following items on the consolidated balance sheet, to the extent that the sum does not exceed the sum of the items included in allowable capital pursuant to paragraphs (a)(1)(i) and (ii) of this Appendix G:

(A) Cumulative preferred stock in excess of the 33% limit specified in paragraph (a)(1)(ii) of this Appendix G and subject to the conditions of paragraphs (a)(1)(ii)(A) through (D) of this Appendix G;

(B) Subordinated debt if the original weighted average maturity of the subordinated debt is at least five years; each subordinated debt instrument states clearly on its face that repayment of the debt is not protected by any Federal agency or the Securities Investor Protection Corporation; the subordinated debt is unsecured and subordinated in right of payment to all senior indebtedness of the ultimate holding company; and the subordinated debt instrument permits acceleration only in the event of bankruptcy or reorganization of the ultimate holding company under Chapters 7 (liquidation) and 11 (reorganization) of the U.S. Bankruptcy Code; and

(C) As part of the broker's or dealer's application to calculate deductions for market and credit risk under § 240.15c3–1e, an ultimate holding company may request to include, for a period of three years after adoption of this Appendix G, long-term debt that has an original weighted average maturity of at least five years and that cannot be accelerated, except upon the occurrence of certain events as the Commission may approve. As part of a subsequent amendment to the broker's or dealer's application, the broker or dealer may request permission for the ultimate holding company to include long-term debt that meets these criteria in allowable capital for up to an additional two years; and

(iv) Hybrid capital instruments that are permitted for inclusion in Tier 2 capital by the Federal Reserve (as defined in 12 CFR 225, Appendix A);

(2) *Allowance for market risk.* The ultimate holding company shall compute an allowance for market risk for all proprietary positions, including debt instruments, equity instruments, commodity instruments, foreign exchange contracts, and derivative contracts, as the aggregate of the following:

(i) *Value at risk.* The VaR of its positions, multiplied by the appropriate multiplication factor as set forth in § 240.15c3–1e(d). The VaR of the positions must be obtained using approved VaR models meeting the applicable qualitative and quantitative requirements of § 240.15c3–1e(d); and

(ii) *Alternative method.* For positions for which there does not exist adequate historical data to support a VaR model, the ultimate holding company must propose a model that produces a suitable allowance for market risk for those positions;

(3) *Allowance for credit risk.* The ultimate holding company shall compute an allowance for credit risk for certain assets on the consolidated balance sheet and certain off-balance sheet items, including loans and loan commitments, exposures due to derivatives contracts, structured financial products, and other extensions of credit, and credit substitutes as follows:

(i) By multiplying the credit equivalent amount of the ultimate holding company's exposure to the counterparty, as defined in paragraphs (a)(3)(i)(A), (B) and (C) of this Appendix G, by the appropriate credit risk weight, as defined in paragraph (a)(3)(i)(F) of this Appendix G, of the asset, off-balance sheet item, or counterparty, then multiplying that product by 8%, in accordance with the following:

(A) For certain loans and loan commitments, the credit equivalent amount is determined by multiplying the nominal amount of the contract by the following credit conversion factors:

(*1*) 0% credit conversion factor for loan commitments that:

(*i*) May be unconditionally cancelled by the lender; or

(*ii*) May be cancelled by the lender due to credit deterioration of the borrower;

(*2*) 20% credit conversion factor for:

(*i*) Loan commitments of less than one year; or

(*ii*) Short-term self-liquidating trade related contingencies, including letters of credit;

(*3*) 50% credit conversion factor for loan commitments with an original maturity of greater than one year that contain transaction contingencies, including performance bonds, revolving underwriting facilities, note issuance facilities and bid bonds; and

(*4*) 100% credit conversion factor for bankers' acceptances, stand-by letters of credit, and forward purchases of assets, and similar direct credit substitutes;

(B) For derivatives contracts and for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, the credit equivalent amount is the sum of the ultimate holding company's maximum potential exposure to the counterparty, as defined in paragraph (a)(3)(i)(E) of this Appendix G, multiplied by the appropriate multiplication factor, and the ultimate holding company's current exposure to the counterparty, as defined in paragraph (a)(3)(i)(D) of this Appendix G. The ultimate holding company must use the multiplication factor determined according to § 240.15c3–1e(d)(1)(v), except that the initial multiplication factor shall be one, unless the Commission determines, based on a review of the group-wide internal risk management control system and practices, including a review of the VaR models, that another multiplication factor is appropriate;

(C) The credit equivalent amount for other assets shall be the asset's book value on the ultimate holding company's consolidated balance sheet or other amount as determined according to the standards published by the Basel Committee on Banking

Supervision, as amended from time to time;

(D) The *current exposure* is the current replacement value of a counterparty's positions, after applying netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(c)(4)(iv) and taking into account the value of collateral from the counterparty in accordance with § 240.15c3–1e(c)(4)(v);

(E) The *maximum potential exposure* is the VaR of the counterparty's positions with the member of the affiliate group, after applying netting agreements with the counterparty meeting the requirements of paragraph (c)(4)(iv) of § 240.15c3–1e, taking into account the value of collateral from the counterparty held by the member of the affiliate in accordance with paragraph (c)(4)(v) of § 240.15c3–1e, and taking into account the current replacement value of the counterparty's positions with the member of the affiliate group, except that for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, maximum potential exposure must be calculated using a time horizon of not less than five days;

(F) Credit ratings and credit risk weights shall be determined according to the provisions of paragraphs (c)(4)(vi)(D) and (c)(4)(vi)(E) of § 240.15c3–1e, respectively;

(G) As part of the broker's or dealer's initial application or in an amendment, the ultimate holding company may request Commission approval to reduce allowances for credit risk through the use of credit derivatives;

(H) For the portion of a current exposure covered by a written guarantee, where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the ultimate holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts, the ultimate holding company or member of the affiliate group may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty; or

(ii) As part of the broker's or dealer's initial application or in an amendment to the application, the ultimate holding company may request Commission approval to use a method of calculating credit risk that is consistent with standards published by the Basel Committee on Banking Supervision in International Convergence of Capital Measurement and Capital Standards (July 1988), as amended from time to time; and

(4) *Allowance for operational risk.* The ultimate holding company shall compute an allowance for operational risk in accordance with the standards published by the Basel Committee on Banking Supervision, as amended from time to time.

Conditions Regarding Reporting Requirements

(b) File reports with the Commission in accordance with the following:

(1) If it is not an ultimate holding company that has a principal regulator, as that term is defined in § 240.15c3–1(c)(13), the ultimate holding company shall file with the Commission:

(i) A report as of the end of each month, filed not later than 30 calendar days after the end of the month. A monthly report need not be filed for a month-end that coincides with a fiscal quarter-end. The monthly report shall include:

(A) A consolidated balance sheet and income statement (including notes to the financial statements) for the ultimate holding company and statements of allowable capital and allowances for market, credit, and operational risk computed pursuant to paragraph (a) of this Appendix G, *except* that the consolidated balance sheet and income statement for the first month of the fiscal year may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a)).

(B) A graph reflecting, for each business line, the daily intra-month VaR;

(C) Consolidated credit risk information, including aggregate current exposure and current exposures (including commitments) listed by counterparty for the 15 largest exposures;

(D) The 10 largest commitments listed by counterparty;

(E) Maximum potential exposure listed by counterparty for the 15 largest exposures;

(F) The aggregate maximum potential exposure;

(G) A summary report reflecting the geographic distribution of the ultimate holding company's exposures on a consolidated basis for each of the top ten countries to which it is exposed (by residence of the main operating group of the counterparty); and

(H) Certain regular risk reports provided to the persons responsible for managing group-wide risk as the Commission may request from time to time;

(ii) A quarterly report as of the end of each fiscal quarter, filed not later than 35 calendar days after the end of the quarter. The quarterly report shall include, in addition to the information contained in the monthly report as required by paragraph (b)(1)(i) of this Appendix G, the following:

(A) Consolidating balance sheets and income statements for the ultimate holding company. The consolidating balance sheet must provide information regarding each material affiliate of the ultimate holding company in a separate column, but may aggregate information regarding members of the affiliate group that are not material affiliates into one column;

(B) The results of backtesting of all internal models used to compute allowable capital and allowances for market and credit risk indicating, for each model, the number of backtesting exceptions;

(C) A description of all material pending legal or arbitration proceedings, involving either the ultimate holding company or any of its affiliates, that are required to be disclosed by the ultimate holding company under generally accepted accounting principles;

(D) The aggregate amount of unsecured borrowings and lines of credit, segregated into categories, scheduled to mature within twelve months from the most recent fiscal quarter as to each material affiliate; and

(E) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements in its quarterly reports. The consolidating balance sheet and income statement for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a));

(iii) An annual audited report as of the end of the ultimate holding company's fiscal year, filed not later than 65 calendar days after the end of the fiscal year. The annual report shall include:

(A) Consolidated financial statements for the ultimate holding company audited by a registered public accounting firm, as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*). The audit shall be made in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The audited financial statements must include a supporting schedule containing statements of allowable capital and allowances for market,

credit, and operational risk computed pursuant to paragraph (a) of this Appendix G; and

(B) A supplemental report entitled "Accountant's Report on Internal Risk Management Control System" prepared by a registered public accounting firm, as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*), indicating the results of the registered public accounting firm's review of the ultimate holding company's compliance with § 240.15c3–4. The procedures are to be performed and the report is to be prepared in accordance with procedures agreed upon by the ultimate holding company and the registered public accounting firm conducting the review. The agreed-upon procedures are to be performed and the report is to be prepared in accordance with rules promulgated by the Public Company Accounting Oversight Board. The ultimate holding company must file, before commencement of the initial review, the procedures agreed upon by the ultimate holding company and the registered public accounting firm with the Division of Market Regulation, Office of Financial Responsibility, at Commission's principal office in Washington, DC. Before commencement of each subsequent review, the ultimate holding company must notify the Commission of any changes in the procedures;

(iv) An organizational chart, as of the ultimate holding company's fiscal year-end, concurrently with its quarterly report for the quarter-end that coincides with its fiscal year-end. The ultimate holding company must provide quarterly updates of the organizational chart if a material change in the information provided to the Commission has occurred;

(2) If the ultimate holding company is an entity that has a principal regulator, as that term is defined in § 240.15c3–1(c)(13), the ultimate holding company must file with the Commission:

(i) A quarterly report as of the end of each fiscal quarter, filed not later than 35 calendar days after the end of the quarter, or a later time to which the Commission may agree upon application. The quarterly report shall include:

(A) Consolidated (including notes to the financial statements) and consolidating balance sheets and income statements for the ultimate holding company;

(B) Its most recent capital measurements computed in accordance with the standards published by the Basel Committee on Banking Supervision, as amended from time to time, as reported to its principal regulator;

(C) Certain regular risk reports provided to the persons responsible for managing group-wide risk as the Commission may request from time to time; and

(D) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements in its quarterly reports. The consolidating balance sheet and income statement for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a)).

(ii) An annual audited report as of the end of the ultimate holding company's fiscal year, filed with the Commission when required to be filed by any regulator;

(3) The reports that the ultimate holding company must file in accordance with paragraph (b) of this Appendix G will be considered filed when two copies are received at the Commission's principal office in Washington, DC. A person who files reports pursuant to this section for which he or she seeks confidential treatment may clearly mark each page or segregable portion of each page with the words "Confidential Treatment Requested." The copies shall be addressed to the Division of Market Regulation, Risk Assessment Group; and

(4) The reports that the ultimate holding company must file with the Commission in accordance with paragraph (b) of this Appendix G will be accorded confidential treatment to the extent permitted by law.

Conditions Regarding Records To Be Made

(c) If it is not an ultimate holding company that has a principal regulator, make and keep current the following records:

(1) A record of the results of funding and liquidity stress tests that the ultimate holding company has conducted in response to the following events at least once each quarter and a record of the contingency plan to respond to each of these events:

(i) A credit rating downgrade of the ultimate holding company;

(ii) An inability of the ultimate holding company to access capital markets for unsecured short-term funding;

(iii) An inability of the ultimate holding company to access liquid assets in regulated entities across international borders when the events described in paragraphs (c)(1)(i) or (ii) of this Appendix G occur; and

(iv) An inability of the ultimate holding company to access credit or assets held at a particular institution when the events described in paragraphs (c)(1)(i) or (ii) of this Appendix G occur;

(2) A record of the basis for the determination of credit risk weights for each counterparty;

(3) A record of the basis for the determination of internal credit ratings for each counterparty; and

(4) A record of the calculations of allowable capital and allowances for market, credit and operational risk computed currently at least once per month on a consolidated basis.

Conditions Regarding Preservation of Records

(d)(1) Must preserve the following information, documents, and reports for a period of not less than three years in an easily accessible place using any media acceptable under § 240.17a–4(f):

(i) The documents created in accordance with paragraph (c) of this Appendix G;

(ii) Any application or documents filed with the Commission pursuant to § 240.15c3–1e and this Appendix G and any written responses received from the Commission;

(iii) All reports and notices filed with the Commission pursuant to § 240.15c3–1e and this Appendix G; and

(iv) If the ultimate holding company does not have a principal regulator, all written policies and procedures concerning the group-wide internal risk management control system established pursuant to § 240.15c3–1e(a)(1)(viii)(C); and

(2) The ultimate holding company may maintain the records referred to in paragraph (d)(1) of this Appendix G either at the ultimate holding company, at an affiliate, or at a records storage facility, provided that the records are located within the United States. If the records are maintained by an entity other than the ultimate holding company, the ultimate holding company shall obtain and file with the Commission a written undertaking by the entity maintaining the records, in a form acceptable to the Commission, signed by a duly authorized person at the entity maintaining the records, to the effect that the records will be treated as if the ultimate holding company were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time or from time to time during business hours by

representatives or designees of the Commission and will promptly furnish the Commission or its designee a true, legible, complete, and current paper copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the ultimate holding company that is required to maintain and preserve such records from any of its reporting or recordkeeping responsibilities under this section.

Conditions Regarding Notification

(e) The ultimate holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall:

(1) Send notice promptly (but within 24 hours) after the occurrence of the following events:

(i) The early warning indications of low capital as the Commission may agree;

(ii) The ultimate holding company files a Form 8–K (17 CFR 249.308) with the Commission; and

(iii) A material affiliate declares bankruptcy or otherwise becomes insolvent; and

(2) If it is not an ultimate holding company that has a principal regulator, as defined in § 240.15c3–1(c)(13), send notice promptly (but within 24 hours) after the occurrence of the following events:

(i) The ultimate holding company becomes aware that an NRSRO has determined to reduce materially its assessment of the creditworthiness of a material affiliate or the credit rating(s) assigned to one or more outstanding short or long-term obligations of a material affiliate;

(ii) The ultimate holding company becomes aware that any financial regulatory agency or self-regulatory organization has taken significant enforcement or regulatory action against a material affiliate; and

(iii) The occurrence of any backtesting exception under § 240.15c3–1e(d)(1)(iii) or (iv) that would require that the ultimate holding company use a higher multiplication factor in the calculation of its allowances for market or credit risk;

(3) Every notice given or transmitted by paragraph (e) of this Appendix G will be given or transmitted to the Division of Market Regulation, Office of Financial Responsibility, at the principal office of the Commission in Washington, DC. A person who files notification pursuant to this section for which he or she seeks confidential treatment may clearly mark each page or segregable portion of each page with the words "Confidential Treatment Request." For the purposes of this Appendix G, "notice" shall be given or transmitted by telegraphic notice or facsimile transmission. The notice described by paragraph (e)(2) of this Appendix G may be transmitted by overnight delivery. Notices filed pursuant to this paragraph will be accorded confidential treatment to the extent permitted by law; and

(4) Upon the written request of the ultimate holding company, or upon its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this paragraph (e) either unconditionally or on specified terms and conditions as are necessary or appropriate in the public interest or for the protection of investors.

■ 8. Section 240.17a–4 is amended by adding paragraph (b)(12) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(12) The records required to be made pursuant to § 240.15c3–1e(c)(4)(vi)(D) and (E).

* * * * *

■ 9. Section 240.17a–5 is amended by:

■ a. Redesignating paragraph (a)(5) as paragraph (a)(6), and adding new paragraph (a)(5); and

■ b. Redesignating paragraphs (k), (l), (m), (n), and (o) as paragraphs (l), (m), (n), (o), and (p) and adding new paragraph (k).

The additions read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

(a) * * *

(5) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must file the following additional reports:

(i) Within 17 business days after the end of each month that is not a quarter, as of month-end:

(A) For each product for which the broker or dealer calculates a deduction for market risk other than in accordance with § 240.15c3–1e(b)(1) or (b)(3), the product category and the amount of the deduction for market risk;

(B) A graph reflecting, for each business line, the daily intra-month VaR;

(C) The aggregate value at risk for the broker or dealer;

(D) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk;

(E) Credit risk information on derivatives exposures, including:

(*1*) Overall current exposure;

(*2*) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(*3*) The 10 largest commitments listed by counterparty;

(*4*) The broker or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(*5*) The broker or dealer's aggregate maximum potential exposure;

(*6*) A summary report reflecting the broker or dealer's current and maximum potential exposures by credit rating category; and

(*7*) A summary report reflecting the broker or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty); and

(F) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application; and

(ii) Within 17 business days after the end of each quarter:

(A) Each of the reports required to be filed in paragraph (a)(5)(i) of this section;

(B) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR; and

(C) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions.

* * * * *

(k) *Supplemental reports.* Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall file concurrently with the annual audit report a supplemental report on management controls, which shall be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)). The supplemental report shall indicate the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in accordance with § 240.15c3–4. This review shall be conducted in accordance with procedures agreed upon by the broker or dealer and the registered public accounting firm conducting the review. The agreed upon procedures are to be performed and the report is to be prepared in accordance with the rules promulgated by the Public Company Accounting Oversight

Board. The purpose of the review is to confirm that the broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3–4. Before commencement of the review and no later than December 10 of each year, the broker or dealer shall file a statement with the Division of Market Regulation, Office of Financial Responsibility, at the Commission's principal office in Washington, DC that includes:

(1) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm; and

(2) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

* * * * *

■ 10. Section § 240.17a–11 is amended by revising paragraph (b)(2) and (h) to read as follows:

§ 240.17a–11 Notification procedures for brokers and dealers.

* * * * *

(b)(1) * * *

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer or broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3–1e shall also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3–1. The notice shall specify the tentative net capital requirements, and current amount of net capital and tentative net capital, of the OTC derivatives dealer or the broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3–1e.

* * * * *

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(ii), § 240.15c3–1(a)(7)(iii), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(c)(2)(x)(F)(*3*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i), § 240.17a–5(h)(2) and § 240.17a–12(f)(2).

* * * * *

■ 11. Section 240.17h–1T is amended by:

■ a. Redesignating paragraph (d)(4) as paragraph (d)(5); and

■ b. Adding new paragraph (d)(4).

The addition reads as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

* * * * *

(d) * * *

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e if that broker or dealer is affiliated with an ultimate holding company that is not an ultimate holding company that has a principal regulator, as defined in § 240.15c3–1(c)(13).

* * * * *

■ 12. Section 240.17h–2T is amended by:

■ a. Redesignating paragraph (b)(4) as paragraph (b)(5); and

■ b. Adding new paragraph (b)(4).

The addition reads as follows:

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

* * * * *

(b) * * *

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e if that broker or dealer is affiliated with an ultimate holding company that is not an ultimate holding company that has a principal regulator, as defined in § 240.15c3–1(c)(13).

* * * * *

By the Commission.

Dated: June 8, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13412 Filed 6–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–49831; File No. S7–22–03]

RIN 3235–AI97

Supervised Investment Bank Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting rules to implement Section 17(i) of the Securities Exchange Act of 1934, which created a new framework for supervising an investment bank holding company ("IBHC"). An IBHC that meets specified criteria may elect to become a supervised investment bank holding company ("SIBHC") and be subject to supervision on a group-wide basis by filing a notice of intention with the Commission. Pursuant to the statute and these new rules, an IBHC is eligible to be an SIBHC if it is not affiliated with certain types of banks and has a subsidiary broker-dealer with a substantial presence in the securities markets. These rules provide an IBHC with a process to become supervised by the Commission as an SIBHC, and establish regulatory requirements for an SIBHC, including requirements regarding its group-wide internal risk management control system, recordkeeping, and periodic reporting (including reporting of consolidated computations of allowable capital and risk allowances consistent with the standards published by the Basel Committee on Banking Supervision). The Commission also is adopting an exemption to the Commission's risk assessment rules to exempt a broker-dealer that is affiliated with an SIBHC from those rules because these new SIBHC rules will require that an SIBHC maintain substantially the same records and make substantially the same reports to the Commission that a broker-dealer must maintain and make pursuant to the risk assessment rules. Finally, the Commission is amending the audit requirements for over-the-counter ("OTC") derivatives dealers to permit OTC derivatives dealers to file, as part of their annual audits, a supplemental report regarding the firm's internal risk management control systems based on agreed-upon procedures rather than auditing standards.

EFFECTIVE DATE: August 20, 2004.

FOR FURTHER INFORMATION CONTACT: With respect to calculations of allowable capital and risk allowances, internal risk management control systems, and books and records and reporting requirements, contact Michael A. Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–4886, Rose Russo Wells, Attorney, at (202) 942–0143, Bonnie L. Gauch, Attorney, at (202) 942–0765, or David Lynch, Financial Economist, at (202) 942–0059, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

With respect to general questions, contact Linda Stamp Sundberg, Attorney Fellow, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The rules the Commission is adopting today implement the framework for Commission supervision of SIBHCs set forth in section 17(i) of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act").[1] These rules also enhance the Commission's supervision of an SIBHC's affiliated broker-dealers through collection of additional information and examinations of affiliates of those broker-dealers. This framework includes qualification criteria for IBHCs that file notices of intention to be supervised by the Commission, as well as recordkeeping and reporting requirements for SIBHCs. Taken as a whole, this framework permits the Commission to monitor the financial condition, risk management, and activities of an SIBHC and its affiliates (including broker-dealer affiliates) on a group-wide basis. Neither the Exchange Act nor these new rules require that an IBHC become an SIBHC; supervision as an SIBHC is voluntary.

This regulatory framework for SIBHCs also is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor[2] for SIBHCs and their affiliates (including broker-dealers). To the extent that non-U.S. financial regulators treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliates, any duplicative regulatory burdens on SIBHCs that are active outside the U.S. would be minimized.

These new rules are not intended to duplicate regulation of banks, insurance companies, or futures commission merchants by other regulatory agencies. Section 17(i) of the Exchange Act directs the Commission to: (i) Accept, to the fullest extent possible, reports that an SIBHC or an affiliate thereof may have been required to provide to another appropriate regulatory agency or self-regulatory organization;[3] (ii) use, to the fullest extent possible, reports of examination made by the appropriate regulatory agency or State insurance regulator;[4] and (iii) defer to the appropriate regulatory agency or State insurance regulator with regard to interpretation and enforcement of banking or insurance regulations.[5]

II. The Proposed Rules

The Commission proposed Rules 17i–1 through 17i–8 and amendments to Rules 17a–12, 17h–1T, and 17h–2T on October 24, 2003 (Exchange Act Release No. 48694 (October 24, 2003))[6] (the "Proposing Release") to implement section 17(i) of the Exchange Act.

Proposed Rules 17i–1 through 17i–8 were designed to implement the framework for Commission supervision of SIBHCs set forth in section 17(i) of the Act. The proposed rules would have (i) incorporated definitions found in the Exchange Act into the SIBHC rules and also would have defined the terms "affiliate group" and "material affiliate," (ii) provided a method by which an IBHC could elect to become an SIBHC and the criteria the Commission would use to make a determination as to whether it would be necessary or appropriate in furtherance of section 17 of the Act for the IBHC to be supervised by the Commission as an SIBHC, (iii) permitted an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission and would have provided a method through which the Commission could terminate supervision if it found that the SIBHC was no longer an IBHC or it was necessary or appropriate in furtherance of section 17 of the Act for the Commission to terminate supervision of the SIBHC, (iv) required that an SIBHC comply with present Exchange Act Rule 15c3–4 as though it were a broker-dealer[7] and establish, document and maintain an internal risk management control system and periodically review

[1] 15 U.S.C. 78q(i).

[2] *See* H.R. Conf. Rep. No. 106–434, 165–166 (1999). Without a demonstration of "equivalent" supervision, U.S. securities firms have expressed concerns that an affiliated institution located in the EU either may be subject to additional capital charges or be required to form a sub-holding company in the EU. *See* "Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002."

[3] Exchange Act § 17(i)(3)(B)(i) [15 U.S.C. 78q(i)(3)(B)(i)].

[4] Exchange Act § 17(i)(3)(C)(iii) [15 U.S.C. 78q(i)(3)(C)(iii)].

[5] Exchange Act § 17(i)(4) [15 U.S.C. 78q(i)(4)].

[6] 68 FR 62910 (November 6, 2003).

[7] In a separate release, we also proposed rules and rule amendments that would, among other things, establish optional alternative net capital requirements for certain broker-dealers. *See* Exchange Act Release No. 48690 (October 24, 2003), 68 FR 62872 (Nov. 6, 2003) (the "CSE Proposing Release"). In the CSE Proposing Release we proposed amendments to Rule 15c3–4 that would apply to a broker or dealer that elects to compute its net capital under proposed Appendix E of Rule 15c3–1.

this internal risk management control system, (v) required that an SIBHC make and keep current certain records relating to its business, and preserve those and other records for certain prescribed time periods, (vi) required an SIBHC to file with the Commission certain monthly and quarterly reports and an annual audit report, (vii) required that an SIBHC calculate, using a Basel-like Standard,[8] the affiliate group's allowable capital and allowances for market risk, credit risk, and operational risk, and (viii) required that an SIBHC notify the Commission upon the occurrence of certain, specified events that could indicate a decline in the financial and operational well-being of the SIBHC.

In addition, a proposed amendment to Rule 17a–12(l) would have required that, similar to the requirements for an SIBHC set forth in proposed Rule 17i–6(i)(2),[9] an OTC derivatives dealer submit a supplemental report, prepared by the accountant using agreed-upon procedures rather than auditing standards, regarding the accountant's review of the internal risk management control system established and documented in accordance with Rule 15c3–4.

Finally, the amendments to Rules 17h–1T and 17h–2T [10] would have exempted broker-dealers that are affiliated with an SIBHC from those rules because, pursuant to proposed Rules 17i–5 and 17i–6, the SIBHC would have been required to make and retain documents and file reports that are substantially similar to, and contain the same information as, those its subsidiary broker-dealer is required to make, retain, and file pursuant to Rules 17h–1T and 17h–2T.

[8] The central bank governors of the Group of Ten countries established the Basel Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters. Its basic consultative papers are: the Basel Capital Accord (1988), the Core Principles for Effective Banking Supervision (1997), and the Core Principles Methodology (1999). The standards set by the Basel Committee (the "Basel Standards") establish a common measurement system, a framework for supervision, and a minimum standard for capital adequacy for international banks in the G–10 countries. The Basel Committee is currently developing a new international agreement and issued a proposal to modify the Basel Standards in April 2003, when it released for public comment a document entitled "The New Basel Capital Accord" (the "*New Basel Capital Accord*"). This proposal can presently be found at: *http://www.bis.org/bcbs/cp3full.pdf*. The Basel Committee expects to issue a final version of the *New Basel Capital Accord* by the middle of 2004, with an effective date for implementation of December 31, 2006.

[9] This requirement is now set forth in paragraph (d)(1)(ii) of Rule 17i–6, as adopted.

[10] 17 CFR 240.17h–1T and 240.17h–2T.

III. Overview of Comments Received

The Commission received two comment letters regarding the Proposing Release [11] from the International Swaps and Derivatives Association ("ISDA") and The Bear Stearns Companies, Inc. ("Bear Stearns"). The comments contained in ISDA's letter generally relate to the proposed rule requirements regarding the manner in which credit and operational risk should be calculated by the holding company. Bear Stearns' letter focused on three areas: The proposed credit risk treatment of margin loans, the proposed credit risk treatment of over-the-counter derivatives, and the proposed treatment of market risk. These comments, and the Commission's response to those comments, are discussed more specifically below in the descriptions of the final rule amendments.

IV. Final Rules and Rule Amendments

A. Rule 17i–1: Definitions

New Rule 17i–1 incorporates the definitions of "investment bank holding company," [12] "supervised investment bank holding company," [13] "affiliate," [14] "bank," "bank holding company," "company," "control," "savings association," "insured bank" [15] "foreign bank," [16] "person associated with an investment bank holding company" and "associated person of an investment bank holding company" [17] set forth in section 17(i)(5) of the Exchange Act [18] into the rules promulgated under section 17(i). Although these definitions apply regardless of whether they are incorporated into the rules, incorporating them lets individuals reading the new rules know that the terms are defined, and directs them to those definitions.

New Rule 17i–1 also includes definitions of the terms "affiliate group" and "material affiliate." The term "affiliate group" is defined to include the SIBHC and every affiliate of the SIBHC because we believe that we would need to obtain information related to all affiliates to provide effective supervision of an SIBHC. We define the term "material affiliate" to include any member of the affiliate group that is material to the SIBHC because, based on the Commission's experience in reviewing holding company documentation, receiving information specific to affiliates material to a holding company provides us with a better understanding of the holding company, including how risk is managed on a consolidated level.

No comments were received regarding these definitions and the Commission is adopting this rule as proposed.

B. Rule 17i–2: Notice of Intention To Be Supervised by the Commission as an SIBHC

Exchange Act § 17(i)(1)(B) authorizes the Commission to prescribe rules regarding the form, information, and documents to be included in an IBHC's notice of intention to become supervised by the Commission as an SIBHC (a "Notice of Intention") as the Commission may prescribe as necessary or appropriate in furtherance of the purposes of § 17 of the Act.[19] The Commission received no comments regarding proposed Rule 17i–2. Thus, the Commission is adopting Rule 17i–2 substantially as it was proposed.[20]

New Rule 17i–2 provides that an IBHC that meets the statutory election criteria may elect to become an SIBHC by filing a written Notice of Intention with the Commission, and prescribes the form of an IBHC's Notice of Intention and the information and documents to be included therewith. New Rule 17i–2 also sets forth the

[11] We received a third comment letter that referenced the Proposing Release; however, it did not address the content of the Proposing Release.

[12] Exchange Act § 17(i)(5)(A) [15 U.S.C. 78q(i)(5)(A)]. The term "investment bank holding company" means any person, other than a natural person, that owns or controls one or more broker-dealers and the associated persons of the investment bank holding company. An IBHC includes the holding company and all other entities within the holding company structure that meet the "control" test.

[13] 15 U.S.C. 78q(i)(5)(B). A "supervised investment bank holding company" is any IBHC that is supervised by the Commission pursuant to Section 17(i) of the Exchange Act.

[14] Section 17(i)(5)(C) of the Exchange Act states that, for purposes of Section 17(i) of the Exchange Act, the terms "affiliate" [12 U.S.C. 1841(k)], "bank" [12 U.S.C. 1841(c)], "bank holding company" [12 U.S.C. 1841(a)], "company" [12 U.S.C. 1841(b)], "control" [12 U.S.C. 1841(a)(2) *et seq.*], and "savings association" [12 U.S.C. 1841(j)] have the same meaning as given in Section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841] (the "Bank Holding Company Act").

[15] Section 17(i)(5)(D) of the Exchange Act states that, for purposes of Section 17(i) of the Exchange Act, the term "insured bank" has the same meaning as given in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813(h)].

[16] Section 17(i)(5)(E) of the Exchange Act states that, for purposes of Section 17(i) of the Exchange Act, the "foreign bank" has the same meaning as given in Section 1(b)(7) of the International Banking Act [12 U.S.C. 3101(7)].

[17] Exchange Act § 17(i)(5)(F) [15 U.S.C. 78q(i)(5)(F)]. The terms "persons associated with an investment bank holding company" and "associated person of an investment bank holding company" mean any person directly or indirectly controlling, controlled by, or under common control, with the IBHC.

[18] 15 U.S.C. 78q(i)(5).

[19] 15 U.S.C. 78q(i)(1)(B).

[20] In addition to minor grammatical changes, the rule, as adopted, no longer includes proposed paragraph (b)(4)(xiv)(B) because we believe it is unnecessary.

process for Commission review of a Notice of Intention and the criteria the Commission will use to make this determination. The new Rule specifies that the Commission will supervise the IBHC as an SIBHC unless the Commission determines that it is not necessary or appropriate in furtherance of the purposes of § 17 of the Act. The new Rule further states that the Commission will not consider such supervision necessary or appropriate unless the IBHC demonstrates that it owns or controls a broker-dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker-dealer maintains tentative net capital of $100 million or more. Finally, new Rule 17i–2 requires that an IBHC or SIBHC amend its Notice of Intention in certain, specified circumstances.

If an IBHC becomes an SIBHC, regulation of its affiliated broker-dealer and related associated persons generally will remain unchanged (except that, pursuant to amendments described later in this release, a broker-dealer affiliated with an SIBHC is exempted from the requirements of Rules 17h–1T and 17h–2T).

1. Election Criteria

Section 17(i)(1)(A) of the Exchange Act sets forth certain limitations on whether an IBHC is eligible to become an SIBHC,[21] and paragraph (a) of new Rule 17i–2 incorporates these statutory exclusions. Specifically, an IBHC that is not (i) an affiliate of an insured bank (with certain exceptions) or a savings association; (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978; or (iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act is eligible to file a Notice of Intention.

2. Notice of Intention To Become an SIBHC

Paragraph (b) of new Rule 17i–2 requires that an IBHC that elects to become an SIBHC file a written Notice of Intention with the Commission that is designed to provide the Commission with a basis for evaluating the IBHC's activities, financial condition, internal risk management control systems, and the relationships among its associated persons in order to determine whether Commission supervision of the IBHC is necessary and appropriate in furtherance of the purposes of section 17 of the Exchange Act. Pursuant to the Rule, an IBHC's Notice of Intention must include (i) a request to become an SIBHC; (ii) a statement certifying that it is not affiliated with an entity listed in section 17(i)(1)(A) of the Exchange Act;[22] (iii) documentation demonstrating that it owns or controls at least one broker-dealer that maintains a substantial presence in the securities business as evidenced either by its holding tentative net capital of $100 million or more or otherwise; and (iv) other supplemental documents.

New Rule 17i–2 specifies that an IBHC must file the following supplemental documents with its Notice of Intention to assist the Commission in making its determination:

- A narrative describing the business and organization of the IBHC;
- An alphabetical list of each member of the affiliate group, with an identification of the financial regulator, if any, by whom the affiliate is regulated, and a designation as to whether the affiliate is a material affiliate;
- An organizational chart identifying the IBHC, each broker-dealer owned or controlled by the IBHC, and the IBHC's material affiliates;
- Certain consolidated and consolidating financial statements;
- Sample calculations of allowable capital and allowances for market, and credit risk or alternative capital assessments made in accordance with Rule 17i–7;
- A list of the categories of positions held by the affiliate group in its proprietary accounts and the methods the IBHC intends to use for computing allowances for market risk and credit risk on those positions;
- A detailed description of the mathematical models the IBHC intends to use to price positions and calculate market and credit risk;
- A description of any positions for which the IBHC proposes to use a method other than Value at Risk ("VaR") to compute an allowance for market risk;
- A description of how the IBHC proposes to calculate current exposure;
- A description of how the IBHC proposes to determine credit risk weights and internal credit ratings;
- A description of the method the IBHC proposes to use to calculate its allowance for operational risk;
- A description of the internal risk management control system established by the IBHC to manage the risks of the affiliate group and an explanation of how that system satisfies the requirements of Rule 17i–4;
- Sample risk reports that the holding company provides to the persons responsible for managing the risks of the affiliate group; and
- An undertaking providing that the SIBHC will cooperate with the Commission as necessary if the disclosure of any information with regard to Rules 17i–1 through 17i–8 would be prohibited by law or otherwise.

The Commission, in its review of each Notice of Intention, will use the information and documents provided by the IBHC to assess the IBHC's business, financial condition, and internal risk management control systems in recognition of the fact that each IBHC manages its business and its internal risks differently. We have successfully used firm-specific information and documents in the past to evaluate and monitor risks to broker-dealers.

Paragraph (b)(xiv) of new Rule 17i–2 requires that an SIBHC provide the Commission with an undertaking indicating that it agrees to cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the SIBHC to provide information on the operations or activities of the SIBHC. If any material impediments exist, the SIBHC must describe the manner in which it proposes to provide the Commission with adequate assurances of access to information.

In addition to the information and documentation specifically described in the rules, the IBHC must also furnish such other information and documents, including documents relating to its financial position, internal controls, and mathematical models, as the Commission may request to complete its review of the Notice of Intention. Paragraph (b)(xv) of new Rule 17i–2 was designed to provide the Commission with needed flexibility to assure it has the information and documents necessary to make the required determination.[23] In addition, experience the Commission gains over time or changes in business practice at broker-dealers and IBHCs may cause the Commission to re-evaluate whether the

[21] Exchange Act § 17(i)(1)(A) [15 U.S.C. 78q(i)(1)(A)].

[22] 15 U.S.C. 78q(i)(1)(A).

[23] For instance, in the course of its review of a Notice of Intention, the information or documents the Commission receives may highlight an issue regarding the IBHC's financial position, internal controls, or a mathematical model. If the Commission is unable to obtain information or documents not specified in the Rule it may be unable to make the required determination.

information and documentation it receives is sufficient.

We find the information and documentation an IBHC is required to compile and submit as part of its Notice of Intention pursuant to paragraph (b) of new Rule 17i–2 is necessary and appropriate in furtherance of the purposes of § 17 of the Act. The information and documentation will inform the Commission as to the IBHC's activities, financial condition, policies, and systems for monitoring and controlling financial and operational risks, transactions and relationships between any broker or dealer affiliate of the IBHC.

A Notice of Intention or amendment thereto will not be complete until the IBHC has provided to the Commission all the information and documentation specified in the Rule and requested by the Commission.[24]

Paragraph (d)(1) of Rule 17i–2 states that all Notices of Intention, amendments, and other documentation and information filed pursuant to Rule 17i–2 will be accorded confidential treatment.[25] We believe it is important to accord confidential treatment to the information and documentation an IBHC provides to the Commission as part of its Notice of Intention because that information and documentation will generally be highly sensitive, non-public business information.

3. Process for Review of Notices of Intention

Pursuant to paragraph (d)(2) of new Rule 17i–2, an IBHC will become an SIBHC subject to Commission supervision 45 calendar days after the Commission receives a completed Notice of Intention, unless the Commission issues an order determining either that (i) the Commission will begin to supervise the IBHC as an SIBHC prior to 45 calendar days after the Commission received the completed Notice of Intention to become supervised; or (ii) the Commission will not supervise the IBHC because supervision of the entity as an SIBHC is not necessary or appropriate in furtherance of the purposes of section 17 of the Exchange Act.[26] The Commission will use the information and documents provided as part of an IBHC's Notice of Intention to assess the financial and operational condition of the IBHC and make this determination.

4. Requirement That an IBHC Be Affiliated With a Broker-Dealer That Has a Substantial Presence in the Securities Business

Pursuant to the Act, the Commission may supervise an IBHC that has submitted a Notice of Intention as an SIBHC "[u]nless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes" of section 17.[27] The purposes of section 17 are quite broad. Section 17 generally permits the Commission to carry out its regulatory oversight responsibilities regarding broker-dealers by establishing rules related to recordkeeping, reporting, and examination. In addition, section 17(h) provides the Commission authority to require that a broker-dealer obtain information and make and keep such records and reports regarding the broker-dealer's affiliates, and the financial and securities activities, capital and funding of certain of those affiliates,[28] as the Commission prescribes to assess the financial and operational risks to a broker-dealer from those affiliates.

We find, consistent with the purposes of section 17, the Commission's supervision of an IBHC as an SIBHC is necessary and appropriate only when the IBHC is affiliated with a broker-dealer that has a "substantial presence" in the securities business.[29] Supervision of an SIBHC that owns or controls a broker-dealer with a substantial presence in the securities business would permit the Commission to be better informed regarding the financial and operational conditions of broker-dealers and their holding companies whose failure could have a materially adverse impact on other securities market participants, thus reducing systemic risk and furthering the purposes of section 17. Among other things, evidence that an IBHC owns or controls a broker-dealer that maintains $100 million in tentative net capital would be sufficient to demonstrate a substantial presence in the securities business.

5. Continuing Obligation To Amend a Notice of Intention

Pursuant to paragraph (c) of new Rule 17i–2, IBHCs and SIBHCs have a continuing obligation to amend their Notices of Intention. If any of the information or documentation filed with the Commission as part of the Notice of Intention is found to be or becomes inaccurate *prior to* a Commission determination, an IBHC must notify the Commission and provide the Commission with a description of the circumstances in which the information or documentation was found to be or became inaccurate along with updated, accurate information and documents.

After a Commission determination, if an SIBHC materially changes a mathematical model or other method used to compute its allowable capital or allowances for market, credit, or operational risk, or its internal risk management control systems, prior to making the changes the SIBHC must file an amended Notice of Intention describing the changes and obtain Commission approval of the amendment. Commission approval is necessary to assure that the SIBHC continues to utilize risk measures that are sufficient to properly manage the financial and operational risks of the affiliate group.

C. Rule 17i–3: Withdrawal From Supervision as an SIBHC

New Rule 17i–3 permits an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission, consistent with Exchange Act § 17(i)(2)(A). Pursuant to the Rule, a notice of withdrawal from supervision will take effect one year after it is filed with the Commission (or a shorter or longer period that the Commission determines is necessary or appropriate to help ensure effective supervision of the material risks to the SIBHC and any affiliated broker-dealer or to prevent evasion of the purposes of section 17 of the Exchange Act).[30] The new Rule also requires an SIBHC to include in its notice of withdrawal a statement regarding whether it is in compliance with new Rule 17i–2(c) regarding amendments to its Notice of Intention to help to assure that the Commission has current information when considering the SIBHC's withdrawal notice.

In addition, paragraph (c) of new Rule 17i–3 provides, consistent with Exchange Act § 17(i)(2)(B), that the Commission may discontinue supervising an SIBHC if the Commission finds that the SIBHC no

[24] 17 CFR 240.17i–2(d)(1).

[25] Section 17(j) of the Exchange Act authorizes the Commission to keep confidential the information it receives pursuant to rules adopted under section (i) [15 U.S.C. 78q(j)]. Section 17(j) provides, "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under" section 17(i).

[26] Exchange Act § 17(i)(1)(B) [15 U.S.C. 78q(i)(1)(B)].

[27] 15 U.S.C. 17(i)(1)(B).

[28] Those affiliates would include, but not be limited to, affiliates whose business activities are reasonably likely to have a "material impact" on the financial or operational condition of the broker-dealer.

[29] As set forth in sub-paragraph (d)(2)(i)(B) of Rule 17i–2.

[30] See section 17(i)(2)(A) of the Exchange Act and paragraph (b) of Rule 17i–3.

longer exists or is no longer an IBHC, or that continued supervision of the SIBHC is not necessary or appropriate in furtherance of the purposes of section 17. Among other things, if an SIBHC makes a material amendment to a mathematical model or to its internal risk management control systems as described in its Notice of Intention (and as modified from time to time), the Commission may review whether the change would cause continued supervision of the SIBHC to no longer be necessary or appropriate in furtherance of the purposes of section 17 of the Act.

The Commission will generally review and consider the same types of information it initially reviewed and considered when making its original determination to supervise the IBHC as an SIBHC to determine whether continued supervision of the SIBHC is necessary or appropriate in furtherance of the purposes of section 17 of the Act.

The Commission received no comments regarding proposed Rule 17i–3, and the Commission is adopting Rule 17i–3 substantially as it was proposed.

D. Rule 17i–4: Internal Risk Management Control System Requirements for SIBHCs

New Rule 17i–4 requires that an SIBHC comply with present Exchange Act Rule 15c3–4 as if it were an OTC derivatives dealer with respect to all of its business activities and transactions.[31] That is, an SIBHC's compliance with Rule 15c3–4 is not limited to its OTC derivatives transactions.[32] Currently, Rule 15c3–4 requires that each OTC derivatives dealer establish, document and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities, including market risk, credit risk, operational risk, funding risk, and legal risk.

An SIBHC that has adopted and follows appropriate risk management controls reduces its risk of significant loss, which also reduces the risk to other market participants or throughout the financial markets as a whole. Due to the level of risk exposures created by the types of business activities of SIBHCs, it is important for SIBHCs to implement robust internal risk management control systems. Based on the Commission's experience with OTC derivatives dealers, we believe new Rule 17i–4 will cause SIBHCs to develop strong internal controls that will reduce risk at the SIBHC and require that each SIBHC adequately document those internal controls. It is important that the internal controls be adequately documented to assure that examiners and accountants can review and audit them. We also believe that, similar to Rule 15c3–4, new Rule 17i–4 provides flexibility for an SIBHC to design and implement internal risk management control systems specific to its business model and circumstances.

Paragraph (b) of new Rule 17i–4 contains one requirement that is not presently included in Rule 15c3–4 "it requires that an SIBHC establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing as part of its internal risk management control system. This requirement is designed to allow the Commission to examine the SIBHC and members of the affiliate group as provided for in the Act.[33] An SIBHC's procedures should include appropriate safeguards at the holding company level to prevent money laundering through affiliates.[34]

The Commission received no comments regarding proposed Rule 17i–4. The Commission is adopting Rule 17i–4 substantially as it was proposed.

E. Rule 17i–5: Record Creation, Maintenance, and Access Requirements for SIBHCs

Section 17(i)(3)(A) of the Exchange Act authorizes the Commission to require that an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require.[35] New Rule 17i–5 specifies the records that an SIBHC must make and keep current, the length of time those records must be preserved, and the format SIBHCs may use to preserve those records. This rule is designed to require an SIBHC to create and maintain sufficient records to keep the Commission informed as to: (i) The SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions among members of the affiliate group; and (ii) the extent to which the SIBHC has complied with the provisions of the Exchange Act and rules to which it is subject.

In addition, new Rule 17i–5(d)[36] specifies that all information obtained by the Commission from the SIBHC pursuant to this Rule will be accorded confidential treatment to the extent permitted by law.[37] We believe it is important to accord confidential treatment to these documents because the information an SIBHC is required create, maintain, and grant the Commission access to pursuant to new Rule 17i–5 generally is highly sensitive, non-public business information.

The Commission received no comments regarding proposed Rule 17i–5, and, except as described below, the Commission is adopting Rule 17i–5 substantially as it was proposed. The Commission has added a requirement to Rule 17a–5 that an SIBHC make a record of the calculations of allowable capital and allowances for market, credit, and operational risk computed at least monthly.

1. Record Creation

Paragraph (a) of new Rule 17i–5 requires that an SIBHC make and keep current (i) a record reflecting the results of quarterly stress testing of the affiliate group's funding and liquidity with respect to certain specified events; (ii) a record of the SIBHC's contingency plans to respond to certain specified events affecting the affiliate group's funding and liquidity; and (iii) a record of the basis for credit risk weights and internal credit ratings, if applicable, for each counterparty.

The specified events for which an SIBHC will need to conduct stress tests and create a contingency plan would include: (i) A credit rating downgrade of the SIBHC; (ii) an inability of the SIBHC to access capital markets for unsecured, short-term funding; (iii) an inability of the SIBHC to move liquid assets across international borders when an event described in (i) or (ii) occurs; or (iv) an inability of the SIBHC to access credit or assets held at a particular institution when an event described in (i) or (ii) occurs. The Commission believes these events would present liquidity and funding stress scenarios that would

[31] Paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) would not apply to an IBHC that elects SIBHC supervision because those paragraphs relate solely to limitations on the types of transactions an OTC derivatives dealer may undertake.

[32] *See* 17 CFR 240.15c3–4(c)(5)(x), (c)(5)(xi), (d)(1), (d)(5), and (d)(10).

[33] *See generally*, Exchange Act § 17(i)(3)(C)(i)(II) [15 U.S.C. 78q(i)(3)(C)(i)(II)], which provides the Commission with the authority to make examinations of any SIBHC and any affiliate of such company in order to monitor compliance with the provisions of subsection 17(i) of the Act, provisions governing transactions and relationships between any broker-dealer affiliated with the SIBHC and any of the company's other affiliates and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly known as the "Bank Secrecy Act") and the regulations thereunder.

[34] This parallels requirements in the *New Basel Capital Accord* (*See supra*, note 8). *See also* Financial Action Task Force on Money Laundering ("FATF"), *The Forty Recommendations* (2003), Recommendation 22, and *see generally* the FATF's *Special Recommendations on Terrorist Financing*. (The FATF's documents can presently be found at: *www.FATF-GAFI.org*).

[35] 15 U.S.C. 78q(i)(3)(A).

[36] 17 CFR 240.17i–5(d).

[37] *See supra*, note 25.

likely create significant financial distress for the SIBHC. The records an SIBHC is required to create pursuant to Rule 17i–5 are intended to provide the Commission with sufficient information to adequately assess the SIBHC's financial condition and financial and operational risks. These records will be available to the Commission during examinations or as otherwise requested.

The Commission requested comment on whether there are any other records that an SIBHC should be required to create. The Commission has given additional consideration to the questions raised in its request for comment and has determined to add a requirement that an SIBHC make a record, on a consolidated basis, of the calculations of allowable capital and allowances for market, credit, and operational risk computed on at least a monthly basis. This parallels the manner in which net capital is recorded at the broker-dealer level. As proposed, an SIBHC would have been required to maintain copies of all reports required to be filed with the Commission, and those reports would have included calculations of allowable capital, and allowances for market, credit, and operational risk (as opposed to statements of allowable capital and allowances for market, credit, and operational risk which the rule, as adopted, requires). Because we do not believe it is necessary for an SIBHC to provide the Commission with the detailed calculations, we eliminated the requirement that an SIBHC report this information to the Commission[38] and instead is requiring an SIBHC to simply maintain a record of these calculations.

2. Record Maintenance

Pursuant to paragraph (b) of new Rule 17i–5, the SIBHC must preserve (i) the records required to be created pursuant to 17i–5(a) (as described above); (ii) all Notices of Intention, amendments thereto, and other documentation and information filed with the Commission in accordance with Rule 17i–2, and any responses thereto; (iii) reports and notices filed with the Commission in accordance with Rules 17i–6 and 17i–8; and (iv) records documenting the internal risk management control system established in accordance with Rule 17i–4 to manage the risks of the affiliate group. This requirement is designed to require that an SIBHC maintain the specified records, which would provide the Commission with sufficient information to adequately assess the SIBHC's financial condition and financial and operational risks.

New Rule 17i–5 requires that an SIBHC maintain the specified records for a period of three years in an easily accessible place. This requirement is designed to assure that the specified records will be available to the Commission during examinations or as otherwise requested. Exchange Act Rule 17a–4 presently requires that broker-dealers maintain certain records for three years, and we believe this time period is appropriate with relation to the records required pursuant to new Rule 17i–5. The new Rule would allow an SIBHC to maintain these records in any manner permitted pursuant to Rule 17a–4(f).[39]

New Rule 17i–5 does not require an SIBHC to maintain its required records in a prescribed standard form. To reduce the recordkeeping burden on SIBHCs, new Rule 17i–5 instead allows an SIBHC to meet its recordkeeping requirements using records it created for its own use so long as those records include the information required in the rules.

Paragraph (c) of new Rule 17i–5 allows an SIBHC to maintain the records required under the rule either at the SIBHC, at an affiliate, or at a records storage facility, provided that the records are located within the United States. If these records are maintained by an entity other than the SIBHC, the SIBHC must file with the Commission a written undertaking from the entity which states that the records will be treated as if the SIBHC were maintaining the records and that the entity undertakes to permit examination of these records by representatives of the Commission and to promptly furnish copies of such records to the Commission. This provision is intended to provide an SIBHC with flexibility with relation to record maintenance, without impairing the Commission's ability to obtain the SIBHC's records as necessary.

3. Access to Records

The Commission has authority to examine an SIBHC and its affiliates pursuant to Section 17(i)(3)(C) of the Exchange Act.[40] However, the Act limits the focus and scope of such examinations. The statutory provisions also require that the Commission use, to the fullest extent possible, examination reports regarding an examination made by an appropriate regulator of the SIBHC or certain regulated affiliates.[41]

F. Rule 17i–6: Reporting Requirements for SIBHCs

New Rule 17i–6 requires that an SIBHC file certain monthly and quarterly reports with the Commission, as well as an annual audit report. These reporting requirements are designed to keep the Commission informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the SIBHC, and the extent to which the SIBHC has complied with the provisions of the Act and the regulations prescribed and orders issued thereunder.

The Commission received no comments regarding proposed Rule 17i–6, and except as noted below, is adopting Rule 17i–6 as proposed. We have amended the timing of the reports, extending the deadline for the filing of monthly reports to 30 calendar days after month-end (instead of 17 business days after month-end) and the deadline for filing the annual audit report to 65 calendar days after year-end (instead of 60 calendar days after year-end). In addition, certain financial information need not be filed with the monthly and quarterly reports if that financial information has not yet been made public in the SIBHC's annual report on Form 10–K. We believe that an extension of these time periods is appropriate because an SIBHC must include detailed information, potentially from a number of affiliates, in these reports. The extension, moreover, does not delay significantly the time at which the Commission will receive the reports and, therefore, should provide the Commission with accurate information about risks that the SIBHC and its affiliates may pose to any affiliated broker-dealer.

The Commission also made other changes to the rule as proposed. We have added a section to require that an SIBHC provide the Commission with an organizational chart on a yearly basis. In addition, the rule, as adopted, no longer includes a requirement that an SIBHC file a supplemental report on inventory pricing and modeling with its annual audited statements, nor does it include many of the technical audit report

[38] *See* proposed Rule 17i–6(a)(1)(i).

[39] 17 CFR 240.17a–4(f). Rule 17a–4 allows a broker-dealer to maintain its records either in hard-copy (paper), microfiche, microfilm, or electronic format, subject to the conditions set forth in paragraph (f).

[40] 15 U.S.C. 78q(i)(3)(C). The primary purpose of our examination of supervised investment bank holding companies is to verify their financial and operational positions and to verify whether the internal risk management controls and the methodologies for calculating allowable capital and allowances for market, credit, and operational risk are consistent with those controls and methodologies approved by the Commission.

[41] *See supra*, note 41.

requirements. These changes are discussed more fully below.

1. Monthly Reports

Paragraph (a) of new Rule 17i–6 requires an SIBHC to file a monthly risk report with the Commission, within 30 calendar days after the end of each month that does not end a calendar quarter. This report must include a consolidated balance sheet and income statement for the affiliate group, computations of consolidated allowable capital and allowances for market, credit, and operational risk, a graph reflecting daily intra-month VaR for each business line, consolidated credit risk information, a summary report of the SIBHC's exposures on a consolidated basis for each of the top ten countries to which it is exposed, and certain regular risk reports the SIBHC generally provides to the persons responsible for managing risk for the affiliate group. These monthly reports are intended to allow the Commission to review and monitor the risk profile for the affiliate group, and alert the Commission to any deterioration in the affiliate group's financial position, operational position, or risk profile.

We changed the language of the rule to provide that an SIBHC is not required to file a separate monthly report when the monthly report would coincide with a quarter-end. The quarterly report requirement was expanded to include the information contained in the monthly report, a consolidating balance sheet and income statement for the affiliate group, the results of backtesting of all models used to compute allowable capital and allowances for market and credit risk, a description of all material pending legal or arbitration proceedings involving the SIBHC or any member of the affiliate group, and the aggregate amount of short-term, unsecured borrowings and lines of credit as to each material affiliate

In addition, the rule, as amended, no longer includes a requirement that an SIBHC provide consolidated credit risk information regarding the 5 largest exposures to regulated financial institutions.[42] These exposures will be reflected as part of an SIBHC's response to paragraphs (a)(1)(iii)(A) and (B),[43] that require that an SIBHC provide the Commission with information regarding its 15 largest exposures to all persons. Thus, it would be duplicative to require that an SIBHC report its 5 largest exposures to financial institutions separately.

2. Quarterly Reports

Paragraph (a)(2) of new Rule 17i–6 requires that an SIBHC file a quarterly risk report with the Commission within 35 calendar days after the end of each quarter. In addition to all the information required to be filed on a monthly basis, the quarterly report must include: (i) Consolidating financial statements (that break out data regarding each material affiliate into separate columns); (ii) the results of backtesting of each of the models used to compute allowable capital and allowances for market and credit risk; (iii) a description of all material pending legal or arbitration proceedings involving any member of the affiliate group that are required to be disclosed under generally accepted accounting principles; and (iv) the aggregate amount of debt scheduled to mature within twelve months from the most recent quarter by each affiliate that is a broker-dealer and any other material affiliate, together with the allowance for losses for such transactions. The information an SIBHC must file on a quarterly basis will provide the Commission with valuable insight as to the financial and operational condition of the SIBHC.

As proposed, these reports are required to be filed within 35 calendar days after the end of each quarter, which is similar to the time frames for quarterly reports due from public companies that are "accelerated filers"[44] and are required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act.[45]

New paragraph (a)(3) of Rule 17i–6 states that the SIBHC need not include consolidated and consolidating balance sheets and income statements with its quarterly report on the quarter-end that coincides with the SIBHC's fiscal year-end. This provision was revised so that an SIBHC that is a publicly traded company would not be required to file its financial statements, under this rule, prior to the date it would otherwise be required to file its financial statements with the Commission pursuant to rules applicable to public companies.

3. Organizational Chart

We have added a new paragraph (b) to Rule 17i–6, which would require that an SIBHC file an organizational chart with the Commission at least once each year as of its fiscal year-end. In addition, this paragraph would require that an SIBHC provide the Commission with quarterly updates if a material change in its organization has occurred. The Commission finds these organizational charts to be useful tools in reviewing holding company risk.[46]

4. Additional Reports

Paragraph (c) of new Rule 17i–6[47] provides that an SIBHC may be required, upon receiving written notice from the Commission, to provide the Commission with additional financial or operational information. This rule provides the Commission with the flexibility to request additional reports, during periods of market stress or otherwise, to monitor the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, transactions and relationships among members of the affiliate group, and the extent to which the SIBHC has complied with the provisions of the Exchange Act and regulations prescribed and orders issued thereunder. In addition, if a broker-dealer affiliated with the SIBHC or the SIBHC were to file a notice, pursuant to Rule 17a–11 or Rule 17i–8, respectively, the Commission may request additional reports from the SIBHC to fully assess the situation giving rise to the filing of the notice.

5. Annual Audit Report

Pursuant to paragraph (d)(1) of new Rule 17i–6,[48] an SIBHC must file an annual audit report containing consolidated financial statements and a supporting schedule containing statements of allowable capital, and allowances for market, credit, and operational risk. The audit must be conducted by a registered public accounting firm (as that term is defined at 15 U.S.C. 7201(a)(12)) in accordance the rules promulgated by the Public Company Accounting Oversight Board. Paragraph (d)(2) of new Rule 17i–6 requires that the annual audit report be

[42] Paragraphs (a)(1)(iii)(A)(*2*) and (a)(1)(iii)(C)(*2*) in proposed Rule 17i–6.

[43] The requirements contained in paragraphs (a)(1)(iii)(A)(*1*) and (a)(1)(iii)(C)(*1*) of proposed Rule 17i–6 can now be found in paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) in new Rule 17i–6.

[44] As defined in 17 CFR § 240.12b–2.

[45] *See* Release No. 33–8128 (Sept. 5, 2002), 67 FR 58480 (Sept. 16, 2002).

[46] Pursuant to § 240.17h–2T(a)(1)(i) and Form 17H, a broker-dealer subject to Rule 17h–2T must file an organizational report with its annual filing and with any quarterly filing if there has been a material change in the information provided to the Commission. We proposed to exempt from Rules 17h–1T and 17h–2T a broker-dealer that is affiliated with an SIBHC because the information an SIBHC would have been required to provide to the Commission pursuant to proposed Rule 17i–6 was substantially similar to that which broker-dealers must provide pursuant to Rules 17h–1T and 17h–2T. However, Rule 17i–6, as proposed, did not include this organizational chart requirement.

[47] Paragraph (b) of proposed Rule 17i–6 was redesignated as paragraph (c) f new Rule 17i–6.

[48] Paragraph (c)(1) of proposed Rule 17i–6 was redesignated as paragraph (d)(1) of new Rule 17i–6.

"as of" the same date as the annual audit of the SIBHC's affiliated broker-dealer, and filed with the Commission not later than 65 calendar days after the end of the fiscal year.

Paragraph (f) of new Rule 17i–6 [49] allows the Commission to grant extensions or exemptions from the annual audit requirement at the request of the SIBHC, or on its own motion. This provision will provide the Commission with flexibility to address firm-specific issues as they arise.

We did not adopt the proposed requirement that an SIBHC file supplemental reports on reportable conditions and inventory pricing and modeling with its annual audited statements [50] because the report on reportable conditions would generally be reported through Form 8–K for public companies, and the staff has found the supplemental report on inventory pricing and modeling filed by OTC derivatives dealers to be less useful than other information required to be filed.

Rule 17i–6 no longer includes certain additional, technical paragraphs regarding the annual audit because, upon further consideration, they were found to be duplicative with the rules of the Public Company Accounting Oversight Board ("PCAOB"),[51] including their independence standards.

Paragraph (h) of new Rule 17i–6 [52] specifies that all information obtained by the Commission pursuant to these rules will be accorded confidential treatment to the extent permitted by law.[53] We believe it is important to accord confidential treatment to the reports and statements filed pursuant to new Rule 17i–6 because these reports will contain information that generally would be non-public and highly sensitive.

[49] Paragraph (k) of proposed Rule 17i–6 was redesignated as paragraph (f) of new Rule 17i–6.

[50] As set forth in paragraph (i)(3) of proposed Rule 17i–6.

[51] New Rule 17i–6(d)(1)(i) requires that an SIBHC's financial statements must be audited by a registered public accounting firm. The term "registered public accounting firm" is defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204] [codified at 15 U.S.C. 7201(a)(12)] as "a public accounting firm registered with the [Public Company Accounting Oversight] Board in accordance with this Act."

[52] Paragraph (m) of proposed Rule 17i–6 was redesignated as paragraph (h) of new Rule 17i–6.

[53] *See supra*, note 25.

6. Accountant's Report on Management Controls—Paragraph (d)(1)(ii) of Rule 17i–6 and Amendment to Paragraph (l) of Existing Rule 17a–12

Paragraph (d)(1)(ii) of new Rule 17i–6 [54] requires that an SIBHC submit a supplemental report, prepared by its accountant, regarding the accountant's review of the internal risk management control system established and documented in accordance with Rule 17i–4. This review must be accomplished using procedures agreed-upon by the accountant and the SIBHC. The Rule also specifies that the agreed-upon procedures must be performed and the report must be prepared in accordance with the rules promulgated by the PCAOB. Pursuant to paragraph (d)(1)(ii) of new Rule 17i–6, the SIBHC must submit the agreed-upon procedures to the Commission prior to the accountant's initial review.

As explained in the Proposing Release, proposed paragraph (d)(1)(ii) of Rule 17i–6 differs from present Rule 17a–12(l), which requires that an accountant provide an opinion regarding an OTC derivatives dealer's compliance with its internal risk management control system. Auditors of OTC derivatives dealers have stated that the lack of standards for evaluating compliance with internal risk management control systems prevents them from issuing an opinion. For this reason, the Commission is also amending present Rule 17a–12(l) so that, similar to the requirements of paragraph (d)(1)(ii) of new Rule 17i–6, an OTC derivatives dealer would be required to submit a supplemental report, prepared by the accountant using agreed-upon procedures, regarding the accountant's review of the internal risk management control system established and documented in accordance with Rule 15c3–4.

Paragraph (d)(1)(ii) of new Rule 17i–6 and this amendment to Rule 17a–12(l) will require an accountant to review an SIBHC's or OTC derivatives dealer's internal risk management control systems and provide a report regarding whether the internal risk management control systems comply with the requirements of Rule 17i–4 or Rule 15c3–4, respectively, and whether the SIBHC or OTC derivatives dealer is following its internal risk management control systems.

The Commission received no comments regarding its proposed amendments to Rule 17a–12(l), and is thus adopting this amendment to Rule 17a–12(l) as it was proposed.

[54] Proposed paragraph 17i–6(i)(1) was redesignated as paragraph 17i–6(d)(1)(ii) in the rules as adopted.

G. Exemption From Risk Assessment Rules for Broker-Dealer Affiliates of SIBHCs

The Commission presently receives financial and risk information about certain holding companies and other broker-dealer affiliates, including certain off-balance sheet items pursuant to the risk assessment rules [55] and through meetings with industry representatives. These supervisory tools generally have performed well by assisting the Commission in identifying, at an early stage, firms that are experiencing financial problems.

As part of this rulemaking, the Commission is amending Rules 17h–1T and 17h–2T [56] to exempt broker-dealers that are affiliated with an SIBHC from those rules. Rule 17h–1T requires that a broker-dealer maintain and preserve records and other information concerning the broker-dealer's holding companies, affiliates, or subsidiaries that are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires that broker-dealers file quarterly reports with the Commission concerning the information required to be maintained and preserved under Rule 17h–1T. We believe it is appropriate to exempt a broker-dealer that is affiliated with an SIBHC because, pursuant to new Rule 17i–5, the SIBHC must make and retain documents substantially similar to those the broker-dealer is required to make and retain pursuant to Rule 17h–1T. Further, pursuant to new Rule 17i–6, the SIBHC would be required to make reports that are substantially similar to those the broker-dealer is required to make pursuant to 17h–2T.

The Commission received no comments regarding these proposed amendments to Rules 17h–1T and 17h–2T. Consequently, the Commission is adopting these amendments to Rules 17h–1T and 17h–2T as proposed.

H. Rule 17i–7: Calculations of Allowable Capital and Risk Allowances or Alternative Capital Assessment

New Rule 17i–7 requires that an SIBHC compute allowable capital and allowances for market, credit, and

[55] Pursuant to the "risk-assessment rules," adopted under Exchange Act Section 17(h), broker-dealers also submit consolidated and consolidating financial statements, organizational charts of the holding company, descriptions of material legal exposures, and risk management policies and procedures to the Commission. [17 CFR 240.17h–1T and 17 CFR 240.17h–2T].

[56] *Id.*

operational risk on a consolidated basis for the affiliate group. These calculations are designed to be consistent with the Basel Standards, which will provide the Commission with a useful measure of the SIBHC's financial position and allow for greater comparability of an SIBHC's financial condition to that of other international securities firms and banking institutions.

New Rule 17i–7 does not set minimum group-wide capital levels for SIBHCs; rather, it requires the SIBHC to perform certain calculations that the Commission will review, when they are reported pursuant to the requirements of new Rule 17i–6, to gain an understanding of the financial and operational position of the affiliate group and identify any risks the SIBHC may pose its affiliated broker-dealer or other market participants.

As discussed below, we believe the new rules provide prudent parameters for measuring allowable capital and allowances for risk for the SIBHC.

1. Calculation of Consolidated Allowable Capital

Consistent with the Basel Standards,[57] new Rule 17i–7 requires that an SIBHC calculate "allowable capital" for the affiliate group that includes common shareholders' equity (less goodwill, certain deferred tax assets,[58] other intangible assets, and certain other deductions), certain cumulative and non-cumulative preferred stock,[59] certain properly subordinated debt, and hybrid capital instruments. As set forth in further detail in the rule, to be included in allowable capital the cumulative and non-cumulative preferred stock and the subordinated debt are subject to additional limitations based on comparisons of the individual components of allowable capital.[60]

The Commission received no comments regarding the requirement to calculate allowable capital set forth in paragraph (a) of proposed Rule 17i–7.

As proposed, Rule 17i–7 would have required that all deferred tax assets be subtracted from common shareholders' equity when computing allowable capital. In order to remain consistent with the CSE Release,[61] certain deferred-tax assets are now includable in an SIBHC's allowable capital, subject to the limitations set forth in paragraph (a)(1)(ii). Generally, an SIBHC may include the amount of deferred-tax assets dependent upon future taxable income, so long as they do not exceed the lesser of the amount of deferred-tax assets the company expects to realize within one year of the calendar quarter-end date (based upon its projected taxable income for the year), or 10 percent of allowable capital.[62] Any deferred tax assets in excess of this amount must be subtracted from common shareholder's equity. There generally is no limit in allowable capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

Paragraph (a)(3)(ii) of proposed Rule 17i–7 would have allowed an SIBHC to include subordinated debt as part of its allowable capital, subject to certain criteria intended to help assure that the subordinated debt provides a long-term source of working capital to the SIBHC and that it has many of the characteristics of capital. We did not receive any comments relating to this provision, so we are adopting paragraph (a)(3)(ii) of new Rule 17i–7 as it was proposed.

As proposed, Rule 17i–7 would not have allowed an SIBHC to include hybrid capital instruments in its calculation of allowable capital. The proposing CSE Release also would have disallowed holding companies from using hybrid capital instruments as part of allowable capital.[63] In response to views expressed by firms that a holding company should be allowed to include hybrid capital instruments in the calculation of allowable capital to be more consistent with both the Basel Standards and the Federal Reserve's definition of Tier 1 and Tier 2 capital, Rule 17i–7, as adopted, allows an SIBHC to include hybrid capital instruments in its calculation of allowable capital, subject to the requirements set forth in paragraph (a)(4). This change is consistent with the final CSE Release.

Hybrid capital instruments generally have characteristics of both equity and debt. Generally, to be includable in allowable capital, hybrid capital instruments must be unsecured, fully paid, subordinated to general creditors, not redeemable before maturity at the option of the holder, available to participate in losses while the issuer is operating as a going concern, and must permit the issuer the option to defer interest payments if the issuer does not report a profit in the preceding annual period. Hybrid capital instruments may constitute no more than 15% of allowable capital, before deductions.

In the Proposing Release, the Commission solicited comment on whether long-term debt, subject to appropriate limitations, should be included in allowable capital. These same questions were asked in the CSE Release. Some firms expressed interest in favor of inclusion. Other firms expressed an interest that long-term debt be included as allowable capital during a phase-out period, suggesting that a swift phase-out of long-term debt would be difficult because of the amount of debt involved and could impact capital markets negatively, increasing funding costs.

To maintain consistency with the Basel Standards, holding companies may not include long-term debt in allowable capital. We understand, however, that an SIBHC might not be able to convert significant amounts of long-term debt to subordinated debt quickly without potentially incurring significant costs and causing market disruptions. Accordingly, as part of its Notice of Intention, the SIBHC may request to phase-out the inclusion of long-term debt as allowable capital over a period of up to three years[64] that

[57] New Rule 17i–7 is generally consistent with the Basel Standards. However, one difference is our method for computing maximum potential exposure based on the VaR of those positions (as opposed to approximating maximum potential exposure through the use of notional add-ons) when calculating credit risk for OTC derivatives instruments. This difference is described more specifically in the section relating to the calculations of allowance for credit risk.

[58] Pursuant to the paragraph (a)(1)(ii) of new Rule 17i–7, deferred tax assets, except those permitted for inclusion in Tier 1 capital by the Board of Governors of the Federal Reserve (12 CFR 225, Appendix A) must be deducted from shareholders' equity when computing allowable capital.

[59] The cumulative and non-cumulative preferred stock may not (i) have a maturity date, (ii) be redeemed at the option of the holder, or (iii) contain any other provisions that would require future redemption of the issue. In addition, the issuer must be able to defer or eliminate dividends.

[60] *See* paragraphs (a)(2) and (a)(3)(i) of Rule 17i–7.

[61] In a separate, companion release, we amended rules to, among other things, establish optional alternative net capital requirements for certain broker-dealers. *See* Exchange Act Release No. 49830 (June 8, 2004) (the "CSE Release"). That release also outlined a capital calculation to be performed by the holding company of a broker-dealer that uses that alternative net capital requirement. The rules set forth in the CSE Release were proposed on October 24, 2003 (*see supra*, note 7).

[62] For purposes of calculating the 10% limitation, allowable capital is defined as the sum of the elements set forth in Rule 17i–7, paragraph (a)(1).

[63] The paragraph headings (A)–(D) in paragraph (a)(3)(ii) were deleted; the language, however, is the same as the Proposing Release.

[64] We believe, based on the staff's experience, that three years should be a sufficient time period for a firm to convert its funding sources from long-term debt to other types of positions that could be

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begins upon adoption of these final rules. At the end of three years, an SIBHC no longer may include long-term debt in allowable capital. However, an SIBHC that wishes to extend the long-term debt phase-out beyond the initial three-year period may amend its notice of intention, pursuant to new Rule 17i–2(c)(2), to include long-term debt in its allowable capital calculation for an additional two years. The Commission will determine if the amount of the SIBHC's long-term debt and market conditions warrant an extension.[65]

2. Calculation of Consolidated Allowance for Market Risk

Paragraph (b) of new Rule 17i–7 requires that an SIBHC compute a consolidated allowance for market risk for its proprietary positions using either a VaR model or, if there is not adequate historical data to support a VaR model, an alternative method.[66] An SIBHC must provide the Commission with information regarding any alternative method for computing allowance for market risk for particular positions during the Commission's review of its Notice of Intention so that the Commission can evaluate the method to determine whether it adequately measures the risks of those positions. The VaR of the positions must be multiplied by an appropriate multiplication factor[67] to provide adequate capital during periods of market stress. The computation of the allowance for market risk is consistent with the calculation of market risk charges under the Basel Standards.

Paragraph (b)(1) of new Rule 17i–7 requires that each VaR model used to calculate allowance for market risk meet the qualitative and quantitative requirements set forth in rules the Commission is also adopting today in a separate release, Rule 15c3–1e(d).[68] The qualitative and quantitative standards set forth in Rule 15c3–1e(d) are similar to the requirements for models used by OTC derivatives dealers and are consistent with the Basel Standards. The qualitative requirements address four aspects of an SIBHC's risk management system: (i) The model must be integrated into, and thus relied upon, in the SIBHC's daily risk management process; (ii) the model must undergo periodic reviews by the SIBHC's internal audit staff and annual reviews by an accountant; (iii) the SIBHC must conduct backtesting of the model, the results of which must be used by the SIBHC to determine the multiplication factor to be used when calculating market and credit risk, and (iv) for purposes of incorporating specific risk into a VaR model, a firm must demonstrate that it has methodologies in place to capture liquidity, event, and default risk adequately for each position.[69] The quantitative requirements set forth basic standards for each model including, (i) for purposes of determining market risk, the model must use a 99 percent, one-tailed confidence level, with price changes equivalent to a ten business-day movement in rates and prices, (ii) the model must use an effective historical observation period of at least one year, and the firm must consider the effects of market stress when constructing the model, and historical data sets must be updated at least monthly and re-assessed whenever market prices or volatilities change significantly, and (iii) the model must take into account and incorporate all significant identifiable market risk factors applicable to the affiliate group's positions.

The Commission received no comments regarding the requirement that an SIBHC calculate an allowance for market risk as set forth in paragraph (b) of proposed Rule 17i–7.

As proposed, Rule 17i–7 would have required that an SIBHC compute an allowance for market risk daily. Firms argued that an SIBHC should not be required to calculate allowance for market risk daily because of the burden this would impose on firms and because the information only must be reported to the Commission monthly. The rule, as adopted, no longer requires that an SIBHC compute an allowance for market risk daily. Further, as adopted, under Rule 17i–5, an SIBHC must make and keep current a record of monthly computations of allowable capital and allowances for market, credit, and operational risk. We also note that, under Rule 17i–6, an SIBHC must report a consolidated allowance for market risk to the Commission monthly. As part of the qualitative and quantitative requirements for the use of models, an SIBHC must compute VaR on its positions on a daily basis as part of its daily risk management process. These changes are consistent with the CSE Release.

3. Calculation of Consolidated Allowance for Credit Risk

Paragraph (c) of new Rule 17i–7 requires that an SIBHC compute a consolidated allowance for credit risk using either the methodology set forth in paragraph (c)(1) of Rule 17i–7, which is similar to the proposed *New Basel Capital Accord*, or, pursuant to paragraph (c)(2) of Rule 17i–7 (if the Commission approves the SIBHC's request), a calculation consistent with the present Basel Standards. This choice provides SIBHCs with flexibility while the Basel Standards are under review.

As proposed, Rule 17i–7 would have required that an SIBHC compute an allowance for credit risk daily. In response to comments made by firms, the rule no longer requires that an SIBHC compute an allowance for credit risk daily. Pursuant to Rule 17i–5, as adopted, an SIBHC must make and keep current a record of monthly computations of its allowance for credit risk. In addition, an SIBHC must calculate its current exposures on a daily basis as part of its internal risk management control system.

The methodology an SIBHC must use to compute its allowance for credit risk, as set forth in paragraph (c)(1) of new Rule 17i–7, requires that an SIBHC multiply the credit equivalent amount of certain asset and off-balance sheet items by the appropriate credit risk weight of the asset or off-balance sheet item, and then multiply the result by 8%.[70] In general, the asset and off-balance sheet items subject to this allowance are loans and loan commitments receivable, receivables arising from derivatives contracts, repurchase and reverse repurchase agreements, stock loans, stock borrows, structured financial products, credit substitutes, and other extensions of credit.

included in allowable capital pursuant to this rule. Long-term debt must meet the criteria specified in paragraph (a)(3)(iii) of Rule 17i–7, as adopted, to be included.

[65] *See* Rule 17i–7(a)(3)(iii).

[66] Generally, the allowance for market risk constitutes three times the largest amount the SIBHC could lose over a ten-day period with a 99% confidence level (as determined using the VaR model or alternative method). *See supra*, note 61. *see* § 17 CFR 240.15c3–1e(d)(2)(i).

[67] Paragraph (b)(1) of Rule 17i–7 establishes the initial multiplication factor (three); however, the multiplication factor would subsequently be set based on the number of backtesting errors generated through use of the model. The initial multiplication factor was derived from the minimum requirement set forth in § 17 CFR 240.15c3–1f(e)(1)(iv)(C) (the rule used by OTC derivatives dealers to calculate market risk capital charges). This initial multiplication factor would be used until sufficient backtesting results has been collected to use the Table set forth in § 17 CFR 240.15c3–1e(d)(1)(iii)(C).

[68] *See supra*, note 61. Where Rule 17i–7 cross-references or incorporates requirements set forth in § 240.15c3–1e, the SIBHC must comply with those provisions as though it were a broker-dealer.

[69] *See supra*, note 61. Specifically, *see* § 17 CFR 240.15c3–1e(d)(1).

[70] This is consistent with the calculation of credit risk used by OTC derivatives dealers (*See* 17 CFR 240.15c3–1f(d)(2)). In addition, the 8% basic multiplier to calculate credit risk capital charges is consistent with the Basel Standards.

The credit equivalent amount of receivables relating to derivatives contracts, repurchase and reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized instruments is the sum of the SIBHC's maximum potential exposure to a counterparty, multiplied by the appropriate multiplication factor, plus the SIBHC's current exposure to that counterparty. The Commission believes that calculating an allowance for credit risk using a maximum potential exposure computed using a VaR model is a more precise method than using a "notional add-on" to approximate maximum potential exposure.[71] In addition, Commission reviews of risk management systems of large U.S. broker-dealers indicate that these firms generally use maximum potential exposure to measure and manage the credit risk of their portfolios. Consequently, many of these firms already have systems in place to calculate maximum potential exposure using VaR models.

ISDA, in its comment letter, indicated that it strongly supported the Commission's proposal to allow firms to calculate current exposure and maximum potential exposure at the counterparty (as opposed to the transactional) level, recognizing the effect of netting arrangements, taking account of collateral posted by the counterparty, and recognizing the protection value of credit derivatives. ISDA also indicated that it believes that OTC derivatives and securities financing transactions (such as repurchase agreements) often exhibit similar counterparty risk characteristics and should receive uniform treatment, and that Proposed Rule 17i–7 does provide for uniform treatment of these types of instruments.

i. Credit Equivalent Amount

Consistent with the proposed *New Basel Capital Accord*, Paragraph (c)(1)(i) of new Rule 17i–7 establishes the manner in which the "credit equivalent amount" of a balance sheet item should be calculated. The credit equivalent amounts for receivables relating to: (i) Loans and loan commitments receivable; (ii) derivatives contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions; and (iii) other assets would be calculated differently, and are set forth in paragraphs (c)(1)(i)(A), (B), and (C) of new Rule 17i–7, respectively.

As proposed, paragraph (c)(1)(i)(B)(*2*) of Rule 17i–7 would have included a 5% credit conversion factor for margin loans. Bear Stearns, in its comment letter, argued that its experience with margin loans suggested that such a level is unjustifiably high. Bear Stearns stated that the requirements of Regulation T and New York Stock Exchange Rule 431, combined with strict operational controls, substantially minimize risk of loss. Thus, Bear Stearns recommended that firms be allowed to adopt a portfolio-specific risk-based methodology, consistent with the proposed *New Basel Capital Accord*, for determining the appropriate amount of capital related to margin lending regardless of whether the loan is held at a broker-dealer or a non-broker-dealer affiliate.

After considering these comments, we have determined that it is appropriate to delete proposed paragraph (c)(1)(i)(B)(*2*). Consistent with the Basel Standards, an SIBHC may apply to use the VaR-based exposure treatment under paragraph (c)(1)(i)(B) for its margin loans as a "similar collateralized transaction." For unrated counterparties, the Commission could determine, after a review of the description of the margin loans in the SIBHC's Notice of Intention, that the margin loans could be treated as a pool with a very low loss history. In this case, the SIBHC could use internal estimates of exposure at default that take into account the loss history for the pool.

ii. Current Exposure

We have revised the definition of current exposure as set forth in paragraph (c)(1)(i)(D) of new Rule 17i–7. The rule, as adopted, defines the term "current exposure" to be the current replacement value of the counterparty's positions, including the effect of netting agreements with that counterparty,[72] and taking into account the value of collateral from that counterparty.[73] As adopted, Rule 17i–7 no longer requires that the SIBHC subtract the fair market value of any credit derivatives that specifically change the exposure to the counterparty.[74] Instead, pursuant to paragraph (c)(1)(iii), an SIBHC may include in its Notice of Intention (or in an amendment thereto) a proposal for use of credit derivatives in its calculation of allowance for credit risk.[75] Requiring subtraction of the fair market value of credit derivatives could reduce the allowance for credit risk without consideration of the SIBHC's credit risk exposure to the credit derivative counterparty. The Commission will be able to consider that exposure in its review of an SIBHC's Notice of Intention (or an amendment thereto).

iii. Maximum Potential Exposure

We have revised the definition of maximum potential exposure as set forth in paragraph (c)(1)(i)(E) of new Rule 17i–7. The rule, as adopted, defines the term "maximum potential exposure" to be the VaR of the counterparty's positions, after applying the effect of netting agreements with that counterparty,[76] and taking into account the value of collateral from that counterparty and the current replacement value of the counterparty's positions.[77] Paragraph (c)(1)(i)(E) of new Rule 17i–7 also states that maximum potential exposure must be calculated using a VaR model that meets the same qualitative and quantitative standards as required for models used to compute the allowance for market risk.[78] Similar to

[71] *See supra*, note 61.

[72] Only netting agreements that meet the requirements set forth in paragraph (c)(4)(iv) of Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra*, note 61. Generally, the SIBHC could use a netting agreement that allows the SIBHC to net gross receivables and gross payables with a counterparty upon default of the counterparty if (i) the netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings; (ii) the gross receivables and gross payables subject to the netting agreement with a counterparty can be determined at any time; and (iii) for internal risk management purposes, the SIBHC monitors and controls its exposure to the counterparty on a net basis.

[73] Only collateral that meets the requirements set forth in paragraph (c)(4)(v) of Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra*, note 61. Generally, the SIBHC can take into account the fair market value of collateral pledged and held, provided (i) the collateral is marked to market each day and is subject to a daily margin maintenance requirement; (ii) the collateral is subject to the firm's physical possession or control; (iii) the collateral is liquid and transferable; (iv) the collateral may be liquidated promptly by the firm without intervention by another party; (v) the collateral agreement is legally enforceable by the SIBHC against the counterparty and any other parties to the agreement; (vi) the collateral does not consist of securities issued by the counterparty or a party related to the SIBHC or to the counterparty; (vii) the Commission has approved the SIBHC's use of a VaR model to calculate its allowance for market risk for the type of collateral during its review of the SIBHC's Notice of Intention, and (viii) the collateral is not used in determining the credit rating of the counterparty.

[74] These changes are consistent with the CSE release.

[75] The credit derivative must be one that (i) provides credit protection equivalent to a guarantee, (ii) is used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, and (iii) is not held for market timing purposes.

[76] *See supra*, note 72.

[77] *See supra*, note 73.

[78] However, the quantitative requirements for a VaR model intended to calculate maximum potential exposure would be required to use a 99

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the changes made to the definition of current exposure, paragraph (c)(1)(i)(E) no longer requires that an SIBHC subtract the fair market value of any credit derivatives that specifically change the exposure to the counterparty because requiring subtraction of the fair market value of credit derivatives could reduce the allowance for credit risk without consideration of the SIBHC's credit risk exposure to the credit derivative counterparty. As was stated above, pursuant to paragraph (c)(1)(iii), an SIBHC may propose to use credit derivatives in its calculation of allowance for credit risk in its Notice of Intention (or in an amendment thereto).

Bear Stearns, in its comment letter, suggested that the time horizon for VaR models used for purposes of determining maximum potential exposure should be ten business days if the position is marked to market daily and a written agreement enforceable against the counterparty provides that the broker-dealer or its affiliate may call for additional collateral daily. Paragraph (e)(2)(ii) of proposed § 240.15c3–1e, proposed for comment in the CSE Proposing Release,[79] would have required the VaR model to use a time horizon of one year. In response to comments received, including Bear Stearns' comment, paragraph (d)(2)(ii) of § 240.15c3–1e[80] as adopted allows a firm to use a shorter time horizon to calculate MPE under specified conditions. More specifically, the Commission may approve a shorter time horizon, if there is a valid collateral agreement, based on a demonstration by the firm that it has sufficient systems and controls, including those necessary to mark positions to market daily and promptly call for and track collateral posted, and promptly liquidate positions as may be necessary to avoid loss by the firm. This modification of the time horizon requirement should help a firm to maintain a liquid capital basis while promoting operational efficiency.

iv. Credit Risk Weights

Paragraph (c)(1)(ii) of new Rule 17i–7 provides that credit risk weights must generally be determined according to the standards published by the Basel Committee, as modified from time to time.[81] In its Notice of Intention or an amendment to its Notice of Intention, an SIBHC may propose to use internal credit ratings or internal calculations when computing its allowance for credit risk.[82] In addition, paragraph (c)(1)(ii)(B) of new Rule 17i–7 allows SIBHCs to adjust credit risk weights of receivables covered by certain forms of credit protection.[83] As adopted, Rule 17i–7 would allow an SIBHC to adjust credit risk weights of receivables covered by certain derivatives (such as credit default swaps and similar instruments used to manage credit risk) if the SIBHC has requested, in its Notice of Intention of an amendment thereto, to use these derivatives to adjust credit risk weights. Allowing an SIBHC to adjust credit risk weights of receivables covered by certain credit derivatives could have reduced credit risk weights without consideration of the SIBHC's credit exposure to the credit derivative counterparty. Thus, we decided only to permit this adjustment of credit risk weights where we have had a chance to consider that exposure.

4. Calculation of Consolidated Allowance for Operational Risk

Pursuant to new Rule 17i–7(d), an SIBHC must calculate an allowance for operational risk in accordance with the standards published by the Basel Committee. The Basel Committee has proposed three methods for the calculation of an allowance for operational risk (i) The basic approach; (ii) the standardized approach; and (iii) the advanced measurement approach. For a complete discussion of the proposed operational risk calculation, please refer to the proposed *New Basel Capital Accord*.[84] The basic and standardized approach calculations are based on fixed percentages. Generally, under the basic approach, the allowance is 15% of consolidated annual revenues net of interest expense averaged over the past three years. The standardized approach maps these revenues to eight business lines. The allowance for operational risk is then a percentage of revenues net of interest expense, ranging from 12% to 18%, attributed to each business line. The advanced measurement approach requires a system for tracking and controlling operational risk and provides that the allowance for operational risk is the largest operational loss that might be expected over a one-year period with 99.9% confidence.

One commenter stated that, as currently structured, there is a perverse incentive built into the standardized approach for computing operational risk in that firms built around business lines with a beta factor of 18% (*e.g.*, corporate finance, trading and sales, and payments and settlements) end up with a higher capital charge than if they were to remain on the basic indicator approach. Thus, the commenter argued that this structural defect should be removed.

We are adopting paragraph (d) of Rule 17i–7 as it was proposed. The rules are intended to provide SIBHCs with flexibility by permitting the computation of operational risk in accordance with the Basel Standards. We recognize, however, that the proposed *New Basel Capital Accord* has not been adopted in its final form and that we may need to further tailor our operational risk requirements. If, in finalizing the *New Basel Capital Accord*, the Basel Committee changes the operational risk computations or charges, we will review and consider amending this Rule.

5. General Discussion of Basel Pillars

These amendments apply a capital reporting requirement consistent with the Basel Standards to an SIBHC. The Basel Committee is currently developing the proposed *New Basel Capital Accord* that specifies three "pillars" for the group-wide supervision of internationally active banks and financial enterprises. The first pillar, "minimum regulatory capital" requirements, requires calculations for credit and operational risk and, for firms with significant trading activity, market risk. The second pillar, "supervisory review," requires that capital be

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percent, one-tailed confidence level, with price changes equivalent to a movement in rates and prices of *not less than five-days* for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions (*See* paragraph (c)(1)(i)(E) of Rule 17i–7) and to a movement in rates and prices of *one-year* for other positions (*See* § 17 CFR 240.15c3–1e(d)(2)(ii)) (as opposed to a *ten business-day* movement for VaR models used to calculate the allowance for market risk (*See* § 17 CFR 240.15c3–1e(d)(2)(i)). The proposal would have required that the maximum potential exposure for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions be calculated using a time horizon of "*five days*," as opposed to "*not less than five days*." This revision clarifies that the time horizon is a minimum period, not an absolute period.

[79] Paragraph (e)(2)(ii) of proposed § 240.15c3–1e has been re-designated as paragraph (d)(2)(ii) of that section, as adopted. *See supra*, note 61.

[80] *Id.*

[81] *See* paragraph (c)(1)(ii)(A) of new Rule 17i–7.

[82] *See* generally paragraph (b)(4)(x) of new Rule 17i–2.

[83] The guarantee must be an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the SIBHC or member of the affiliate group can demand immediate payment after any payment is missed without having to make collection efforts. Further, the guarantee must be evidenced by a written obligation of the guarantor that allows the SIBHC or member of the affiliate group to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty. These requirements are designed to allow an SIBHC to reduce its allowance for credit risk only if the guarantee contains features that make it more reliable.

[84] *See supra*, note 8.

assessed relative to overall risks and that supervisors review and take action in response to those assessments.

The third pillar of the proposed *New Basel Capital Accord* requires certain disclosures that are intended to allow market participants to assess key pieces of information about, for example, the capital, risk exposures, and risk assessment processes of the institution. The purpose of the third pillar is to complement the minimum capital requirements and the supervisory review process by encouraging market discipline. Specific disclosure requirements would apply to all institutions that use the proposed *New Basel Capital Accord* and would encompass capital, credit risk, credit risk mitigation, securitization, market risk, operational risk, and interest rate risk.

We requested comment on whether U.S. broker-dealers and their holding companies and affiliates should be required to make additional disclosures to meet the requirements of the third pillar of the proposed *New Basel Capital Accord*. No comments were received in response to the request made in the Proposing Release.

The securities industry has taken important steps to enhance public disclosure of material risks. For example, in June 1999, the Counterparty Risk Management Policy Group (CRMPG) (representing 12 major securities firms and banks) published a report on Improving Counterparty Risk Management Practices.[85] In addition, a private-sector Working Group on Public Disclosure (representing 11 major securities firms and banks), issued a report in January 2001.[86] The group recommended enhanced and more frequent public disclosure of financial information by banking and securities organizations. It also said financial information should be disclosed based on a firm's internal methodologies and exposure categories, and that quantitative information on a firm's risk exposure should be balanced with qualitative information describing its risk management process.

The Commission staff has taken a leading role to enhance public disclosure by financial intermediaries. It was a member of the Multidisciplinary Working Group on Enhanced Disclosure (Fisher II working group) that provided advice to its sponsoring organizations[87] on steps that would advance the state of financial institutions' disclosures of financial risks in order to enhance the role of market discipline. More recently, Commission staff chaired a Joint Forum[88] Working Group on Enhanced Disclosure (JFWGED) established by the Basel Committee, IAIS and IOSCO, seeking to follow up on the recommendations contained in the Fisher II report.[89] The JFWGED expects to publish its report shortly.

However, some issues remain. For instance, broker-dealers are concerned that under new, enhanced disclosure requirements they may be required to disclose sensitive, proprietary information. As the proposed *New Basel Capital Accord* has not yet been finalized, we do not believe it would be appropriate to adopt additional disclosure requirements as part of these amendments.

I. Rule 17i–8: Notification Requirements for SIBHCs

Paragraph (a) of new Rule 17i–8 requires that an SIBHC immediately notify the Commission upon the occurrence of certain events. These events include: (i) The occurrence of certain backtesting exceptions; (ii) the early warning indications of low capital as the Commission may agree; (iii) a material affiliate declares bankruptcy or otherwise becomes insolvent; (iv) the SIBHC becomes aware that a credit rating agency intends to decrease its evaluation of the creditworthiness of a material affiliate or the credit rating assigned to one or more outstanding short or long-term obligations of a material affiliate; (v) the SIBHC files a Form 8–K with the Commission; (vi) the SIBHC becomes aware that a financial regulatory agency or self-regulatory organization has taken certain regulatory actions against a material affiliate; or (vii) the SIBHC becomes ineligible to be supervised by the Commission as a SIBHC (*e.g.*, the SIBHC purchases an insured bank, or the SIBHC's affiliated broker-dealer's tentative net capital falls below $100 million).[90] We believe that the events described in items (i) through (vi) above would indicate a decline in the financial and operational well-being of the firm. Were an SIBHC to file a notification regarding these events, as required by new Rule 17i–8, the Commission may be prompted to request additional reports, as contemplated by Rule 17i–6(c), and otherwise begin to monitor the SIBHC's condition more closely. Were an SIBHC to file a notification regarding the event described in item (vii) above, the Commission would review whether it should continue supervising the IBHC as an SIBHC.

The Commission received no comments regarding proposed Rule 17i–8.

As proposed, paragraph (a) of Rule 17i–8 did not include a requirement to notify the Commission when the supervised investment bank holding company or any material affiliate files a Form 8–K with the Commission. The Commission requested comment on the proposed notification requirement, and in particular whether the events that would trigger the notification requirement are appropriate and whether other triggering events should be included. The Commission has given additional consideration to the questions raised in its request for comment and has determined that filing a Form 8–K may indicate that a major change has occurred at the SIBHC or material affiliate, and that the Commission may want to monitor the SIBHC more closely to determine, for instance, that internal risk management controls remain robust despite that change.

As proposed, paragraph (b) of Rule 17i–8 would have required that an SIBHC file a written report with the Commission if there was a material change (along with a description of that change) in the ownership or organization of the affiliate group, the status of any affiliate that is material, or the major business functions of any material affiliate. Paragraph (b) no longer requires that an SIBHC notify the

[85] CRMPG was formed in January 1999, after the near collapse of Long-Term Capital Management. The group's mission was to redevelop standards for strengthening risk management practices at banks, securities firms and other dealers to avoid similar difficulties in the future. Its findings were publicly released on June 21, 1999, and are presently available at: *http://financialservices.house.gov/banking/62499crm.pdf*. A hearing was held on June 24, 1999, regarding the group's findings and recommendations, before the U.S. House of Representatives, Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, Committee on Banking and Financial Services. A transcript of the hearing, at which the CRMPG chairs gave testimony, is presently available at: *http://commdocs.house.gov/committees/bank/hba57791.000/hba57791_0f.htm*.

[86] Walter V. Shipley, retired chairman of Chase Manhattan Bank, chaired the working group. His letter to the Board of Governor's of the Federal Reserve System, summarizing the group's findings, is presently available at: *http://www.federalreserve.gov/boarddocs/press/general/2001/20010111/DisclosureGroupLetter.pdf* (Jan. 11, 2001).

[87] The Basel Committee, the Committee on the Global Financial System of the G–10 central banks (CGFS), the International Association of Insurance Supervisors (IAIS) and the International Organisation of Securities Commissions (IOSCO).

[88] The Joint Forum was established in 1996 under the aegis of the BCBS, IOSCO and the IAIS to deal with issues common to the banking, securities and insurance sectors.

[89] Final Report of the Multidisciplinary Working Group on Enhanced Disclosure (April 26, 2001). The report is presently available at: *http://www.bis.org/publ/joint01.pdf*.

[90] *See* paragraph (a) of Rule 17i–8.

Commission of changes to mathematical models and changes in organizational control because an SIBHC must amend its Notice of Intention if it changes a mathematical model pursuant to new Rule 17i–2(c)(2), and must file organizational charts with the Commission annually (or quarterly if there has been a material change) pursuant to new Rule 17i–6(b).[91] Thus, we eliminated the notification requirement of proposed paragraph (b) of Rule 17i–8, because the information was duplicative of information already required to be filed with the Commission.

Paragraph (c) of new Rule 17i–8 specifies the manner in which these notices and reports should be provided to the Commission. In addition, paragraph (c) specifies that the notices and reports filed with the Commission pursuant to Rule 17i–8 will be accorded confidential treatment.[92] We believe it is important to accord confidential treatment to the notices and reports an SIBHC must provide pursuant to new Rule 17i–8 because the information contained in those notices and reports will generally be highly sensitive, non-public business information.

Paragraph (d) of new Rule 17i–8 allows the Commission to grant extensions or exemptions from the notification provisions at the request of the SIBHC, or on its own motion. This paragraph will provide the Commission with flexibility to address firm-specific issues as they arise.

We believe the requirements set forth in new Rule 17i–8 are necessary to keep the Commission informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the SIBHC and the extent to which the SIBHC has complied with the provisions of the Act and the regulations promulgated thereunder.

V. Amendment to Rule 30–3

The Commission has adopted amendments to Rule 30–3 of its Rules of Organization and Program Management governing delegations of authority to the Director of the Division of Market Regulation ("Director").[93] The amendments delegate to the Director the authority to: (1) Review amendments to a supervised investment bank holding company's Notice of Intention required by paragraph (c)(2) of Rule 17i–2 (17 CFR 240.17i–2(c)(2)), and to approve such amendments pursuant to paragraph (d)(2)(ii) of Rule 17i–2 (17 CFR 240.17i–2(d)(2)(ii)) after reviewing the amended notice of intention to determine whether the amendment is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q); (2) to consider requests by supervised investment bank holding companies for exemptions from the requirement, and extensions of time within which, to file reports required by Rule 17i–6 (17 CFR 240.17i–6), and to grant or deny such requests pursuant to paragraph (f) of that Rule (17 CFR 240.17i–6(f)); and (3) to consider requests by supervised investment bank holding companies for exemptions from the requirement, and extensions of time within which, to file notices required by Rule 17i–8 (17 CFR 240.17i–8), and to grant or deny such requests pursuant to paragraph (d) of that Rule (17 CFR 240.17i–8(d)).

The Commission is delegating to the Director the authority to approve amendments to SIBHCs' Notices of Intention regarding changes to mathematical models used to calculate allowances for market or credit risk, or to the SIBHC's internal risk management control system after reviewing the amended notice of intention to determine whether the amendment is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q). The Commission is delegating to the Director its authority for the limited purposes described above.

These delegations of authority to the Director are intended to conserve Commission resources by permitting the staff to review and to issue orders regarding amendments to an SIBHC's Notice of Intention pursuant to new Rule 17i–2, and consider and grant SIBHCs' requests for exemptions from, and extensions of time within which to file, reports required by new Rule 17i–6 and notices required to be filed by new Rule 17i–8. The Commission anticipates that the delegation of authority will facilitate effective review. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.[94]

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this amendment to Rule 30–3 relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date are unnecessary.

VI. Paperwork Reduction Act

Certain provisions of new Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[95] Consequently, the Commission submitted the proposed new rules and rule amendments to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are (i) Rules 17h–1T and 17h–2T Risk Assessment Rules; (ii) Rule 17i–2 Notice of Intention to be Supervised by the Commission as a Supervised Investment Bank Holding Company; (iii) Rule 17i–3 Withdrawal from Supervision as an Supervised Investment Bank Holding Company; (iv) Rule 17i–4 Internal Risk Management Control Systems Requirements for Supervised Investment Bank Holding Companies; (v) Rule 17i–5 Record Creation, Maintenance, and Access Requirements for Supervised Investment Bank Holding Companies; (vi) Rule 17i–6 Reporting Requirements for Supervised Investment Bank Holding Companies; and (vii) Rule 17i–8 Notification Requirements for Supervised Investment Bank Holding Companies. OMB approved these collections of information and assigned them OMB Control Nos. 3235–0410, 3235–0592, 3235–0593, 3235–0594, 3235–0590, 3235–0588, and 3235–0591, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In the Proposing Release,[96] the Commission solicited comment on these "collection of information" requirements. The Commission received no comments that specifically addressed the Paperwork Reduction Act portion of the Proposing Release. Because Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T, as adopted, are substantially similar to those proposed, the SEC continues to believe that the estimates published in the Proposing Release regarding the proposed collection of information burdens associated with new Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T are appropriate. However, we have decreased our estimate of the number of

[91] *See* paragraph (a)(5) of new Rule 17i–8. In addition, Form 8–K requires that a firm file form 8–K when it experiences a change of control, and SIBHCs must now inform the Division of Market Regulation when it files a Form 8–K pursuant to paragraph (a)(5) of new Rule 17i–8.

[92] 15 U.S.C. 78q(j). *See supra*, note 24.

[93] 17 CFR 200.30–3.

[94] 17 CFR 200.30–3(e).

[95] 44 U.S.C. 3501, *et seq.*

[96] *See supra*, note 6 and accompanying text.

respondents because we expect fewer IBHC's to file Notices of Intention to be supervised as SIBHCs than originally estimated in light of the limited interest that has been expressed with regard to SIBHC supervision.

A. Collection of Information Under the Amendments to Rules 17h–1T and 17h–2T and New Rules 17i–2 Through 17i–8

New Rules 17i–2 through 17i–8 create a framework for Commission supervision of SIBHCs. The collections of information included in these rules are necessary to allow the Commission to (1) effectively determine whether SIBHC supervision is necessary or appropriate in furtherance of the purposes of § 17 of the Act and (2) supervise the activities of these SIBHCs. These rules also enhance the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Regulatory oversight pursuant to this system is voluntary, and eligible IBHCs are not required to be supervised in this manner. This framework includes procedures through which an IBHC may file a Notice of Intention to become supervised by the Commission as an SIBHC, as well as recordkeeping and reporting requirements for SIBHCs.

The amendments to Rules 17h–1T and 17h–2T [97] exempt broker-dealers that are affiliated with an SIBHC from those rules and thus reduce their "collection of information" requirements. This exemption was designed to eliminate duplicative recordkeeping and reporting requirements.

B. Proposed Use of Information

The Commission intends to use the information collected under the new Rules to determine whether SIBHC supervision is necessary or appropriate in furtherance of the purposes of § 17 of the Act and to monitor the financial condition, risk management, and activities of SIBHCs on a group-wide basis. In particular, these rules allow the Commission access to important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer or the SIBHC.

C. Respondents

An IBHC is eligible to be supervised by the Commission as an SIBHC only if it: (1) Has a subsidiary broker or dealer that can evidence that it has a substantial presence in the securities business; and (2) is not (i) affiliated with an insured bank (with certain exceptions) or a savings association, (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.[98] Pursuant to paragraph (d)(2)(i)(B) of Rule 17i–2, the Commission would not consider it to be necessary or appropriate to supervise an IBHC unless the IBHC can demonstrate that it owns or controls a broker-dealer that has a substantial presence in the securities business (which may be demonstrated by a showing that the broker-dealer maintains tentative net capital of at least $100 million).

As of September 30, 2003, approximately 115 registered broker-dealers reported their tentative net capital as being between $100 million and $1 billion.[99] Many of these broker-dealers are affiliated with another broker-dealer that reported its tentative net capital as being more than $100 million. Of these 115 registered broker-dealers, approximately 35 could not be supervised by the Commission as an SIBHC due to the fact that each is either: (i) Affiliated with an insured bank (with certain exceptions) or a savings association,[100] (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.[101] In addition, some broker-dealers may not be active in jurisdictions that require securities firms to demonstrate that they have consolidated supervision at the holding company level that is equivalent to EU consolidated supervision, or may not find it to be cost-effective to register as an SIBHC for other reasons. Thus, the Commission estimates, for PRA and cost-benefit analysis purposes, that three IBHCs will file notices of intent to be supervised by the Commission as SIBHCs.

D. Reporting and Recordkeeping Burdens

1. Amendments to Rules 17h–1T and 17h–2T

The amendments to Rules 17h–1T and 17h–2T [102] exempt broker-dealers that are affiliated with an SIBHC from those rules and thus reduce their "collection of information" requirements. Rule 17h–1T requires that a broker-dealer maintain and preserve records and other information concerning the broker-dealer's holding companies, affiliates, or subsidiaries that are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires broker-dealers to file with the Commission quarterly reports concerning the information required to be maintained and preserved under Rule 17h–1T. The present PRA burden for broker-dealers that are presently reporting pursuant to Rules 17h–1T and 17h–2T is 24 hours per year for each broker-dealer respondent. The estimated three firms therefore would have their annual burden reduced by an aggregate of 72 hours per year.

2. Rule 17i–2

New Rule 17i–2 requires that an IBHC file a Notice of Intention if it wants to become supervised by the Commission as an SIBHC. The Notice of Intention must set forth certain information and include a number of documents. In addition, an SIBHC must submit amendments to its Notice of Intention if certain information becomes incorrect or if it makes certain material changes. The Commission designed Rule 17i–2 so an IBHC could compile and submit existing documents with its Notice of Intention (as opposed to requiring that an IBHC create additional documents) in order to decrease any costs or burdens imposed by this Rule.

As stated previously in section VI.C., we estimate that approximately three IBHCs will file Notices of Intention to become SIBHCs. We estimate that each IBHC that files a Notice of Intention to become supervised by the Commission will take approximately 900 hours to draft a Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with

[97] *See supra*, note 56.

[98] Federal Reserve Act § 25A [12 U.S.C. 611].

[99] This conclusion is based on the September 30, 2003, FOCUS Report filings. Broker-dealers are required to file monthly and/or quarterly reports on Form X–17A–5 pursuant to Rule 17a–5(a) (17 CFR 240.17a–5(a)), commonly referred to as FOCUS Reports. In addition, we have adopted new rules and rule amendments that would allow a holding company that owns or controls a broker-dealer that maintains more than $1 billion in tentative net capital to elect to be supervised as a consolidated supervised entity in the CSE Release (*see supra*, note 61). The supervisory framework provided by those new rules and rule amendments would allow the broker-dealers of those entities to calculate market and credit risk capital charges using mathematical modeling techniques. We believe firms that apply for the CSE regulatory regime will do so and will not elect to be supervised pursuant to these new rules for SIBHC election.

[100] *See* Exchange Act § 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

[101] Federal Reserve Act § 25A [12 U.S.C. 611].

[102] *See supra*, note 56.

the Commission staff. Further, we believe that an IBHC will have an attorney review its Notice of Intention, and we estimate that it will take the attorney approximately 100 hours to complete such a review. Consequently, we estimate the total burden for all three firms to be approximately 3,000 hours.[103] We believe this will be a one-time burden.

Rule 17i–2 also requires that an IBHC/SIBHC[104] amend its Notice of Intention on an ongoing basis. We estimate that an IBHC/SIBHC will take approximately 2 hours each month to update or amend its Notice of Intention, as necessary. Thus, we estimate that it will take the three IBHC/SIBHCs, in the aggregate, about 72 hours each year[105] to update or amend their Notices of Intention.

3. Rule 17i–3

Rule 17i–3 provides a method by which an SIBHC may withdraw from Commission supervision as an SIBHC. An SIBHC that wishes to withdraw from Commission supervision may do so by filing a notice of withdrawal with the Commission.

Due to the benefits and costs associated with becoming supervised by the Commission as an SIBHC, we believe that an IBHC will carefully consider whether to file a notice of withdrawal. We estimate that one SIBHC may wish to withdraw from Commission supervision as an SIBHC over a ten-year period.

We estimate that, for an SIBHC that intends to withdraw from Commission supervision as an SIBHC, it would take one attorney approximately 24 hours to draft a withdrawal notice and submit it to the Commission. Further, we believe the SIBHC will have a senior attorney or executive officer review the notice of withdrawal before submitting it to the Commission, and that it will take such person 8 hours to conduct such a review. Thus, we estimate that the annual, aggregate burden of withdrawing from Commission supervision as an SIBHC will be approximately 3.2 hours each year.[106]

4. Rule 17i–4

Rule 17i–4 requires that an SIBHC have in place an internal risk management control system appropriate for its business and organization. An SIBHC must consider, among other things, the sophistication and experience of its operations, risk management, and audit personnel, as well as the separation of duties among these personnel, when designing and implementing its internal control system's guidelines, policies, and procedures. These requirements are designed to result in control systems that adequately address the risks posed by the firm's business and the environment in which it is being conducted. In addition, these requirements enable an SIBHC to implement specific policies and procedures unique to its circumstances.

Rule 17i–4 also requires that an SIBHC periodically review its internal risk management control system for integrity of the risk measurement, monitoring, and management process, and accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

In implementing its policies and procedures, an SIBHC must document and record its system of internal risk management controls. In particular, an SIBHC must document its consideration of certain issues affecting its business when designing its internal controls. An SIBHC also must prepare and maintain written guidelines that discuss its internal control system.

The information to be collected under Rule 17i–4 is essential to the supervision of SIBHCs and their compliance with the Commission's Rules. More specifically, the requirement that an SIBHC document the planning, implementation, and periodic review of its risk management controls is designed to ensure that all pertinent issues are considered, that the risk management controls are implemented properly, and that they continue to adequately address the risks faced by SIBHCs.

As stated previously in section VI.C., we estimate that approximately three IBHCs will file Notices of Intention to be supervised by the Commission as SIBHCs. We further estimate that the average amount of time an SIBHC will spend assessing its present structure, businesses, and controls, and establishing and documenting its risk management control system will be about 3,600 hours, and that this would be a one-time burden. In addition, we estimate that an SIBHC will spend approximately 250 hours each year maintaining its internal risk management control system. Thus, we estimate that the total initial burden for all SIBHCs will be approximately 10,800 hours[107] and the continuing annual burden would be about 750 hours.[108]

Internationally active firms generally already have in place risk management practices, and generally will review and improve their risk management practices notwithstanding the requirements of these rules. However, we recognize that, to the extent an IBHC presently has a group-wide internal risk management control system, those systems may not take into account all of the elements and issues required by Rule 17i–4. In addition, firms may not have documented their consideration of these elements and issues, or other aspects of their internal risk management control systems, as the Rule requires.

5. Rule 17i–5

Pursuant to Rule 17i–5, an SIBHC must make and keep current certain records relating to its business. In addition, it must preserve those and other records for certain prescribed time periods. The purpose of this rule is to require that the SIBHC create and maintain records that would allow the Commission to evaluate SIBHC compliance with the rules to which it is subject. We expect that any burden under the Rule would be minimal because the information that is required under the Rule is information a prudent IBHC that manages risk on a group-wide basis would maintain in the ordinary course of its business.

Pursuant to Rule 17i–5, an SIBHC must make and keep records reflecting (i) the results of quarterly stress tests; (ii) that the firm had created a contingency plan to respond to certain possible funding and liquidity difficulties; and (iii) the basis for credit risk weights. We estimate that the average amount of time an SIBHC will spend to create a record regarding stress tests is about 64 hours each quarter, or approximately 256 hours each year. We further estimate that the average amount of time an SIBHC will spend to create and document a contingency plan

[103] We calculated this amount as follows: (900 hours + 100 hours) × 3 IBHCs/SIBHCs = 3,000 hours.

[104] An IBHC would be required to review and update its Notice of Intention to the extent it becomes inaccurate prior to a Commission determination, and an SIBHC would be required to amend its Notice of Intention if it makes a material change to a mathematical model or other method used to calculate its risk allowances pursuant to Rule 17i–7 or its internal risk management control system after a Commission determination was made.

[105] We calculated this amount as follows: (2 hours × 12 months each year) × 3 SIBHCs = 72.

[106] We calculated this amount as follows: (1 SIBHC/every 10 years) × (24 hours to draft + 8 hours to review) = 3.2 hours.

[107] We calculated this amount as follows: (3,600 hours × 3 SIBHCs) = 10,800 hours.

[108] We calculated this amount as follows: (250 hours per year × 3 SIBHCs) = 750 hours per year.

regarding funding and liquidity of the affiliate group (which we believe an SIBHC will do only once, not on an ongoing basis) will be about 40 hours. In addition, we estimate that the average amount of time an SIBHC will spend to create a record regarding the basis for credit risk weights will be about 30 minutes for each counterparty, and that on average, an SIBHC will establish approximately 20 new counterparty arrangements each year.[109]

In addition, requirements that were located in other proposed rules were moved into new Rule 17i–5. Specifically, Rule 17i–5 now also requires that an SIBHC make and keep records of the calculations of allowable capital and allowances for market, credit, and operational risk. An SIBHC will make a record of its calculations of allowable capital, and allowances for market, credit, and operational risk when performing the calculation in compliance with new Rule 17i–7 to comply with the monthly reporting requirements contained in new Rule 17i–6. Thus, SIBHCs should not incur any additional burden relative to this paragraph.

Pursuant to Rule 17i–5, an SIBHC must maintain these and other records for at least three years in an easily accessible place. We estimate that the average amount of time an SIBHC would spend to maintain these and other, specified records for three years would be about 24 hours per year per SIBHC.

As stated previously in section VI.C., we estimate that approximately three IBHCs will file Notices of Intention to be supervised by the Commission as SIBHCs. Thus, the total initial burden relating to new Rule 17i–5 for all SIBHCs would be approximately 120 hours [110] and the continuing annual burden would be approximately 870 hours.[111]

6. Rule 17i–6

Rule 17i–6 requires an SIBHC to file certain monthly and quarterly reports with the Commission, as well as an annual audit report. These reporting requirements are necessary to keep the Commission informed as to the activities of the SIBHC, as well as the financial condition, transactions and relationships involving the affiliate group, and policies, systems for monitoring and controlling financial and operational risks. In addition, these requirements are essential to keeping the Commission informed of the extent to which the SIBHC or its affiliates have complied with section 17(i) of the Exchange Act and the rules promulgated thereunder. Finally, these reports may also be used to evaluate the activities conducted by these SIBHCs and to anticipate, where possible, how they might be affected by significant economic events.

As stated previously in section VI.C., we anticipate that the Rule would affect approximately three SIBHCs. We estimate that, on average, it will take an SIBHC about 8 hours each month to prepare and file the monthly reports required by this rule (or approximately 96 hours per year).[112] We estimate that, on average, it will take an SIBHC about 16 hours each quarter (or 64 hours each year) [113] to prepare and file the quarterly reports required by this rule. We estimate that, on average, it will take an SIBHC about 200 hours to prepare and file the annual audit reports required by this rule. Thus, we estimate that the total annual burden of Rule 17i–6 on all SIBHCs will be approximately 1,080 hours.[114] However, we believe that most well-managed SIBHCs already report to their senior management much of the information required to be provided to the Commission pursuant to Rule 17i–6; therefore, the burdens may be significantly lower.

7. Rule 17i–8

Rule 17i–8 requires SIBHCs to report on the occurrence of certain events that may have a material adverse affect on the SIBHC. This early warning system is modeled after the early warning system used with respect to broker-dealers in Exchange Act Rule 17a–11. Like Exchange Act Rule 17a–11, Rule 17i–8 is designed to give the Commission advance warning of problems that may pose material risks to the financial and operational capability of an SIBHC and its affiliated broker-dealers, and is integral to the Commission's supervision of SIBHCs and their affiliated broker-dealers.

We estimate that it would take an SIBHC approximately one hour to create a notice required to be submitted to the Commission pursuant to Rule 17i–8. We estimate that of the approximately three IBHCs that we believe will register to be supervised as SIBHCs, one may be required to file notice pursuant to Rule every four years. Thus, we estimate that the annual burden of Rule 17i–8 for all SIBHCs will be about 15 minutes.

E. Collection of Information Is Mandatory

The collection of information requirements in new Rules 17i–2 through 17i–8 are mandatory for every IBHC that files a Notice of Intention to be supervised by the Commission as an SIBHC and every SIBHC that is supervised by the Commission.

F. Confidentiality

The information and documents collected, retained, and/or filed pursuant to new Rules 17i–2 through 17i–8 will be accorded confidential treatment to the extent permitted by law.

G. Record Retention Period

New Rule 17i–5(b) requires that an SIBHC preserve for three years in an easily accessible place information relating to: (i) Its Notice of Intention; (ii) its group-wide system of internal risk management controls; (iii) the records it is required to make and keep current; (iv) the reports it is required to file; and (v) its calculations of allowable capital and allowances for market, credit, and operational risk.

VII. Costs and Benefits of the Rules and Rule Amendments

The Commission has identified certain costs and benefits that will result from this framework for supervising SIBHCs. Supervision pursuant to this system is voluntary, and eligible IBHCs are not be required to be supervised in this manner. This framework includes requirements for SIBHCs that file Notices of Intention to be supervised by the Commission as SIBHCs, as well as recordkeeping and reporting requirements for SIBHCs, including a requirement that an SIBHC calculate and report a calculation of allowable capital and allowances for market, credit and operational risk.

In the Proposing Release [115] the Commission solicited comment on all aspects of the cost-benefit analysis to assist the Commission in evaluating the

[109] We estimate that, on average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, it is our understanding that firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties.

[110] We calculated this amount as follows: (40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group) × 3 SIBHCs = 120 hours.

[111] We calculated this amount as follows: ((256 hours to create a record regarding stress tests) + ((30 minutes × 20 counterparties) to create a record regarding the basis for credit risk weights) + (24 hours per year to maintain records)) × 3 SIBHCs = 870 hours.

[112] We calculated this amount as follows: (8 hours × 12 months in a year) = 96 hours/year.

[113] We calculated this amount as follows: (16 hours × 4 quarters in a year) = 64 hours/year.

[114] We calculated this amount as follows: (96 hours per year to prepare and file monthly reports + 64 hours each year to prepare and file quarterly reports + 200 hours each year to prepare and file annual audit reports) × 3 SIBHCs = 1,080 hours.

[115] *See supra.* note and accompanying text.

costs and benefits that may result from the supervisory framework for SIBHCs. Specifically, the Commission requested comment on the potential costs and benefits identified in the Proposing Release, as well as any other costs or benefits that may result from the rules and rule amendments. In particular, the Commission solicited comments on the potential costs for any necessary modifications to accounting, information and recordkeeping systems, and internal risk management control systems required to implement the rules, and the potential benefits arising from participation in this optional regulatory framework, as well as the degree to which potential applicants under this rule have already made, or are making, the necessary investments in internal risk management control systems, information technology, and mathematical modeling. The Commission requested that commenters provide views and data comparing the costs and benefits discussed above with the costs and benefits of the current regulatory framework, as well as any analysis and data relating to the costs and benefits associated with each of the Rules.

The Commission received no comments that specifically addressed the Cost-Benefit Analysis included in the Proposing Release. Because Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T, as adopted, are substantially similar to those proposed, the SEC believes that the Cost-Benefit Analysis included in the Proposing Release regarding the benefits and costs associated with new Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T continues to be appropriate.

A. Benefits

There are many quantifiable and non-quantifiable benefits that will result from these rules. We discuss these benefits below.

U.S. securities firms that do business in the EU have indicated that they may need to demonstrate that they are subject to consolidated supervision at the holding company level that is "equivalent" to EU consolidated supervision. Generally, EU "consolidated supervision" takes the form of a series of rules, imposed at the holding company level, regarding firms' internal controls, capital adequacy, intra-group transactions, and risk concentration. Without a demonstration of "equivalent" supervision, securities firms located in the EU have stated that they may either be subject to additional capital charges or required to form a sub-holding company that would be subject to consolidated supervision by the EU.[116] The regulatory framework for SIBHCs set forth in the new rules and rule amendments is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor[117] for SIBHCs and their affiliated broker-dealers. The Commission estimates that it would cost an IBHC approximately $8 million to create a new, non-U.S., regulated affiliate,[118] or about $24 million in the aggregate for the three IBHCs we believe will file Notices of Intention to become supervised by the Commission as SIBHCs. We do not have sufficient information to estimate what additional costs may be imposed on securities firms that do business in the EU if they are not subject to equivalent supervision.

Currently, certain broker dealers must create records and file quarterly reports with the Commission regarding the financial condition, organization, and risk management practices of the affiliated group pursuant to Exchange Act Rules 17h–1T and 17h–2T.[119] Broker-dealers affiliated with IBHCs that meet the criteria set forth in Rules 17i–1 through 17i–8 generally already would be subject to Rules 17h–1T and 17h–2T. To the extent that the information collected or made and maintained pursuant to new Rule 17i–5 reports are made and filed pursuant to Rule 17i–6 by the SIBHC of a broker-dealer that is subject to Rules 17h–1T and 17h–2T, that broker-dealer will be exempted from the provisions of Rules 17h–1T and 17h–2T. We estimate that, on average, a broker-dealer affiliated with one of the three SIBHCs would save about $2,208 due to this exemption.[120] In the aggregate, the total cost savings associated with these amendments would be approximately $6,624.[121]

In addition, Rules 17i–1 through 17i–8 not only create a regulatory framework for the Commission to supervise SIBHCs, but they improve the Commission's ability to supervise the financial condition and securities activities of SIBHCs' affiliated broker-dealers. The requirement that an SIBHC establish, document and maintain an internal risk management control system reduces the risk of significant losses by the SIBHC's affiliated broker-dealers. The internal risk management control system requirement also will reduce systemic risk. We have no way to quantify this benefit.

An additional benefit arises from the reduced borrowing costs, or increased stock price that will result from better risk management practices. Credit rating agencies analyze risk management practices, among many factors, in determining credit ratings. A firm that has better risk management systems may be rated better, and will therefore pay lower interest rates to borrow and realize higher stock prices. However it is unclear to what extent risk management factors into credit ratings. In addition, present internal risk management control systems vary widely from firm to firm. Therefore it is difficult to quantify this benefit.

However, evolving industry best practice for internationally active firms suggests that some of the firms already have group-wide internal risk management control systems in place, and some firms will implement the risk management practices in the near future.

B. Costs

Each IBHC that files a Notice of Intention to become supervised by the Commission as an SIBHC would incur various on-going costs and one-time costs.

1. Ongoing Costs

An SIBHC will incur costs complying with new Rules 17i–1 through 17i–8, including ongoing costs relating to: (i) Drafting and reviewing a Notice of Intention; (ii) drafting and reviewing a notice of withdrawal; (iii) updating its internal risk management control system; (iv) creating a record regarding stress tests; (v) creating a record regarding the basis for credit risk weights; (vi) maintaining its records in

[116] *See* "Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002."

[117] *See supra* note 2.

[118] *See* Exchange Act Release No. 48694 [68 FR 62910, at 62928, note 121 (Nov. 6, 2003)].

[119] *See supra*, note.

[120] We estimate, based on the present burden for Rules 17h–1T and 17h–2T, that each broker-dealer affiliated with an SIBHC that will no longer have to maintain records or file reports will spend 24 hours less each year to perform these tasks. This estimate was described in the Proposing Release, and they elicited no comments. The staff believes that a broker-dealer would have a financial reporting manager perform these tasks. According to the Securities Industry Association's ("SIA") *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a financial reporting manager is $92.00. We calculated this amount as follows: (($92.00 × 24 hours) = $2,208). Generally, to estimate an hourly cost using the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the staff will take the median (or, if no median is provided, the mean) salary provided in that Report for the position cited, divide that amount by 1,800 hours (in the average year), and then multiply the result by 135% (to account for employee overhead costs).

[121] We calculated this amount as follows: ($2,208 × three affected broker-dealers) = $6,624.

accordance with Rule 17i–5; (vii) preparing and filing monthly and quarterly reports; (viii) preparing and filing its annual audit; (ix) calculating allowable capital and allowances for market, credit, and operational risk; (x) maintaining its models; (xi) conducting stress tests on its models; and (xii) filing notices pursuant to Rule 17i–8.

New Rule 17i–2 requires that an SIBHC amend its Notice of Intention on an ongoing basis. We estimate that each SIBHC will incur a cost of approximately $1,704 each year to make any necessary amendments to its Notice of Intention.[122] Thus, we estimate that the total annual cost to make any amendments to the notice will be, in aggregate, about $5,112 each year for all SIBHCs.[123]

Rule 17i–3 requires that an SIBHC file a notice of withdrawal with the Commission if it wishes to withdraw from Commission supervision. We estimate that each SIBHC that withdraws from Commission supervision will incur a cost of about $2,130 to draft and review a notice or withdrawal to submit to the Commission.[124] However, we further estimate that one SIBHC may withdraw from Commission supervision only once every ten years. Thus, the annual cost of this rule will be approximately $279.[125]

New Rule 17i–4 requires that an SIBHC maintain an internal risk management control system. We estimate that an SIBHC will incur a cost of approximately $17,750 associated with maintaining its internal risk management control system each year.[126] Thus, the continuing annual burden will be, in aggregate, approximately $53,250 for all three SIBHCs.[127]

Pursuant to new Rule 17i–5, an SIBHC must create records regarding stress tests and the basis for credit risk weights, and preserve those and other records relating to its business for certain prescribed time periods. We estimate that an SIBHC will incur an annual cost of about $23,808 to create a record regarding stress tests as required by Rule 17i–5.[128] Further, we estimate that, on average, an SIBHC will incur an annual cost of approximately $370 to create a record regarding the basis for credit risk weights.[129] Further, we estimate that, on average, an SIBHC will incur an annual cost of $1,440 to maintain records pursuant to new Rule 17i–5.[130] Thus, the aggregate annual cost relating to new Rule 17i–5 for all SIBHCs will be approximately $76,854.[131]

New Rule 17i–6 requires that an SIBHC file certain monthly and quarterly reports with the Commission, as well as an annual audit report. We estimate that the average cost for an SIBHC to prepare and file the monthly reports will be about $440 per month, and thus approximately $5,280 per year.[132] We estimate that, on average, an SIBHC will incur a quarterly cost of $880 to prepare and file the required quarterly reports, and thus will incur an annual cost of $3,520 to file these reports.[133] Finally, we estimate that, on average, an SIBHC will incur an annual cost of $9,800 to prepare and file an annual audit.[134] Thus, we estimate that the total cost that, in aggregate, SIBHCs will incur that are associated with new Rule 17i–6 would be approximately $55,800.[135]

New Rule 17i–7 requires that an SIBHC calculate the affiliate group's allowable capital and allowances for certain types of risk. Once the appropriate systems and models are in place, we estimate that each SIBHC will incur a cost of about $57,750 to calculate its group-wide allowances for market, credit, and operational risk.[136] In addition, we estimate that each SIBHC will incur a cost of about

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[122] We estimate that an SIBHC will take about 24 hours each year to ensure that its Notice of Intention is accurate and make any necessary amendments. We believe an SIBHC will have a senior compliance person perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a senior compliance person is $71.00. (24 hours × $71.00) = $1,704. We described these estimates in the Proposing Release, and they elicited no comments.

[123] We calculated this amount as follows: ($1,704 × 3 SIBHCs) = $5,112.

[124] We estimate, that it will take one attorney approximately 24 hours to draft a withdrawal notice and that it will take a senior attorney or executive officer 8 hours to review the notice of withdrawal before submitting it to the Commission. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of an attorney is $82.00, and the average hourly cost of a senior attorney and executive officer is $102.00. ((24 hours × $82.00) + (8 hours × $102.00)) = $2,784. We described these estimates in the Proposing Release, and they elicited no comments.

[125] We calculated this amount as follows: ($2,784/10 years) = $279.

[126] We estimate that it will take each SIBHC 250 hours each year to maintain its internal risk management control system, and that an SIBHC would have a senior compliance person perform that task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a compliance examiner is $71.00. We calculated this amount as follows: ((250 hours × $71.00) = $17,750). We described these estimates in the Proposing Release, and they elicited no comments.

[127] We calculated this amount as follows: ($17,750 × 3 SIBHCs) = $53,250.

[128] We estimate that an SIBHC will spend approximately 256 hours each year to create a record regarding stress tests. We believe that an SIBHC will have a trading floor supervisor or equivalent create this record. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a trading floor supervisor is $93.00. We calculated this amount as follows: (($93.00 × 256) = $23,808). We described these estimates in the Proposing Release, and they elicited no comments.

[129] We estimate that an SIBHC will spend 30 minutes per counterparty to create a record regarding credit risk weights, and that, on average, each SIBHC will initiate relationships with 20 new counterparties each year. We believe that an SIBHC would have an intermediate accountant create this record. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of an intermediate accountant is $37.00. We calculated this amount as follows: ($37.00 × (30 minutes × 20 counterparties)) = $370. We described these estimates in the Proposing Release, and they elicited no comments.

[130] We estimate that an SIBHC will spend about 24 hours per year to maintain records as required pursuant to Rule 17i–5. The staff believes that an SIBHC will have a programmer analyst perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a programmer analyst is $60.00. We calculated this amount as follows: ($60.00 × 24) = $1,440. We described these estimates in the Proposing Release, and they elicited no comments.

[131] We calculated this amount as follows: (($23,808 + $370 + $1,440) × 3 SIBHCs) = $76,854.

[132] We estimate that an SIBHC will spend about 8 hours per month and 96 hours per year to prepare and file these monthly reports. We believe that an SIBIC will have a senior accountant prepare and file these reports. According to the SIA's *Report* on *Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a senior accountant is $55.00. ($55.00 × 8 hours) = $440. ($440 × 12 months) = $5,280. We described these estimates in the Proposing Release, and they elicited no comments.

[133] We estimate that an SIBHC will spend about 16 hours per quarter and 64 hours per year to prepare and file these quarterly reports. We believe that an SIBHC will have a senior accountant prepare and file these reports. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a senior accountant is $55.00. ($55.00 × 16 hours) = $880. ($880 × 4 quarters) = $3,520. We described these estimates in the Proposing Release, and they elicited no comments.

[134] We estimate that an SIBHC would spend about 200 hours per year to prepare and file an annual audit. We believe that an SIBHC would have a senior internal auditor work with accountants to prepare and file these reports. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a senior internal auditor is $49.00. ($49.00 × 200 hours) = $9,800. We described these estimates in the Proposing Release, and they elicited no comments.

[135] We calculated this amount as follows: (($5,280 + $3,520 + $9,800) × 3 SIBHCs) = $55,800). We described these estimates in the Proposing Release, and they elicited no comments.

[136] We estimate that, on average, each SIBHC will take approximately 1,050 hours per year to calculate allowable capital and allowances for market, credit, and operational risk and to verify and review that data. We believe that an SIBIC will have a senior accountant perform these calculations and verifications. According to the SIA's *Report* on *Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a senior accountant is $55.00. (($55.00 × 1,050 hours) = $57,750). We described these estimates in the Proposing Release, and they elicited no comments.

$378,000 to maintain its models.[137] Finally, we estimate that each SIBHC will incur an annual cost of approximately $32,000 to perform stress tests on its models at least once each quarter.[138] Thus, we estimate that the annual cost that SIBHCs will incur, in aggregate, will be approximately $1.4 million.[139]

New Rule 17i–8 requires that an SIBHC report to the Commission the occurrence of certain material risks. We estimate that it will cost an SIBHC approximately $82 to create a notice required to be submitted to the Commission pursuant to Rule 17i–8.[140] However, we estimate that only one SIBHC may be required to send a notice as required by new Rule 17i–8 every three years. Thus, we estimate, for that the annual cost of Rule 17i–8 for all SIBHCs will be about $27.[141]

2. One-Time Costs

We believe that an SIBHC will incur five types of one-time costs associated with becoming an SIBHC: (i) Costs associated with drafting a Notice of Intention to submit to the Commission; (ii) costs associated with assessing its present structure, businesses, and controls, and designing and implementing an internal risk management control system in order to comply with new Rule 17i–4; (iii) costs associated with creating and documenting a contingency plan regarding funding and liquidity of the affiliate group; (iv) costs associated with upgrading the information technology ("IT") systems it uses to manage group-wide risk, make and retain records and reports, and calculate group-wide capital; and (v) costs associated with developing mathematical models to calculate its group-wide allowances for market and credit risk as required by new Rule 17i–7.

New Rule 17i–2 requires that an IBHC file a Notice of Intention to become supervised by the Commission that includes certain information and documents. We estimate that each IBHC that files a Notice of Intention to become supervised by the Commission as an SIBHC will incur a cost of approximately $63,900 to draft a Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with the Commission staff.[142] Further, we believe that an IBHC will have an attorney review the Notice of Intention, and that it will incur a cost of approximately $8,200 relating to this review.[143] Consequently, we estimate that the total costs that will be incurred by the three IBHCs we believe will file Notices of Intention to become supervised by the Commission as SIBHCs is about $216,300.[144]

Each SIBHC will incur a one-time cost to assess its present structure, businesses, and controls, and establish, document and maintain an internal risk management control system in order to comply with new Rule 17i–4. We estimate that the one-time cost for an SIBHC to assess its present structure, businesses, and controls, and establish, document and maintain an internal risk management control system will be approximately $255,600.[145] Thus, we anticipate the total aggregate cost for all SIBHCs would be about $766,800.[146]

Pursuant to new Rule 17i–5, an SIBHC must document a contingency plan regarding funding and liquidity of the affiliate group. We estimate that it will cost each SIBHC about $4,160 to document such a contingency plan.[147] Consequently, it will cost the three SIBHCs we expect to file Notices of Intention to be supervised by the Commission, in aggregate, approximately $12,480.[148]

The IT systems used by IBHCs to manage risk, make and retain records and reports, and calculate capital differ widely based on the types of business and the size of the IBHC. In addition, these IT systems may be in varying stages of readiness to meet the requirements of the rules. We estimate that it will cost an IBHC that has well-developed IT systems to manage group-wide risk, make and retain their records,

[137] We estimate that each SIBHC will spend an average of approximately 5,600 hours per year maintaining its models. We believe that an SIBHC will have a senior programmer and a senior research analyst spend approximately 2,800 hours each maintaining its models. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior programmer is $64.00 and the hourly cost of a senior research analyst is $71.00. ($64.00 × 2,800 hours) + ($71.00 × 2,800 hours) = $378,000. We described these estimates in the Proposing Release, and they elicited no comments. Due to a lack of data points available in the SIA's *Report on Monogement ond Professional Eornings in the Securities Industry—2003* guide regarding salaries for this type of position, we used data obtained from the SIA's 2002 guide to generate this estimate.

[138] We estimate that each SIBHC will spend about 640 hours each year to conduct stress tests on its models. We believe that an SIBHC will have a junior research analyst conduct stress tests on its models. According to the SIA's *Report* on *Management and Professional Earnings in the Securities Industry—2003*, the hourly cost of a junior research analyst is $50.00. (($50.00 × 640 hours) = $32,000). We described these estimates in the Proposing Release, and they elicited no comments.

[139] We calculated this amount as follows: ($57,750 + $378,000 + $32,000) × 3 SIBHCs = $1,403,250.

[140] We estimate that it will take an SIBHC approximately one hour to create a notice required to be submitted to the Commission pursuant to Rule 17i–8. However, we further estimate that only one SIBHC may be required to submit such notice every other year. We believe that an SIBHC will have an attorney create a notice required to be submitted to the Commission pursuant to Rule 17i–8. According to the SIA's *Report on Monogement and Professionol Earnings in the Securities Industry—2003*, the hourly cost of an attorney is $82.00. (($82.00 × 1 hour) = $82.00).

The hourly burden estimate for Rule 17i–8 is based on our present estimates for Rule 17a–11. The Commission received 841 Rule 17a–11 Notices from 562 broker-dealers during the year ending December 2003. At that time, there were approximately 6,800 active broker-dealers that are registered with the Commission. Thus, 12% (841/6,800) of active, registered broker-dealers had a situation arise which caused them to file a notice pursuant to Rule 17a–11. Using this 12% figure, we estimate that of the approximately 3 IBHCs that we believe will register to be supervised as SIBHCs, one may be required to file notice pursuant to Rule 17i–8 every three years ((3 SIBHCs × 12%) = 0.36).

[141] We calculated this amount as follows: (($82.00 × 1 hour) × .33 (once every three years)) = $27.

[142] We estimate that an SIBHC will spend 900 hours to perform this task. Further, we believe that an SIBHC will have a senior compliance person perform this task. According to the SIA's *Report on Management ond Professionol Eornings in the Securities Industry—2003*, the hourly cost of a compliance examiner is $71.00. (($71.00 × 900 hours) = $63,900). We described these estimates in the Proposing Release, and they elicited no comments.

[143] We believe that an SIBHC will have an attorney review the Notice of Intention and that it would take an attorney 100 hours to complete this review. According to SIA's *Report on Management ond Professional Eornings in the Securities Industry—2002*, the hourly cost of an attorney is $82.00. (($82.00 × 100 hours) = $8,200). We described these estimates in the Proposing Release, and they elicited no comments. Due to a lack of data points available in the SIA's *Report on Monogement and Professionol Earnings in the Securities Industry—2003* guide regarding salaries for this type of position, we used data obtained from the SIA's 2002 guide to generate this estimate.

[144] ($63,900 + $8,200) × 3 SIBHCs = $216,300. We described these estimates in the Proposing Release, and they elicited no comments.

[145] We estimate that the average amount of time an SIBHC will spend assessing its present structure, businesses, and controls, and designing and implementing a risk management control system would be about 3,600 hours. We believe that an SIBHC will have a senior compliance person performing this task. According to the SIA's *Report on Management and Professional Eornings in the Securities Industry—2003*, the hourly cost of a compliance examiner is $71.00. (($71.00 × 3,600 hours) = $255,600). We described these estimates in the Proposing Release, and they elicited no comments.

[146] We calculated this amount as follows: ($255,600 per SIBHC × 3 SIBHCs expected to apply) = $766,800. We described these estimates in the Proposing Release, and they elicited no comments.

[147] We estimate that, on average, an SIBHC will spend about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group. Further, we believe that an SIBHC will have a senior treasury manager perform this task. According to the SIA's *Report* on *Monogement ond Professionol Earnings in the Securities Industry—2003*, the hourly cost of a senior treasury manager is $104.00. ($104 × 40 hours) = $4,160. We described these estimates in the Proposing Release, and they elicited no comments.

[148] We calculated this amount as follows: ($4,160 × 3 SIBHCs) = $12,480.

provide reports, and calculate group-wide capital about $1 million to upgrade its IT systems. We estimate that it will cost an IBHC that has less well-developed IT systems approximately $10 million to upgrade its IT systems. Thus, we estimate that, on average, it will cost each of the three SIBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. We believe that the costs for an SIBHC to update information technology systems in order to comply with new Rules 17i–1 through 17i–8 will be an initial, one-time cost. These estimates are based on the experience of Commission staff, as well as informal discussions with potential respondents.

Pursuant to new Rule 17i–7 an SIBHC must calculate its group-wide allowances for market, credit, and operational risk on a monthly basis. SIBHCs will generally use mathematical models to calculate market and credit risk. The SIBHC's size, the types of business in which it engages, and the complexity of its portfolio will all factor into the cost of model development. We estimate, based on staff experience, our experience with OTC derivatives dealers, and discussions with industry participants, that it will cost an SIBHC between $6,750 (if the firm already manages risks using mathematical models and simply needs to adjust those models to assure they comply with the qualitative and quantitative requirements set forth in the rules) and $675,000 (if the firm is complex and does not presently use mathematical models to manage risk) to update or create mathematical models.[149] Thus, we estimate that the additional cost to create new models will be, in aggregate, between about $20,250 and about $2 million for all three firms.[150]

The Commission notes that broker-dealers with tentative net capital of between $100 million and $1 billion that are not affiliated with banks generally do not report a VaR figure in their market risk disclosure of their holding companies' annual reports. However, some firms of this size do report a VaR figure in their market risk disclosure of their holding companies' annual reports. IBHCs that do not presently use VaR to manage group-wide risk may not find it to be cost effective to file a Notice of Intention to be supervised by the Commission as an SIBHC. However, this regulatory framework is available to a wide range of firms as an alternative, and may allow some of them to compete more effectively.

As stated previously, there are approximately 115 applicants who qualify to elect SIBHC supervision based on the minimum tentative net capital requirements. Evolving industry best practice for internationally active firms suggests that some IBHCs will have already made some or all the investments required by the rules, and some IBHCs have plans to make those investments in the near future. As stated previously in section VI.C., we believe that the three IBHCs that qualify will file a Notice of Intention to become supervised by the Commission as SIBHCs because it is cost effective and because they have made or plan to make the necessary investments regardless of Commission rule making. To the extent that a firm that elects SIBHC supervision, the SIBHC will not incur additional costs to establish, document and maintain an internal risk management control system, upgrade its IT, or create mathematical models, our estimates with regard to the rules may be reduced.

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [151] requires the Commission, whenever it engages in rulemaking and is required to consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [152] requires the Commission, in adopting rules under the Exchange Act, to consider the impact that any such rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release,[153] the Commission solicited comments on whether the amendments to Rules 17h–1T and 17h–2T and new Rules 17i–1 through 17i–8 would have any effects on competition, efficiency and capital formation. We received no comments in response to this solicitation.

The Commission believes that Rules 17i–1 through 17i–8 promote both efficiency and capital formation. The rules will provide qualifying IBHCs an opportunity to increase operational efficiency by continuing to compete effectively outside of the United States in countries that require consolidated supervision as a condition of doing business. Although the rules may impose new costs relating to: (i) Creation and implementation of a group-wide system of internal management controls; (ii) recordkeeping; and (iii) reporting, an IBHC that files a Notice of Intention to be supervised by the Commission as an SIBHC will save costs because it will not be subject to consolidated supervision in non-U.S. marketplaces. Further, as this framework for oversight is voluntary, we do not believe IBHCs will file Notices of Intention to be supervised by the Commission as an SIBHC unless the benefits of such an election outweigh the costs with respect to the applying IBHC.

The Commission notes that broker-dealers with tentative net capital of between $100 million and $1 billion that are not affiliated with banks generally do not report a VaR figure in their market risk disclosure of their holding companies' annual reports. However, some firms of this size do report a VaR figure in their market risk disclosure of their holding companies' annual reports. IBHCs that do not presently use VaR to manage group-wide risk may not find it to be cost effective to file a Notice of Intention to be supervised by the Commission as an SIBHC. However, this regulatory framework is available to a wide range of firms as an alternative, and may allow

[149] We estimate that an SIBHC that already manages risk using mathematical models may need to spend 100 hours to review its models and adjust them to assure they comply with the qualitative and quantitative requirements set forth in the rules. We believe that an SIBHC will have a senior programmer and a senior research analyst spend approximately 50 hours each to perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior programmer is $63.75 and the hourly cost of a senior research analyst is $71.25. (($64.00 × 50 hours) + ($71.00 × 50 hours) = $6,750). Due to a lack of data points available in the SIA's *Report on Management and Professional Earnings in the Securities Industry—2003* guide regarding salaries for this type of position, we used data obtained from the SIA's 2002 guide to generate this estimate.

Further, we estimate that a complex SIBHC that does not presently use mathematical models to manage risk will spend approximately 10,000 hours to create mathematical models to use in calculating market and credit risk as required by the rules. We believe that an SIBHC will have a senior programmer and a senior research analyst spend approximately 5,000 hours each to perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior programmer is $64.00 and the hourly cost of a senior research analyst is $71.00. (($64 × 5,000 hours) + ($71 × 5,000 hours) = $675,000. We described these estimates in the Proposing Release, and they elicited no comments

[150] We calculated this amount as follows: ($6,750 × 3 SIBHCs) = $20,250. ($675,000 × 3 SIBHCs) = $2,025,000.

[151] 15 U.S.C. 78c(f).

[152] 15 U.S.C. 78w(a)(2).

[153] *See supra*, note 6 and accompanying text.

some of them to compete more effectively.

The Commission does not believe that the rules will have anti-competitive effects on smaller broker-dealers because smaller broker-dealers are generally not interested in consolidated supervision.[154] In addition, the Commission believes that the benefits smaller broker-dealers would realize though SIBHC supervision would not outweigh the cost to establish procedures to comply with these rules. These rules implement section 17(i) of the Exchange Act, and are designed, in part, to allow U.S. broker-dealers to compete more effectively in the global securities markets.

IX. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[155] the Commission has certified that the new Rules 17i–1 through 17i–8, and amendments to Rules 17h–1T, 17h–2T, and 17a–12(l) under the Exchange Act, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification was included in the Proposing Release.[156] The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

X. Statutory Authority

The amendments are made pursuant to the authority conferred on the Securities and Exchange Commission by the Exchange Act (15 U.S.C. 78a, *et seq.*) (particularly sections 17, 23, and 24(b) thereof (15 U.S.C. 78q and 78w)).

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 240

Brokers, OTC derivatives dealers, Reporting and recordkeeping requirements, Securities, Supervised investment bank holding companies.

Text of Rules and Rule Amendments

■ In accordance with the foregoing, the Securities and Exchange Commission hereby amends title 17 chapter II of the Code of Federal Regulations as follows:

[154] Generally, smaller broker-dealers are organized in a simpler manner, and they do not engage in international transactions that could cause them to be subject to regulation by international securities regulatory agencies.

[155] 5 U.S.C. 605(b).

[156] *See supra*, note 6 and accompanying text.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–3 is amended by adding paragraphs (a)(79), (a)(80) and (a)(81) to read as follows:

§ 200.30–3 Delegationof authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(79) To review amendments to a supervised investment bank holding company's Notice of Intention, and to approve such amendments pursuant to paragraph (d)(2)(ii) of Rule 17i–2 (17 CFR 240.17i–2(d)(2)(ii)) after reviewing the amended notice of intention to determine whether the amendment is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

(80) To consider requests by supervised investment bank holding companies for exemptions from the requirement, and extensions of time within which, to file reports and notices required by Rule 17i–6 (17 CFR 240.17i–6), and to grant or deny such requests pursuant to paragraph (f) of that Rule (17 CFR 240.17i–6(f)).

(81) To consider requests by supervised investment bank holding companies for exemptions from the requirement, and extensions of time within which, to file notices required by Rule 17i–8 (17 CFR 240.17i–8), and to grant or deny such requests pursuant to paragraph (d) of that Rule (17 CFR 240.17i–8(d)).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 240.17a–12 is amended by revising paragraph (l) to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

* * * * *

(l) *Accountant's report on management controls.*

(1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the OTC derivatives dealer's internal risk management control system with respect to the requirements of § 240.15c3–4. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and the certified public accountant conducting the review. The purpose of the review is to confirm that the OTC derivatives dealer has established, documented, and maintained an internal risk management control system in accordance with § 240.15c3–4, and is in compliance with that internal risk management control system.

(2) The agreed-upon procedures are to be performed, and the report is to be prepared, in accordance with U.S. Generally Accepted Attestation Standards.

(3) Prior to the commencement of the initial review, every OTC derivatives dealer shall file the procedures to be performed pursuant to paragraph (l)(1) of this section with the Commission's principal office in Washington, DC. Prior to the commencement of any subsequent review, every OTC derivatives dealer shall file with the Commission's principal office in Washington, DC a notice of changes to the agreed-upon procedures.

* * * * *

■ 5. Section 240.17h–1T is amended by:
■ a. Redesignating paragraph (d)(5) as paragraph (d)(6); and
■ b. Adding new paragraph (d)(5).

The addition reads as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

* * * * *

(d) * * *

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i–1(a).

* * * * *

■ 6. Section 240.17h–2T is amended by:
■ a. Redesignating paragraph (b)(5) as paragraph (b)(6); and
■ b. Adding new paragraph (b)(5).

The addition reads as follows:

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

* * * * *

(b) * * *

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i–1(a).

* * * * *

■ 7. Sections 240.17i–1 through 240.17i–8 are added to read as follows:

Supervised Investment Bank Holding Company Rules

Sec.

Supervised Investment Bank Holding Company Rules

Preliminary Note: Rules 17i–1 through 17i–8 set forth a program of supervision at the holding company level for supervised investment bank holding companies. This program is designed to reduce the likelihood that financial and operational weakness in a supervised investment bank holding company will destabilize broker or dealer or the broader financial system. The focus of this supervision of the supervised investment bank holding company is its financial and operational condition and its risk management controls and methodologies.

§ 240.17i–1. Definitions.

(a) For purposes of §§ 240.17i–1 through 240.17i–8, the terms *investment bank holding company, supervised investment bank holding company, affiliate, bank, bank holding company, company, control, savings association, insured bank, foreign bank, person associated with an investment bank holding company* and *associated person of an investment bank holding company* shall have the same meaning as set forth in section 17(i)(5) of the Act (15 U.S.C. 78q(i)(5)).

(b) For purposes of §§ 240.17i–2 through 240.17i–8, the term *affiliate group* shall include the supervised investment bank holding company and every affiliate of the supervised investment bank holding company.

(c) For purposes of §§ 240.17i–1 through 240.17i–8, the term *material affiliate* shall mean any member of the affiliate group that is material to the supervised investment bank holding company.

§ 240.17i–2. Notice of intention to be supervised by the Commission as a supervised investment bank holding company.

(a) An investment bank holding company that owns or controls a broker or dealer may file with the Commission a written notice of intention to become supervised by the Commission pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)), provided that the investment bank holding company is not:

(1) An affiliate of an insured bank (other than an institution described in paragraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) (12 U.S.C. 1841(c)(2)(D), (F), or (G) and 12 U.S.C. 1843(f)) or a savings association;

(2) A foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); or

(3) A foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611).

(b) To become supervised as a supervised investment bank holding company an investment bank holding company shall file a notice of intention that includes the following:

(1) A request to become supervised by the Commission as a supervised investment bank holding company;

(2) A statement certifying that the investment bank holding company is not an entity described in section 17(i)(1)(A)(i)–(iii) of the Act (15 U.S.C. 78q(i)(1)(A)(i)–(iii));

(3) Documentation demonstrating that the investment bank holding company owns or controls a broker or dealer that maintains a substantial presence in the securities business as evidenced either by its holding $100 million or more in tentative net capital as calculated pursuant to § 240.15c3–1 or by any other information that the Commission determines is appropriate; and

(4) Supplemental information including:

(i) A description of the business and organization of the investment bank holding company;

(ii) An alphabetical list of each member of the affiliate group, with an identification of the financial regulator, if any, by whom the affiliate is regulated, and a designation as to whether the affiliate is a material affiliate;

(iii) An organizational chart that identifies the investment bank holding company, each broker or dealer owned or controlled by the investment bank holding company, and each material affiliate;

(iv) Consolidated and consolidating financial statements of the affiliate group as of the end of the quarter preceding the filing of the notice of intention;

(v) Sample computations for the supervised investment bank holding company of allowable capital and allowances for market risk, credit risk, and operational risk made in accordance with § 240.17i–7(a)–(d);

(vi) A list of the categories of positions that the affiliate group holds in its proprietary accounts and a brief description of the method that the investment bank holding company proposes to use to calculate allowances for market and credit risk on those categories of positions pursuant to § 240.17i–7(b) and (c);

(vii) A description of mathematical models that the investment bank holding company proposes to use to price positions and to compute allowances for market and credit risk (as specified in § 240.17i–7(b) and (c)), including:

(A) A description of the creation, use, and maintenance of the mathematical models;

(B) A description of the internal risk management controls over those models, including a description of each category of persons who may input data into the model;

(C) If the mathematical model incorporates correlations across risk factors, a description of the process used to measure those correlations;

(D) A description of the backtesting procedures the investment bank holding company proposes to use to backtest the models, including a description of the backtest and procedures instituted to respond to test results;

(E) A description of how each mathematical model satisfies the applicable qualitative and quantitative requirements listed in § 240.15c3–1e(d); and

(F) A statement describing the extent to which each mathematical model that it is used to analyze risk and report risk to senior management;

(viii) A description of any positions for which the investment bank holding company proposes to use a method other than Value at Risk to compute an allowance for market risk and a description of how that allowance would be determined;

(ix) A description of how the investment bank holding company proposes to calculate the credit equivalent amount and maximum potential exposure (as defined in §§ 240.17i–7(c)(1)(i) and 240.17i–7(c)(1)(i)(E), respectively);

(x) A description of how the investment bank holding company proposes to calculate credit risk weights and internal credit ratings, if applicable;

(xi) A description of the method the investment bank holding company proposes to use to calculate its allowance for operational risk pursuant to § 240.17i–7(d);

(xii) A comprehensive description of the internal risk management control system the investment bank holding company has established to manage the risks of the affiliate group, including market, credit, leverage, liquidity, legal, and operational risks, and how that system satisfies the requirements of § 240.17i–4;

(xiii) Sample risk reports the supervised investment bank holding company regularly provides to the persons responsible for managing risk for the affiliate group that the investment bank holding company proposes to provide to the Commission pursuant to § 240.17i–6(a)(1)(iv);

(xiv) A written undertaking, in a form acceptable to the Commission and signed by a duly authorized person, that provides that if the disclosure of any information with regard to §§ 240.17i–1 through 240.17i–8 would be prohibited by law or otherwise, the supervised investment bank holding company will cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the supervised investment bank holding company or any material affiliate from providing information on its operations or activities and by discussing the manner in which the supervised investment bank holding company proposes to provide the Commission with adequate assurances of access to information; and

(xv) Any other information or documents relating to the investment bank holding company's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships among members of the affiliate group that the Commission may request to complete its review of the notice of intention.

(c) *Amendments to the notice of intention.*

(1) *Prior to a Commission determination.* If any of the information filed with the Commission as part of the notice of intention described in paragraph (b) of this section is found to be or becomes inaccurate before the Commission makes a determination, the investment bank holding company must promptly notify the Commission and provide the Commission with a description of the circumstances in which the information was found to be or has become inaccurate along with updated, accurate information.

(2) *Subsequent to a Commission determination.* A supervised investment bank holding company must amend and resubmit to the Commission its notice of intention, and obtain Commission approval of the amendment, as set forth in paragraph (d)(2)(ii) of this section, before it may make a material change to a mathematical model or other method used to compute allowable capital or allowance for market, credit, or operational risk, or its internal risk management control systems as described in its notice of intention, as modified from time to time.

(d) *Process for review of notice of intention.*

(1) *When filed.* A notice of intention to be supervised by the Commission as a supervised investment bank holding company and any amendments thereto shall not be complete until the investment bank holding company has filed with the Commission all the documentation and information specified in this section. The notice of intention, and any amendments thereto, shall be considered filed when received at the Office of the Secretary at the Commission's principal office in Washington DC. All notices of intention, amendments thereto, and other information filed in connection with the notice of intention shall be accorded confidential treatment to the extent permitted by law.

(2) *Commission determination.*

(i) An investment bank holding company shall become a supervised investment bank holding company pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)) 45 calendar days after the Commission receives a completed notice of intention to be supervised by the Commission as a supervised investment bank holding company pursuant to paragraph (a) of this section, unless the Commission issues an order determining either that:

(A) The Commission will begin to supervise the investment bank holding company prior to 45 calendar days after the Commission receives the completed notice of intention; or

(B) The Commission will not supervise the investment bank holding company because supervision of the investment bank holding company as a supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q). In addition, the Commission will not consider such supervision necessary or appropriate unless the investment bank holding company demonstrates that it owns or controls a broker or dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker or dealer maintains tentative net capital of $100 million or more.

(ii) The Commission, upon receipt of an amendment to the notice of intention submitted by a supervised investment bank holding company pursuant to paragraph (c)(2) of this section, may approve the amendment after reviewing the amended notice of intention to determine whether the amendment is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

§ 240.17i–3. Withdrawal from supervision by the Commission as a supervised investment bank holding company.

(a) A supervised investment bank holding company may withdraw from supervision by the Commission as a supervised investment bank holding company by filing a notice of withdrawal with the Commission. The notice of withdrawal shall include a statement regarding whether the supervised investment bank holding company is in compliance with § 240.17i–2(c).

(b) A notice of withdrawal from supervision as a supervised investment bank holding company shall become effective one year after it is filed with the Commission, unless the Commission issues an order determining that it is necessary or appropriate for the Commission to terminate its supervision of the supervised investment bank holding company within a shorter or longer period to help ensure effective supervision of the material risks to the supervised investment bank holding company and to any associated person of the supervised investment bank holding company that is a broker or dealer, or to prevent evasion of the purposes of section 17 of the Act (15 U.S.C. 78q).

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission, by order, may discontinue supervision of any supervised investment bank holding company if the Commission finds that:

(1) The supervised investment bank holding company is no longer in existence;

(2) The supervised investment bank holding company has ceased to be an investment bank holding company; or

(3) Continued supervision by the Commission of the supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

§ 240.17i–4. Internal risk management control system requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall comply with § 240.15c3–4 as though it were an OTC derivatives dealer with respect to all of its business activities, except paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) will not apply; and

(b) As part of its internal risk management control system, a supervised investment bank holding company must establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing.

§ 240.17i–5. Record creation, maintenance, and access requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall make and keep current the following records:

(1) A record reflecting the results of stress tests, conducted by the supervised investment bank holding company at least once each quarter, of the affiliate group's funding and liquidity with respect to the following events:

(i) A credit rating downgrade of the supervised investment bank holding company;

(ii) An inability of the supervised investment bank holding company to access capital markets for unsecured short-term funding;

(iii) An inability of the supervised investment bank holding company to move liquid assets across international borders when the events described in paragraphs (a)(1)(i) or (ii) of this section occur; and

(iv) An inability of the supervised investment bank holding company to access credit or assets held at a particular institution when the events described in paragraphs (a)(1)(i) or (ii) of this section occur;

(2) The supervised investment bank holding company's contingency plan to respond to the events outlined in paragraphs (a)(1)(i) through (iv) of this section;

(3) A record of the basis for the determination of the credit risk weight and internal credit rating, if applicable, for each counterparty; and

(4) A record of the calculations of allowable capital and allowances for market, credit, and operational risk computed currently at least once each month on a consolidated basis.

(b) Except as provided in paragraph (c) of this section, the supervised investment bank holding company shall preserve for a period of not less than three years in an easily accessible place using any storage media acceptable under § 240.17a–4(f):

(1) The documents created in accordance with paragraph (a) of this section;

(2) All notices of intention, amendments thereto, and other documentation and information filed with the Commission pursuant to § 240.17i–2, and any responses thereto;

(3) All reports and notices filed by the supervised investment bank holding company pursuant to § 240.17i–6;

(4) All notices filed by the supervised investment bank holding company pursuant to § 240.17i–8; and

(5) Records documenting the system of internal risk management controls required to be established pursuant to § 240.17i–4, including written guidelines, policies, and procedures.

(c) A supervised investment bank holding company may maintain the records specified in paragraph (b) of this section either at the supervised investment bank holding company, at an affiliate, or at a records storage facility, provided that the records are located within the United States. If the records are maintained by an entity other than the supervised investment bank holding company, the supervised investment bank holding company shall file with the Commission a written undertaking in a form acceptable to the Commission from the entity, signed by a duly authorized person at the entity maintaining the records, to the effect that the records will be treated as if the supervised investment bank holding company were maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of those records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee a true, correct, complete and current copy of all or any part of those records in paper, or electronically if the records are stored electronically, as specified by the Commission's representative or designee. The election to store records pursuant to the provisions of this paragraph (c) shall not relieve the supervised investment bank holding company from any of its responsibilities under this section or § 240.17i–6.

(d) All information created pursuant to this section and obtained by the Commission from the supervised investment bank holding company shall be accorded confidential treatment to the extent permitted by law.

§ 240.17i–6. Reporting requirements for supervised investment bank holding companies.

(a) *Monthly and quarterly reports.* The supervised investment bank holding company shall file:

(1) A report as of the end of each month, filed not later than 30 calendar days after the end of the month, *Except that* the monthly report need not be filed for a month-end that coincides with a fiscal quarter-end. The monthly report shall include:

(i) A consolidated balance sheet and income statement (including notes to the financial statements) and statements of allowable capital and allowances for market, credit, and operational risk computed pursuant to § 240.17i–7 for the affiliate group, *Except that* the consolidated balance sheet and income statement for the first month of the fiscal year may be filed at a time to which the Commission agrees (when making a determination pursuant to § 240.17i–2(d)(2));

(ii) A graph reflecting, for each business line, the daily intra-month Value at Risk;

(iii) Consolidated credit risk information, including:

(A) Aggregate current exposure and current exposures (including commitments) for the 15 largest exposures listed by counterparty;

(B) Aggregate maximum potential exposure and maximum potential exposures for the 15 largest exposures listed by counterparty; and

(C) A summary report reflecting the geographic distribution of the supervised investment bank holding company's exposures, on a consolidated basis, for each of the top ten countries to which it is exposed (by residence of the main operating group of the counterparty); and

(iv) Certain risk reports the supervised investment bank holding company regularly provides to the persons responsible for managing risk for the affiliate group that the Commission may request from time to time.

(2) A report as of the end of each fiscal quarter, filed not later than 35 calendar days after the end of the quarter, which shall include (except as provided in paragraph (a)(3) below):

(i) The information contained in the monthly report, as set forth in paragraph (1) above;

(ii) A consolidating balance sheet and income statement for the affiliate group,

which shall break out information regarding each material affiliate into separate columns, but may consolidate information regarding affiliate group entities that are not material affiliates into one column;

(iii) The results of backtesting of all models used to compute allowable capital and allowances for market and credit risk indicating, for each model, the number of backtesting exceptions;

(iv) A description of all material pending legal or arbitration proceedings involving the supervised investment bank holding company or any member of the affiliate group that are required to be disclosed by the supervised investment bank holding company under generally accepted accounting principles; and

(v) The aggregate amount of unsecured borrowings and lines of credit, segregated into categories, scheduled to mature within twelve months from the most recent fiscal quarter as to each material affiliate.

(3) For a quarter-end that coincides with the supervised investment bank holding company's fiscal year-end, the supervised investment bank holding company need not include in its filing consolidated and consolidating balance sheets and income statements.

(b) *Organizational chart.* The supervised investment holding company shall file, concurrently with its quarterly report for the quarter-end that coincides with the supervised investment bank holding company's fiscal year-end, an organizational chart, as of the investment bank holding company's fiscal year end. Quarterly updates should be provided where a material change in the information provided to the Commission has occurred.

(c) *Additional reports.* Upon receiving notice from the Commission, the supervised investment bank holding company shall file other information as the Commission may request in order to monitor the supervised investment bank holding company's financial or operational condition, risk management system, and transactions and relationships among members of the affiliate group.

(d) *Annual audit report.*

(1) A supervised investment bank holding company shall file an annual audit report as of the end of the supervised investment bank holding company's fiscal year, that includes:

(i) Consolidated financial statements (including notes to the financial statements) for the supervised investment bank holding company. The audited financial statements must include a supporting schedule containing statements of allowable capital and allowances for market, credit and operational risk computed in accordance with § 240.17i–7. The audit must be conducted by a registered public accounting firm (as that term is defined at 15 U.S.C. 7201(a)(12)) in accordance the rules promulgated by the Public Company Accounting Oversight Board; and

(ii) A supplemental report entitled "Accountant's Report on Internal Risk Management Control System" prepared by the registered public accounting firm (as that term is defined at 15 U.S.C. 7201(a)(12)) indicating the results of the accountant's review of the internal risk management control system established and documented by the supervised investment bank holding company in accordance with § 240.17i–4 and utilized by the affiliate group. This review must be conducted by the accountant in accordance with procedures agreed to by the supervised investment bank holding company and the accountant conducting the review. The agreed-upon procedures are to be performed and the report is to be prepared in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the internal risk management control system complies with the requirements of § 240.17i–4 and that the supervised investment bank holding company and its affiliate group are adhering to the requirements of that internal risk management control system. The supervised investment bank holding company must file, prior to the commencement of the review, the procedures for conducting the audit agreed to by the supervised investment bank holding company and the accountant (pursuant to paragraph (d)(1) of this section). Prior to the commencement of each subsequent review, the supervised investment bank holding company shall file with the Commission a notice of any changes to the agreed-upon procedures.

(2) Annual audit reports prepared pursuant to this paragraph (d) shall be prepared as of the same date as the annual audit of the supervised investment bank holding company's affiliated broker or dealer.

(3) Annual audit reports prepared pursuant to this paragraph (d) shall be filed not later than 65 calendar days after the end of the fiscal year.

(e) *Consolidating Balance Sheet and Income Statement.* The supervised investment bank holding company shall file, concurrently with the annual audit report, an unaudited consolidating balance sheet and income statement, as of the supervised investment bank holding company's fiscal year-end, for the affiliate group.

(f) *Extensions and exemptions.* Upon the written request of the supervised investment bank holding company, or on its own motion, the Commission may conditionally or unconditionally grant or deny an extension of time or an exemption from any of the requirements of paragraphs (a) through (e) of this section to the extent that such exemption or extension of time is necessary or appropriate in the public interest or for the protection of investors.

(g) *When filed.* The reports required to be filed pursuant to this section shall be considered filed when two copies are received at the Commission's principal office in Washington, DC. The copies shall be addressed to the Division of Market Regulation, Office of Financial Responsibility.

(h) *Confidentiality.* All reports and statements filed by the supervised investment bank holding company with the Commission pursuant to this section shall be accorded confidential treatment to the extent permitted by law.

§ 240.17i–7. Calculations of allowable capital and risk allowances or alternative capital assessment.

(a) *Computation of allowable capital.* The supervised investment bank holding company must compute allowable capital on a consolidated basis as the aggregate of the following:

(1) Common shareholders' equity on the consolidated balance sheet of the supervised investment bank holding company less:

(i) Goodwill;

(ii) Deferred tax assets, except those permitted for inclusion in Tier 1 capital by the Board of Governors of the Federal Reserve (12 CFR 225, Appendix A);

(iii) Other intangible assets; and

(iv) Other deductions from common stockholders' equity as required by the Board of Governors of the Federal Reserve in calculating Tier 1 capital (as defined in 12 CFR 225, Appendix A).

(2) Cumulative and non-cumulative preferred stock, except that the amount of cumulative preferred stock may not exceed 33% of the items included in allowable capital pursuant to paragraph (a)(1) of this section, excluding cumulative preferred stock, provided that:

(i) The stock does not have a maturity date;

(ii) The stock cannot be redeemed at the option of the holder of the instrument;

(iii) The stock has no other provisions that will require future redemption of the issue; and

(iv) The issuer of the stock can defer or eliminate dividends; and

(3) The sum of the following items on the consolidated balance sheet, to the extent that sum does not exceed the sum of the items included in allowable capital pursuant to paragraphs (a)(1) and (a)(2) of this section:

(i) Cumulative preferred stock in excess of the 33% limit specified in paragraph (a)(2) and subject to the conditions of paragraphs (a)(2)(i) through (iv) of this section;

(ii) Subordinated debt if the original weighted average maturity of the subordinated debt is at least five years; each subordinated debt instrument states clearly on its face that repayment of the debt is not protected by any Federal agency or the Securities Investor Protection Corporation; the subordinated debt is unsecured and subordinated in right of payment to all senior indebtedness of the holding company; and the subordinated debt instrument permits acceleration only in the event of bankruptcy or reorganization of the holding company under Chapters 7 (liquidation) (11 U.S.C. 7) and 11 (reorganization) (11 U.S.C. 11) of the U.S. Bankruptcy Code; and

(iii) As part of the investment bank holding company's notice of intention, the investment bank holding company may request to include, for a period of three years after the adoption of this Rule (or such other period as the Commission may approve) long-term debt that has an original weighted average maturity of at least five years and that cannot be accelerated, except upon the occurrence of certain events as the Commission may approve. As part of an amendment to the investment bank holding company's notice of intention, the supervised investment bank holding company may request permission to include long-term debt that meets these criteria in allowable capital for an additional two years; and

(4) Hybrid capital instruments that are permitted for inclusion in Tier 2 capital by the Board of Governors of the Federal Reserve (12 CFR 225, Appendix A).

(b) *Allowance for market risk.* The supervised investment bank holding company must compute an allowance for market risk on a consolidated basis for all proprietary positions, including debt instruments, equity instruments, commodity instruments, foreign exchange contracts, and derivative contracts as the aggregate of the following:

(1) *Value at risk.* The Value at Risk measures obtained by applying one or more approved Value at Risk models to each position and multiplying the result by the appropriate multiplication factor. Each Value at Risk model shall meet the applicable qualitative and quantitative requirements set forth in § 240.15c3–1e(d); and

(2) *Alternative method.* For each position for which there is not adequate historical data to support a Value at Risk model, the measure obtained by computing the allowance for market risk using a method described in the supervised investment bank holding company's notice of intention that produces a suitable allowance for market risk for those positions.

(c) *Allowance for credit risk.* The supervised investment bank holding company must compute an allowance for credit risk for certain assets on the consolidated balance sheet and certain off-balance sheet items, including loans and loan commitments, exposures due to derivatives contracts, structured financial products, other extensions of credit, and credit substitutes in as follows:

(1) By multiplying the credit equivalent amount of the supervised investment bank holding company's exposure to the counterparty, as determined according to sub-paragraph (c)(1)(i) below, by the appropriate credit risk weight of the asset or off-balance sheet item or counterparty, as determined according to sub-paragraph (c)(1)(ii) below, then multiplying the product by 8%, in accordance with the following:

(i) *Credit equivalent amount:*

(A) *Certain loans and loan commitments receivable.* The credit equivalent amount for exposures relating to certain loans and loan commitments is determined by multiplying the nominal amount of the contract by the following credit conversion factors:

(*1*) 0% credit conversion factor for loan commitments that:

(*i*) May be unconditionally cancelled by the lender; or

(*ii*) May be cancelled by the lender due to credit deterioration of the borrower;

(*2*) 20% credit conversion factor for:

(*i*) Loan commitments of less than one year; or

(*ii*) Short term self-liquidating trade related contingencies, including letters of credit;

(*3*) 50% credit conversion factor for loan commitments with an original maturity of greater than one year that contain transaction contingencies, including performance bonds, revolving underwriting facilities, note issuance facilities and bid bonds; and

(*4*) 100% credit conversion factor for loans and bankers' acceptances, stand-by letters of credit, and forward purchases of assets, and similar direct credit substitutes;

(B) *Receivables relating to derivative contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions.* The credit equivalent amount for exposures relating to derivative contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions is the sum of:

(*1*) The supervised investment bank holding company's current exposure to the counterparty (as defined in paragraph (c)(1)(i)(D) of this section); and

(*2*) The supervised investment bank holding company's maximum potential exposure to the counterparty (as defined in paragraph (c)(1)(i)(E) of this section) multiplied by the appropriate multiplication factor. The initial multiplication factor shall be one, unless the Commission determines pursuant to § 240.17i–2(d)(2), based on a review of the supervised investment bank holding company's internal risk management control system and practices, including a review of the Value at Risk model used to determine maximum potential exposure, that another multiplication factor is appropriate;

(C) *Credit equivalent amount for other assets.* The credit equivalent amount for other assets shall be the book value of the exposure on the supervised investment bank holding company's consolidated balance sheet or other amount as determined according to the standards published by the Basel Committee on Banking Supervision, as amended from time to time;

(D) The *current exposure* is the current replacement value of a counterparty's positions, after applying the effect of netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(c)(4)(iv) and taking into account the value of collateral from the counterparty in accordance with § 240.15c3–1e(c)(4)(v);

(E) The *maximum potential exposure* is the Value at Risk of the counterparty's positions with the member of the affiliate group, after applying netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(c)(4)(iv) and taking into account the value of collateral from the counterparty in accordance with § 240.15c3–1e(c)(4)(v)) obtained using a Value at Risk model that meets the applicable requirements of § 240.15c3–1e(d) and the current replacement value of the counterparty's positions with the

member of the affiliate group, *Except that* for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, maximum potential exposure shall be calculated using a time horizon of not less than five days;

(ii) *Credit risk weights.*

(A) *General.* The credit risk weights that shall be applied to certain assets and counterparties shall be determined according to standards published by the Basel Committee on Banking Supervision, as modified from time to time;

(B) *Receivables covered by guarantees.* For the portion of a current exposure covered by a written guarantee, where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the supervised investment bank holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts, the supervised investment bank holding company or member of the affiliate group may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty; and

(iii) *Credit derivatives.* Upon a determination by the Commission pursuant to § 240.17i–2(d), the supervised investment bank holding company may use credit derivatives to reduce its allowance for credit risk; or

(2) Upon a determination by the Commission pursuant to § 240.17i–2(d), using a calculation consistent with standards published by the Basel Committee on Banking Supervision in International Convergence of Capital Measurement and Capital Standards (July 1988), as modified from time to time;

(d) *Allowance for operational risk.* A supervised investment bank holding company shall compute an allowance for operational risk on a consolidated basis in accordance with the standards published by the Basel Committee on Banking Supervision, as amended from time to time.

§ 240.17i–8. Notification provisions for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall send notice promptly (but within 24 hours), in accordance with paragraph (c) of this section, after the occurrence of the following events:

(1) The occurrence of any backtesting exception, determined in accordance with § 240.15c3–1e(d)(1)(iii) or (iv), that would require that the supervised investment bank holding company use a higher multiplication factor in the calculation of its allowances for market or credit risk;

(2) The early warning indications of low capital as the Commission may agree;

(3) A material affiliate declares bankruptcy or otherwise becomes insolvent;

(4) The supervised investment bank holding company becomes aware that a nationally recognized statistical rating organization has determined to reduce materially its assessment of the creditworthiness of a material affiliate or the credit rating(s) assigned to one or more outstanding short or long-term obligations of an material affiliate;

(5) The supervised investment bank holding company files a Form 8–K (§ 249.308) with the Commission;

(6) The supervised investment bank holding company becomes aware that any financial regulatory agency or self-regulatory organization has taken significant enforcement or regulatory action against a material affiliate; or

(7) The supervised investment bank holding company becomes ineligible to be supervised by the Commission as a supervised investment bank holding company.

(c) Every notice required to be given or transmitted pursuant to this section shall be given or transmitted by telegraphic notice or facsimile transmission to the Division of Market Regulation, Office of Financial Responsibility at the principal office of the Commission in Washington, DC. The notices filed under this section shall be accorded confidential treatment to the extent permitted by law.

(d) Upon the written request of the supervised investment bank holding company, or on its own motion, the Commission may conditionally or unconditionally grant or deny an extension of time or an exemption from any of the requirements of this Rule 17i–8 to the extent that such exemption or extension of time is necessary or appropriate in the public interest or for the protection of investors.

Dated: June 8, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13413 Filed 6–18–04; 8:45 am]

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June 21, 2004

Part III

Department of Agriculture

Commodity Credit Corporation
National Resources Conservation Service

7 CFR Part 1469
Conservation Security Program; Interim Final Rule and Notice

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1469

RIN 0578–AA36

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document establishes regulations to govern activities under the Conservation Security Program (CSP) which is administered by the Natural Resources Conservation Service (NRCS). The CSP sets forth a mechanism to provide financial and technical assistance to agricultural producers who, in accordance with certain requirements, conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. The CSP regulations implement provisions of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our nation.

DATES: Effective June 21, 2004. Comments must be received by September 20, 2004.

ADDRESSES: Send comments by mail to Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to *FarmBillRules@usda.gov*; Attn: Conservation Security Program. You may access this interim final rule via the Internet through the NRCS homepage at *http://www.nrcs.usda.gov*. Select "Farm Bill. The rule may also be reviewed and comments submitted via the Federal Government's centralized rulemaking Web site at *http://www.regulations.gov*."

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@usda.gov*, Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION: Based on an advance notice of proposed rulemaking which was published in the **Federal Register** on February 18, 2003 (68 FR 7720), information submitted in public workshops and focus groups, a proposed rule published in the **Federal Register** on January 2, 2004 (69 FR 194), setting forth the agency's vision of how to implement the CSP, and a number of public listening sessions, this document establishes regulations to govern activities under the CSP.

The CSP is a voluntary program administered by NRCS, using the authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation.

The CSP regulations implement provisions set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, as amended by the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002, Public Law 107–171 and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our nation.

NRCS responded in the notice of proposed rulemaking to the comments submitted in response to the advance notice of proposed rulemaking and to the information submitted in public workshops and focus groups. For the proposed rule, we provided a 60 day comment period that ended March 2, 2004. We received more than 10,000 separate written responses containing over 20,000 specific comments were received: 9,638 comments were from farmers, ranchers, and other individuals, 253 from non-governmental organizations, 27 from businesses, and 128 from state, local, and tribal governments. Over 700 oral comments were received from the 10 Nationally-sponsored CSP listening sessions. Several other listening sessions were held and those comments were considered in the written responses. We discuss below the significant issues raised in response to the proposed rule, including the written responses and the oral submissions at the public listening sessions. Based on the rationale set forth in the proposed rule and this rule, we are adopting the provisions of the proposed rule as a interim final rule, except for certain changes as discussed below.

Additional responses were received from Federal agencies and employees; their comments are not included in the following analysis of public comments. These responses were treated as inter- and intra-agency comments and considered along with the public comments, where appropriate. There were also comments related to the statute, the budget, and other areas of concern outside the purview of this rulemaking that are not discussed here.

Discussion of the Conservation Security Program Interim Final Rule

Overview

CSP helps support those farmers and ranchers who reach the pinnacle of good land stewardship, and encourage others to enhance the ongoing production of clean water and clean air on their farms and ranches—which are valuable commodities to all Americans.

The interim final rule promulgates the proposed rule published January 2, 2004, as interim final with several significant additions and changes. As discussed in a notice published on May 4, 2004 (69 FR 24560), NRCS determined that the interim final rule would contain two key eligibility provisions of the proposed rule: the watershed approach and enrollment categories. Prompt use of these elements provides a practical means of implementing the program in FY 2004 and staying within the statutory funding and technical assistance constraints. Without moving expeditiously to establish the processes for identifying and utilizing priority watersheds and enrollment categories, the CSP would not be implemented in the current fiscal year. Notwithstanding the adoption of these elements for FY 2004, this interim final rule provides notice and opportunity for comment on the processes for establishment of priority watersheds and the enrollment categories for use in administering the CSP for FY 2005 and future years.

Congress authorized $41.443 million to be available to implement CSP in FY 2004. NRCS needs to obligate these funds by September 30, 2004. Given the time-frame established by the authorization of funds, NRCS must have its framework for implementation of CSP available immediately. While NRCS has considered the comments in response to the proposed rule and will respond to further comments on its interim final rule, NRCS believes that the public interest will best be served if CSP can be implemented this fiscal year under the basic framework set forth in its proposed rule.

This interim final rule sets forth the manner in which NRCS will operate the CSP. As noted in one public response, "The proposed rule was designed to manage budget exposure and participation under the constraints of a severely capped entitlement program and enable eventual implementation of the fully functioning stewardship-based entitlement program." This interim final rule reflects the authority of the Secretary to set criteria, standards, and priorities for annual sign-ups in order to match participation with available technical and financial resources, and achieve an orderly and effective ramp up to full implementation of CSP. Environmental performance, priorities for CSP and programmatic costs will be effectively managed through criteria established for general sign-ups in priority watersheds. Ramping up CSP as quickly as possible while preserving its integrity as a novel approach of integrating environmental performance while rewarding stewards were the primary considerations that guided rulemaking.

In developing this interim final rule, NRCS carefully considered its experience with conservation programs and the public comments it received. CSP raises policy issues that are not usually addressed in other conservation programs. This interim final rule lays out the approach NRCS believes will best achieve the statutory objectives and responds to the suggestions from the public. Several policy decisions established in the rule are highlighted in this preamble for further public comment, but NRCS is seeking comment on all aspects of this rule.

General Comments on 7 CFR Part 1469

Overall, almost all respondents expressed appreciation for the opportunity to comment on the CSP proposed rule and general support for CSP. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule, as well as specifics related to managing the program which have been incorporated into the CSP manual and operating handbooks. Some of these suggestions were group efforts, in that numerous individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule. There were thousands of responses that commented on the underlying statutory authority itself and other matters outside the control of NRCS and, thus, the scope of the rule, *e.g.*, some expressed concern about the budget.

The majority of comments centered on six major issues in the proposed rule: (1) The Administration's response to legislative intent; (2) the watershed approach and enrollment categories ; (3) the minimum stewardship eligibility requirements; (4) the funding and payment rates; (5) the definition of agricultural operation; and (6) locally led conservation. These comments were considered as part of the rulemaking record to the extent that they were relevant to the objectives of the rulemaking. Numerous minor editorial and other language clarification changes were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes are included in the interim final rule. Comments on other issues are discussed in the Summary of Provisions. As appropriate, public comments and recommendations have been incorporated in the interim final rule or will be included in program guidance and delivery activities.

1. The Administration's Response to Legislative Intent

Limiting Payments

As discussed in the proposed rule, the CSP, as originally enacted, was an entitlement program where many producers would have received payments if they met certain eligibility criteria. The Administration designed this new conservation entitlement program with a cap on its total expenditures over multiple years because, subsequent to the enactment of the CSP, the Consolidated Appropriations Resolution of 2003 amended the Act to limit CSP's total expenditures to a total of $3.77 billion over eleven years, fiscal year (FY) 2003 through FY 2013. In the proposed rule, NRCS outlined the mechanisms to address a capped entitlement program and still deliver an effective CSP program. The Omnibus Appropriations Act for FY 2004, signed January 23, 2004, removed the $3.77 billion funding limitation for the program over eleven years, but also instituted a cap for FY 2004 of $41.443 million, keeping CSP as a capped entitlement program for that year. The President's budget, released February 2, 2004, in effect focused CSP's activities and benefits in high-priority regions that meet the environmental and philosophical goals of the program.

The CSP statutory provisions were written without a specific mechanism for limiting payments if the program were only partially funded. With a cap of $41.443 million for FY 2004, this interim final rule adopts provisions of the proposed rule setting forth a mechanism for limiting payments for those years when the CSP is only partially funded. In this regard, the interim final rule includes provisions to:

- Limit the sign-up periods.
- Limit participation to priority watersheds.
- Limit participation to certain enrollment categories.
- Reduce stewardship (base) payments by applying a reduction factor.
- Limit the number and type of existing and new practice payments.

Many commenters asserted that the proposed rule did not meet the intent of Congress or the law. They suggested that CSP should not adopt any provisions that would establish a mechanism for responding to partial funding because the CSP should have full funding. In light of the congressional cap on spending in FY 2004 and the President's 2005 Budget request, NRCS established a priority mechanism in order to most effectively administer the CSP. This interim final rule allows the flexibility to conduct any CSP sign-up in an appropriate number of watersheds and enrollment categories according to the program's funding status at the time of sign-up. Since the CSP statutory funding was adjusted three times in twenty months, there is a need to allow for regulatory flexibility to operate the program. The alternative would be to change the rule each time Congress makes an adjustment to CSP funding. Further, NRCS believes that each of the limiting factors will help create the appropriate balance between allowing the largest number of participants and yet providing meaningful payments.

The limitation in the interim final rule concerning stewardship (base) payments is different from that set forth in the proposed rule. The proposed rule provided that we would reduce base payments, now termed "stewardship payments", for all three tiers by applying a 0.1 reduction factor. In the interim final rule, the stewardship rate for Tier I is reduced to 0.25, the stewardship rate for Tier II is reduced to 0.50, and the stewardship rate for Tier III is reduced to 0.75. We chose these percentages for two reasons. First, this will provide incentives for producers to move to a higher Tier which provides significantly greater environmental benefits. Second, the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate with the payment scheme.

Commenters asserted that rather than prorate funding, a better approach may be to hold the remaining funds for a

future sign-up. Other commenters asserted that this year's limited funding should be used to develop implementation strategy and capability instead of launching a scaled down program. We made no changes based on these comments. Congress intended that NRCS expend or obligate the funds in FY 2004 for establishing CSP contracts with participants. NRCS has no authority to carry CSP funds into the next fiscal year and funds not expended or obligated will be returned to the Treasury.

Commenters asserted that NRCS should extend contracts to the maximum amount of participation for each sign-up by allocating limited funding, if necessary, based on the annual contract amount rather than the life of contract amount. We made no changes based on these comments. CSP funding already operates in the manner suggested by the comment.

Commenters asserted that producers should be accepted into the CSP without having accepted a conservation security plan, but funding should be withheld until a security conservation plan is accepted. We made no changes based on these comments. We would be unable to make determinations regarding the adequacy of the applicant's conservation performance and therefore eligibility for enrollment into the CSP without the submission of a conservation security plan.

Commenters asserted that in times of less than full funding NRCS should give priority to Tier III over Tier II and give priority to Tier II over Tier I. We made no changes based on these comments. The statute provides no authority for prioritizing one Tier over another and requires that the program offer all three Tiers for participation.

2. The Watershed Approach and Enrollment Categories

The Watershed Approach

In the proposed rule, NRCS stated that it would use watersheds as a mechanism for focusing CSP participation. NRCS would nationally rank watersheds to focus on conservation and environmental quality concerns based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Watersheds ranked for potential CSP enrollment would then be announced in the sign-up notice. Once the highest ranked watershed's applications were funded, the next watershed would be funded, *etc.* Funding would be distributed to each priority watershed to fund sub-categories until it was exhausted.

In order to be able to implement CSP in FY 2004, NRCS announced, in a notice to the **Federal Register**, dated May 4, 2004 (69 FR 24560), its decision to use priority watersheds and enrollment categories for operating the program for the current fiscal year. The authority for the use of priority watersheds and enrollment categories is the authority to determine the conservation purposes for which assistance for conservation and improvement are to be provided under CSP—16 U.S.C. 3838A(a).

The May 4 document and a copy of the enrollment category chart can be found on the Web at *http://www.nrcs.usda.gov/programs/ csp.*

The interim final rule includes a process to select the priority watersheds and includes specific enrollment categories for identifying, classifying, and prioritizing contracts to be funded. As discussed below, NRCS will use similar provisions regarding watersheds and enrollment categories for FY 2004. NRCS will not rank selected watersheds for funding purposes, but rather provide funding to producers in all selected watersheds in the order established through the enrollment categories. However, NRCS is requesting comments on the process to select the priority watersheds and on the specific enrollment categories for identifying, classifying, and prioritizing contracts to be funded. NRCS will consider the comments and may make appropriate changes for future years.

In the proposed rule, NRCS also asked for ideas for program delivery as alternatives to its "preferred approach and the listed alternatives." These comments are also addressed below.

Commenters asserted that priority should be given to those with the highest number of enhancement activities. We made no changes based on these comments. This would be inconsistent with the statutory scheme regarding the ranking of applications.

Commenters asserted that the CSP process constitutes competitive bidding. We made no changes based on these comments. We are not implementing a competitive process. We are merely implementing the statutory scheme of providing payments for those meeting specified criteria, so as to stay within the budgetary and technical assistance limits explained below.

NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agriculture activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to: The potential of surface and ground water quality to degradation; the potential of soil to degradation; the potential of grazing land to degradation; state or national conservation and environmental issues *i.e.*, location of air non-attainment zones or important wildlife habitat; and local availability of management tools needed to more efficiently operate the program. The number and location of eligible watersheds will be announced and identified prior to the sign-up.

Commenters made a number of suggestions regarding the establishment of priority watersheds, including the following:

- Use objective criteria to prioritize watersheds.
- Give priority to watersheds in good condition.
- Give priority to watersheds in bad condition (such as watersheds with the most sediment and/or water quality concerns or watersheds with water quality impairments resulting from agricultural activities).
- Give priority to areas where producers are prepared to participate in significant numbers.
- Give priority to areas that provide the drinking water supply.
- Ensure that environmental performance, evaluation and accountability be established in advance, be consistent with land use, and be consistent with other agencies' initiatives.

Based on the projection from the President's budget, the selection of the watershed priorities would put all watersheds on a multi-year rotation for CSP sign-up. Only producers with a majority of their agricultural operation located within those watersheds would be eligible for a given sign-up.

Commenters asserted that the watershed priority system should be deleted and instead NRCS should fund only those agricultural operations that already meet the highest conservation standards, such as those eligible for Tier III payments. Other commenters asserted that the watershed priority system should be deleted, and instead, NRCS should fund only those who do not yet meet high standards but strive to do so. Commenters further asserted that instead of the priority watershed approach, NRCS should select one farm from every watershed, select one farm from each county, select farms based on a lottery system, select farms based on a first-come first-serve approach, and select all farms in non priority watersheds. We made no changes based on these comments. By statute, the cost

of technical assistance is limited to 15 percent of the total funds expended in a fiscal year. It is not feasible to conduct a nationwide sign-up for any purpose because the technical assistance cost would far exceed the 15 percent cap.

NRCS responded by determining that even though the comments were overwhelmingly negative regarding the watersheds and enrollment categories, it had no choice but to implement the program in this manner. Two key considerations provide the basis of a watershed focus to the CSP program. The first is to ensure that CSP's limited resources are focused first on the most achievable environmental performance areas. The second is management constraints based on the statutory limit on technical assistance. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the funds expended in a fiscal year. NRCS expects that a large number of producers will seek participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus, the statutory cap on technical assistance of 15 percent becomes a primary limiting factor for implementing CSP.

Given capped spending authority in FY 2004, and as proposed in the President's 2005 Budget, the Administration wants to focus CSP's activities and benefits in high-priority regions that meet the environmental and philosophical goals of the program. Using watersheds allows for improved watershed-scale planning, program execution, and monitoring and evaluation of results, creating a first-of-its-kind conservation program.

Watersheds form discrete natural spatial units. Using watersheds to narrow program participation and assistance will enhance the evaluation of producers' stewardship efforts. Watersheds will reflect the environmental progress we expect from CSP in ways we couldn't expect from working along county or state lines. NRCS expects that the selection of different watersheds for each sign-up will result in every farmer and rancher being potentially eligible for CSP over the rotation. No qualifying producer will be left out. A watershed rotation reduces the administrative burden on applicants while it reduces the technical assistance costs associated with NRCS and its technical service providers processing a large number of applications that cannot be funded.

Rotating the watersheds allows producers to plan and prepare for CSP participation in future sign-ups. The watershed approach allows NRCS to focus finite resources on areas with both a documented need for resource enhancement and a strong stewardship tradition. For producers in a selected watershed, this approach means better service when applying, and a higher chance of getting selected. For producers not yet in a selected watershed it means time to improve conservation performance through access to other Farm Bill programs and access to technical service from agency personnel unencumbered by CSP responsibilities. The CSP self-assessment exercise will allow producers to assess their conservation performance for the CSP sign-up and allow for management concerns to be addressed.

The staged implementation will allow Agency personnel to refine, streamline, and perfect application procedures as well as self-assessment and self-screening processes.

We believe that this is the best alternative to meet goals that we believe that must be met for FY 2004, *i.e.*, help ensure that we select watersheds with a demonstrated effort to apply conservation measures, with identifiable needs, and with circumstances that allow NRCS the opportunity to successfully implement the CSP in the remaining time in FY 2004.

By concentrating participation for each sign-up for CSP in specific watersheds and addressing priority resource concerns, NRCS will be better able to provide high quality technical assistance, adapt new technology tools, and assessment techniques to critically evaluate the program. Additionally, NRCS will have the opportunity to evaluate the effectiveness of the treatment in an established geographic context where it will be more practical and reasonable to relate to environmental performance.

Commenters asserted that the watershed priority system should be deleted and instead NRCS should fund only those agricultural operations that already meet the highest conservation standards, such as those eligible for Tier III payments. Other commenters asserted that the watershed priority system should be deleted, and instead, NRCS should fund only those who do not yet meet high standards but strive to do so. Commenters also suggested that instead of the priority watershed approach, NRCS should select one farm from every watershed, select one farm from each county, select farms based on a lottery system, select farms based on a first-come first-serve approach, and select all farms in non priority watersheds. We made no changes based on these comments. By statute, the cost of technical assistance is limited to 15 percent of the total funds expended in a fiscal year. It is not feasible to conduct a nationwide sign-up for any purpose because the technical assistance cost would far exceed the 15 percent cap.

Some commenters asserted that instead of priority watersheds, the CSP program should be treated as a pilot or demonstration project until full funding occurs. We made no changes based on these comments. In essence, NRCS included this approach in its watershed process as part of the management flexibility aspect. Based on these comments, we propose to allow flexibility in the watershed selection process to capitalize on knowledge gained though the first year implementation.

Commenters argued that watershed priorities will help industrial sized agriculture instead of small to moderately sized family farms. We made no changes based on these comments. The criteria for selecting priority watersheds do not take into account the size of the farms. USDA natural resource, agricultural statistics, and economic research data do not indicate any relationship between resource conservation and agricultural operation size.

Some commenters asserted that if eligibility is to be determined based on ranking of watersheds, the watersheds should be selected by rotation. The watershed approach includes a rotation system aspect in that all watersheds will be selected once before any are selected for a second time.

Some commenters asserted that if eligibility is to be determined based on ranking of watersheds, the watersheds should be selected by 10, 11, or 12 digit hydrologic unit codes rather than 8-digit hydrologic unit codes. They asserted that 8-digit hydrologic unit codes are too large for effective watershed planning, especially in small States like Delaware or Hawaii. We made no changes based on these comments. We selected the use of 8 hydrologic unit codes because they are manageable natural resource delineations and the majority of natural resource data needed for the analysis is available at the 8 digit level. Watersheds are the fundamental building blocks of natural resource systems; their boundaries are inherently inclusive of most natural processes and communities. The 8-digit watershed (sub-basin) is the smallest, nationally consistent delineation available for use in identifying priority watersheds and for which accepted statistical analytical procedures and underlying supporting data exist that make it possible to use essential county level agricultural data

such as farm numbers, agricultural input use, and conservation activity. NRCS along with other Federal and State level agencies with natural resource and land management responsibilities are working to delineate smaller size hydrologic units (*i.e.*, 10 and 12 digit hydrologic unit codes) using common standards and guidelines to create a hydrologically correct, seamless and consistent national watershed boundary dataset (WBD). At this time, only 14 states have completed and verified delineation under the accepted standards and guidelines for the WBD. Sub-basins (formerly cataloging units) average about 450,000 acres in size, 10 digit range in size from 40,000 to 250,000 acres, and 12 digit from 10,000 to 40,000 acres.

Careful accounting for and tracking of CSP enrolled acres will help to demonstrate the environmental performance achieved through the program. The first order of benefits is provided as stewards maintain enrolled acres to the stringent CSP non-degradation standard, which they met in order to qualify for the program. These acres reflect a stream of environmental benefits sustained, and the first increment of environmental benefit. Acres enhanced beyond non-degradation, through management intensity that amplifies conservation benefits, provides a second increment of environmental performance. Quantifying the natural resource and environmental improvements delivered will be achieved at micro and macro scales over time. At the field level, environmental performance will be observed and documented through the producer-based studies and evaluation and assessment components of CSP. At larger scales, natural resource inventory, ongoing conservation system physical effects documentation, and modeling methods will form the basis for quantifying CSP environmental performance.

Some commenters asserted that we should use maps concerning plants, crops, livestock, or wildlife, including habitat needs of important fish and wildlife species, or to help determine which areas to pick for payment of CSP. We made no changes based on these comments. CSP is targeted toward working agricultural lands throughout the Nation. Although valuable sources of information, data on crops, plants, wildlife, and livestock tend to be too localized to be used as national selection criteria.

Some commenters asserted that we should remove the watershed concept, if all watersheds could be funded. We made no changes based on these comments. The more funding we have the more watersheds would be included in CSP, including all, if appropriate.

Commenters asserted that the watershed approach should concentrate on ranching areas. We made no changes based on theses comments. By statute, a number of different land uses are eligible for CSP and there is no basis for emphasizing rangeland.

Enrollment Categories

NRCS proposed to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the CSP in an orderly fashion and remain within the statutory budget caps. The enrollment categories were intended to identify and prioritize eligible producers within the selected watersheds for funding. Applicants would be eligible to be enrolled based on science-based, data supported, priority categories consistent with historic conservation performance established prior to the announcement of a sign-up. NRCS would develop criteria for construction of the enrollment categories, such as soil condition index, soil and water quality conservation practices and systems, and grazing land condition, and publish them for comment in the **Federal Register**. NRCS proposed that the categories would be based on the following principles:

(i) Categories will serve to sustain past environmental gains for nationally significant resource concerns consistent with the producer's historic conservation performance.

(ii) Categories will use natural resource, demographic, and other data sources to support the participation assumptions for each category.

(iii) The highest priority categories will require additional conservation treatment or enhancement activities to achieve the additional program benefits, and

(iv) Categories will accommodate the adoption of new and emerging technologies.

NRCS also allowed that sub-categories might be established within the categories.

The May 4 notice announced NRCS' intention to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion and remain within the statutory budget caps for FY 2004. Enrollment categories can be reviewed and downloaded at *http://www.nrcs.usda.gov/programs/csp*. Once the highest enrollment category's applications are funded within all priority watersheds, the next category would be funded, etc. If all the applications in a category cannot be funded, then NRCS will fund subcategories in the same manner. Subcategories will be announced in each sign-up. Funding will be distributed to each succeeding category to fund subcategories until funding is exhausted.

NRCS is requesting comment on the categories chosen for 2004 and the specific criteria used to sort applications. This input will be considered in developing the FY 2005 sign-up and a final rule.

One comment stated "the multiple levels of the application process will be one of the most confusing aspects of the CSP implementation. The understanding of the enrollment categories and sub-categories will need considerable explanation to applicants. The ranking of categories adds another level of inability to determine if one's application would be accepted. The development of specific examples of practices relative to each State or region will be beneficial. Enrollment categories, if used, should be practical and tailored to meet the specific needs of the State or region of the State. In order to maximize Federal conservation spending, we would urge that beginning farmer and limited risk farmers not be specified as an enrollment category, but rather some other method be determined to designate some funding to these special cases."

Another group responded, "More flexibility should be given to State Conservationists in the funding priorities for the enrollment categories and sub-categories. Rather than strictly funding all projects in full based on some categorization, it may be more feasible to pro-rate funding across several participants with sound plans if such partial funding is enough to provide a significant enhancement incentive. On the other hand, limited funding should not be pro-rated to the extent that it merely offers "pennies on the dollar" and is not commercially-viable."

Another commenter stated, "a second overarching theme of CSP is that it is for all farmers. Unlike commodity programs, it is open to livestock farmers, fruit and vegetable growers, organic producers, and many others. It is open to large and small farms. Unlike other conservation programs, it is not just for those who have ongoing resource degradation, but also rewards those who have done a good conservation job all along on their own. Unfortunately, these rules fall short of achieving the goal of being open to all who agree to meet its conservation challenge."

We have addressed the issues raised by commenters in discussions throughout this document. However, NRCS has proposed a bold set of enrollment categories that in fact do "reward(s) those who have done a good conservation job all along on their own," first, and the rest if funding is available. NRCS would fund as many categories as possible. If the last category cannot be fully funded, NRCS would fund producers within the category in order of the subcategories as indicated in the sign-up announcement. NRCS will fund as many subcategories within the last category to be funded as possible. If the final subcategory cannot be completely funded, the applications will be pro-rated. Additionally, within each category, limited resource producers would be placed at the highest subcategory for funding. All applicants would be placed at the highest subcategory for which they may qualify.

3. Minimum Stewardship Eligibility Requirements

Under proposed rule section § 1469.5, a producer must meet minimum criteria for enrollment in Tier I, II, or III to be eligible for CSP. This included the requirement that producers meet or exceed the quality criteria set forth in the NRCS technical guides for the nationally significant resource concerns. The proposed rule designated soil quality and water quality as the two nationally significant resource concerns. Further, under proposed § 1469.4, for each sign-up, the Chief of NRCS may determine additional nationally significant resource concerns that reflect pressing conservation needs, and emphasize those that deliver the greatest net resource benefits from the program.

Commenters were concerned that the proposed rule had set the entry point too high. One commenter asserted thatthe proposal would restrict access to only those farmers who have already addressed all their major conservation needs, and deny access to many. Others requested that NRCS retain high environmental standards, but to allow farmers and ranchers to achieve those high standards while in the program. Others congratulated NRCS on making sure that the program did require actual stewardship as a requisite for entry. The conservation standards for soil and water quality must be achieved prior to becoming eligible for the CSP for Tier I and II. For Tier III participants, the proposed rule requires all applicable resource concerns be addressed prior to enrollment.

The law allows the Secretary to set the minimum tier eligibility for CSP. With the concept of "reward the best and motivate the rest", the minimums were set to reward those historic stewards who have been providing the most fundamental conservation treatment to protect the soil and manage nutrients and pesticides through the most basic stewardship practices that result in environmental improvements that benefit all Americans, clean water, and healthy landscapes. This reward serves as a motivator to those who have not practiced basic conservation management to complete these minimum requirements for future CSP eligibility. All activities above these minimums are potentially eligible for enhancement payments once the producer enters the program.

Commenters suggested that NRCS should adopt a systems approach that includes an index that scores the growers' overall agronomic practice concerning residue, soil disturbance, pest, and nutrient management and rotations. We made no changes to the regulatory language based on these comments. However, we have significantly adjusted our process for development of enhancement payments to include these concepts. NRCS will utilize performance based indices for use in enhancement payment calculations for use in the first sign-up, and plans to develop additional performance-based indexes for use wherever practical.

Significant Resource Concerns

Commenters asserted that NRCS should establish criteria but that soil and water should not be singled out. The commenters suggested that that the following also be included as significant resource concerns:

- Water quantity.
- Air quality.
- Energy.
- Wildlife.
- Fish.
- Plant and animal germ plasma conservation.
- All of the resources concerns identified within the statute, tailored to their operations.
- Biodiversity.

We made no changes based on these comments. Although all resources are important for agricultural operations, NRCS established minimum criteria for eligibility based on soil quality and water quality because they are essential to all agricultural operations and provide the best yardstick for measuring commitment to conservation. These nationally significant resource concerns are eligibility requirements that must be met as a condition for enrollment rather than a theme for improvement. In this interim final rule we are retaining the provisions to allow NRCS to designate additional nationally significant resource concerns so that NRCS can further limit eligibility in any sign-up by adding these additional eligibility requirements.

Other commenters suggested that the rule clarify the specific CSP requirements of soil quality and water quality on cropland and grazing land. Based on these comments, NRCS has more specifically set the minimum level of treatment for the Tiers. As described in the May 4 notice, for assessing soil quality on cropland, irrigated cropland, vineyards and orchards, NRCS will use the Soil Condition Index (SCI) to provide an overall indication of the trend and quality of the soil resource. Soil quality minimum level of treatment is defined as achieving a positive SCI. To assess the condition of the soil resource, the SCI is an effective tool that readily evaluates the producers farming activities for soil quality and assigns an index value for that operation. The SCI can predict the consequences of cropping systems and tillage practices on the trend of soil organic matter.

Commenters asserted that soil quality is mostly defined as soil organic matter, and this should not be the conservation target. We made no changes based on these comments. Organic matter is a primary indicator of soil quality and an important factor in carbon sequestration and global climate change. NRCS reviewed other options, such as assigning specific practices to be achieved for program entry, requiring all soil quality resource concerns in the NRCS technical documentation to be addressed, and adding soil erosion as an additional factor. The SCI provides an overall indication of the trend and quality of the soil resource, provides local flexibility, takes advantage of new and emerging technology, is easy to use by the public and NRCS work force, and provides a science-based approach to improving the soil resource and positive benefits toward air quality, carbon sequestration, reduction of green house gases, and soil moisture conservation.

[For assessing water quality on cropland, irrigated cropland, vineyards and orchards, NRCS will set the water quality minimum level of treatment as managing specific sub-set of resource concerns: Nutrients, pesticides, salinity, and sediment. This sub-set of resource concerns provides an overall indication of the stewardship effort by the producer for water quality. In effect, this reduces excessively high eligibility requirements, provides for a more streamlined program, allows NRCS to ramp-up the water quality portion of the

CSP, provides local flexibility to adapt assessment of the resource concerns, and reduces potential criticism about unfair or inappropriate resource condition assessments that are difficult to make.

Achievement of soil and water quality criteria on rangelands and pasture is based on the management of plant communities through control of grazing animals. Controlled rotational grazing ensures the appropriate kind and number of animals is balanced with the adequate amount of available forage and meets the need of the plants. Water quality issues on rangelands for the purposes of the CSP means resource concerns and/or opportunities, including concerns such as nutrients, sediment, pesticides, and turbidity in surface waters with limited impacts to groundwater. Soil quality issues on rangelands include erosion, organic matter, and compaction. These issues are adequately addressed through grazing management and managing livestock access to water courses through a properly applied grazing management plan. Adequate vegetation cover provides soil and water quality benefits, such as maintaining filtering capacity, infiltration rates, organic matter content, and is achieved by controlling grazing animals to minimize livestock concentration, and trailing and trampling, and enhancing nutrient distribution.

Commenters asserted that water quality criteria and the soil quality criteria were too high. Some commenters asserted that the CSP rule should list all water and soil quality and resource criteria levels so there is no question about what they are at sign-up. Others argued that the CSP should be changed so that all could be eligible, and that standards should not be required to be met for a period of time, such as three years. In addition, some commenters asserted that the definition of water quality should specifically address water temperature. In order to address these comments NRCS made the minimum requirements for soil quality and water quality more specific. For implementation of CSP, the soil quality minimum requirement is now defined as a SCI value of 0.0 or greater, and the water quality minimum requirement is defined as meeting the quality criteria for nutrients, pesticides, salinity, and sediment for surface waters and nutrients, pesticides, and salinity for groundwater according to the FOTG.

Commenters asserted that reductions in all forms of soil erosion, including tillage erosion, should be included as critical components of any national resource concern related to soil quality. To address this issue, the interim final rule uses the SCI to provide an overall indication of the trend and quality of the soil resource, including the impact of tillage. NRCS uses the SCI in conservation planning to estimate whether applied conservation practices and systems will result in maintained or increased levels of soil organic matter.

Commenters asserted that the final rule should require consultation with state and fish wildlife agencies and natural resource agencies. We made no changes based on these comments. Although the statute does not require consultation with any other agency, NRCS seeks advice for program delivery from the State Technical Committee which includes membership from State and fish wildlife agencies and natural resource agencies.

Commenters asserted that NRCS should provide producers the flexibility to determine which resource concerns should be applicable for eligibility as nationally significant resource concerns. We made no changes based on these comments. If we were to expand the list of nationally significant resource concerns, the eligibility requirements would be much more stringent and many deserving applicants would be ineligible. However, Tier II participation does allow the producer to select another resource concern to be addressed by the end of the contract. In addition, producers will be able to address a wide array of resources and resource concerns under the enhancement portion of the CSP.

Commenters argued that the selected resource concerns were not appropriate for their region of the country, or to add additional concerns to the list such as rangeland health and at-risk wildlife. Resource concerns and quality criteria for their sustained use rely on the existing NRCS technical guides and conservation planning guidance and policies. Even though not all operations have problems to solve in the area of water quality and soil quality, most have opportunities to improve the condition of the resource through more intensive management of typical soil quality or water quality conservation activities such as conservation tillage, nutrient management, grazing management, and wildlife habitat management. Operations that have already treated soil and water quality to the minimum level of treatment could increase the management intensity applicable to those resource concerns through enhancement activities. This rule requires that every contract address national priority resource concerns. At the announcement of sign-up, the Chief may designate additional resource concerns of national significance. Additionally, State and local concerns would be addressed through the enhancement activities undertaken by CSP participants.

Commenters asserted that eligibility should not be based on resource concerns but instead on management practices. We made no changes based on these comments. The statute provides the minimum requirement for Tier I and Tier II as addressing at least one resource concern and all resource concerns for Tier III. NRCS has exercised the Secretary's authority to set the minimum requirement by elevating Tier I and Tier II requirements to having addressed both soil quality and water quality. Addressing these resource concerns requires more than just implementing a specified practice or management activity.

NRCS received comments expressing concerns that the proposed rule is silent on how the Department will coordinate participation in the CSP for organic farmers who are certified under USDA's National Organic Program (NOP). NRCS did a comparison between the technical requirements for the NOP and CSP minimum eligibility requirements. The land management plan required by NOP does not necessarily meet the minimum standards for soil quality and water quality. In fact, there is no requirement in NOP to be in compliance with highly erodible land provisions. NRCS is generating a crosswalk between the regulatory NOP practices and NRCS FOTG practices to assure that certified growers get full credit for their NOP compliance. The eventual final rule preamble will include a clear mechanism for coordinating participation in the NOP and the CSP. USDA staff will deliver these complementary programs in the most farmer-friendly, least burdensome fashion possible.

Commenters asserted that NRCS should make CSP participation conditional on attaining the presumably stronger non-degradation standard as required by some laws. We made no changes based on these comments. The term non-degradation standard as used in the CSP statute means the level of measures required to adequately protect, and prevent degradation of natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the NRCS. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by EPA and other regulatory agencies. The FOTG relies upon quality criteria, the

functional equivalent to the non-degradation standard.

4. Funding and Payment Rates

Proposed § 1469.23, set up a CSP payment system that included a base component based on land use categories, an existing practice component based on a percentage of the average 2001 county cost of maintaining a land management and structural practice, and an enhancement component based on specific criteria. Proposed § 1469.23 also included one-time new practice payments. Numerous commenters provided advice regarding the types of lands and activities that should be considered for the various components and for new-practice payments. The proposed rule contains mechanisms to help ensure that determinations are made based on the best potential conservation stewardship impact.

A. General Concerns

Commenters asserted that NRCS should provide a list of approved conservation practices and intensive management activities which are eligible for CSP payments. Others argued against such a list based on the need to be flexible. To best meet the local needs, this information will be available to the public at the time of sign-up.

Commenters asserted that payments should be variable over the life of the contract so that rates are consistent with the local trends. Other commenters asserted that those producers obtaining contracts in a particular year should receive higher rates in future years if the actual costs increase. We made no changes based on these comments. We want to use whatever new funding we have to enroll more producers in CSP. by statute, the rates are based and set according to the 2001 crop year.

As NRCS was developing the CSP stewardship payment provisions, research of the history of the establishment of similar rental payments for the CRP indicated that producers were concerned about the potential effects of the CSP rental payments levels on the land prices and rental values. Therefore to avoid possible distortions in those prices and values, NRCS is providing that the total CSP contract payment (combination of the stewardship, existing and enhancement payments) not exceed the following percentage payment rate (the amount prior to application of the reduction factor) for the applicable Tier level: 15 percent for Tier I, 25 percent for Tier II and 40 percent for Tier III. However the new practice payment will be exempt from this limitation and will be excluded from the computation of the limitation. NRCS requests comments on this limitation for consideration in the administration of CSP sign-ups.

In addition, NRCS is reviewing a process to allow the existing practice payments to be calculated as a percentage of the stewardship payment, allowing for paperwork reduction burden for producers and administrative efficiency for the agency. NRCS requests comments on this proposal which will be tested during the FY 2004 sign-up.

B. Stewardship Payment Component

NRCS will apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments (for all tiers of participation). The more that total program payments are made toward aspects directly related to additional environmental performance, rather than on stewardship payments, the more positive conservation results are likely to be obtained. The results of the CSP proposed rule economic analysis indicated that, if all other payment are held constant, the lower the reduction factor used on regional rental rates, the less the effect the stewardship payment has on the overall producer payment. This results in more net environmental benefits accruing from the program. This will lower payments to producers, but does it in an equitable manner and allows more producers to participate within the available funding. NRCS proposes that the stewardship rate, once established, will be fixed over the life of the program.

The CSP Interim Final Rule Benefit Cost Assessment indicates that, depending upon the magnitude of the CSP, stewardship payments can have a significant effect on program participation and has the potential of greatly effecting regional equity. A key consideration is whether the use of regional or local rental rates maintains "regional equity." Stewardship payments calculated from national average rental rates are equitable in the sense that the payment rate per acre is uniform. However, this method of calculating payments is less equitable on a per-farm basis. Where land rental rates are low, farms tend to be large compared to those in areas of high rental rates. On a per farm basis, then, overall stewardship payments could be quite large on large farms located in areas where land rental rates are low when compared to smaller farms located in areas where land rental rates are higher. Larger farms in areas with lower rental rates would incur a disproportionately large increase in farm incomes and (if payments are capitalized into land values) wealth. Thus, the goal of regional equity is best served by using local rental rates to calculate stewardship payments. NRCS invites comment on the appropriate reduction factor, and whether it should be fixed or vary by sign-up.

Many commenters including farm organization rejected the formulation of the base payment in the proposed rule especially the use of a reduction factor. One stated, "The proposed regulation places a disproportionate amount of the rental payment on enhancement activities rather than base or maintenance payments. One of the stated purposes of the CSP was to reward producers who were good conservation stewards based on practices already in place. While it is desirable to encourage further conservation enhancement, the proposed regulation provides that only 5 to 15 percent of the respective tier payments can be expended for base payments. We believe that to the extent allowable in the statute, a higher percentage of the rental payment should be made to producers who have accomplished conservation improvements. * * * this low percentage of base payment rental will discourage producers from participating in the CSP. Because of our belief that the base payments represent too small a percentage of the total payment, we would also oppose any across-the-board scale down of such payments as a means to allocate limited funds." The statute provides for limits on the base payment as a percentage of the total contract limit of 25 percent for Tier I and 30 percent in Tiers II and III.

At a listening session, one commenter was concerned that CSP had an impact on the producer's farm program base, and explained that the use of the term "base payment" could be confused with the "base" acres from farm programs. In order to avoid any further confusion, the "base payment" was renamed "stewardship payment" for clarification purposes.

Commenters asserted that they support a method where the local land rental rates only account for a small portion of the base payment to producers, and thereby prevent any bias towards States with big land values. The statute requires that any alternative form of base payment take into account the issue of regional equity. The process developed by NRCS takes land value into account.

Commenters asserted that they strongly oppose the proposal to use State and local rental rates over a set

national rate. NRCS has proposed an alternate stewardship payment system using statistical techniques in an analysis of land value, CRP rental rate, and NASS rental rate data sets along with a reduction factorbased on data developed at the county level and reviewed by the State Conservationist. In order to allow for maximizing the level of enhancements for additional environmental performance above the minimum and to reduce the skew between small and large operations, the stewardship payment used a reduction factor. After considering the comments and the budget impacts, NRCS has adjusted the reduction factor from the proposed level of 0.1 for all stewardship payments to 0.25 for Tier I 0.50 for Tier II, and 0.75 for Tier III.

Many commenters asserted that various types of land should have a higher payment than assigned. For example, commenters argued that corn and bean rotation farmers should not get more than "a conservation minded hay and pasture farmer." Some commenters asserted that pasture land should be classified as cropland. While other commenters asserted that base payments should be based on NRCS land capability classes and not on current land use. Based on these comments, NRCS has created a definition and landuse for pastured cropland.

NRCS recognizes that decisions about the proper use and management of the resources that support agricultural operations are made on a daily basis. In some instances, a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive land use. For example, a dairy operation that is using cropland to grow forages may convert to a rotational grazing system. This reduction in land use intensity has many associated environmental benefits. NRCS requested comments on how the base payment could be calculated in this situation. Under the proposed rule, the land use conversion would change the basis from a cropland (higher) payment per acre rate to a pasture (lower) payment per acre.

Concerns were expressed on "determining base payments for pasture and grazing land, the proposed rule would determine the cash rent value of the land based on how the land is being used currently rather than by land capability. Since rental rates for pasture are far lower than for cropland, base payments would be far lower for grazers, even if their land is fully capable of producing crops and, in a different owner or operator's hands, might well be cropped. Land that has been placed in permanent cover, a practice with enormous environmental benefits, is unwisely penalized by the proposal."

By statute, the base payment rates must be based on land use. An idea forwarded in the comments was to create another category of land termed "pastured-cropland," meaning that the land has the capability to support cropland but a management decision was made to put the land into pasture. The comments recommend that the pastured-cropland base payment be made according to the cropland base payment rate. We made no changes based on these comments. Land uses were used to set the stewardship payment rates rather than land capability classes.

Commenters asserted that incidental forest land should be defined in various ways so as to provide a basis for obtaining a base rate value. Based on these and other comments, NRCS has set a definition for incidental forest land, and the stewardship payment will be the same as the adjacent benefiting land.

Commenters asserted that CSP funds should only be used for base payments and not for new practices. We made no changes based on these comments. The statute authorizes payments for both new and existing practices.

Commenters asserted that NRCS should develop criteria for construction of enrollment categories. NRCS provided in the proposal that they would publish additional information about the construction of the enrollment categories and those were published in the **Federal Register** on May 4, 2004 (69 FR 24560).

C. Existing and New Practice Payment Components

Some commenters were concerned about the "very limited number" of conservation practices available for the existing and new practice payments citing that the law specifically authorizes the use of new, innovative practices through on-farm demonstration and pilot testing. They suggested the proposed restriction is not consistent with NRCS' policy of "site-specific" conservation and will stifle farmer innovation.

Some commenters were concerned that payments for new practices should be as close to the statutory limit of "up to 75 percent" as possible. Other commenters asserted that 5 percent cost share is not sufficient help to struggling farmers and that 75 percent is more realistic. The reference to 5 percent cost share was mentioned as an alternative in the economic analysis in the proposed rule and we did not adopt the 5 percent rate that was evaluated in the analysis. NRCS intends to set the appropriate cost-share rate for new practice payments at a rate similar to or less than the EQIP rates but no more than 50 percent.

NRCS will maintain the concept of limiting the practice payment options and encourage enhancement activities that provide for additional environmental performance. This rule also encourages farmer innovation through a robust process for on-farm demonstration and pilot testing of innovative practices.

The Chief will determine and announce which practices will be eligible for new and existing practice payments s available for a given sign-up based on factors described in the regulation including: The potential conservation benefits; the degree of treatment of significant resource concerns; the number of resource concerns the practice or activity will address; new and emerging conservation technology; and the need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility. State Conservationists will have an opportunity to tailor the lists to meet the needs of local and State conditions. Not all practices will be available through CSP for payment. NRCS believes that CSP should work together as a complement with, rather than a substitute for, cost share programs such as EQIP, WHIP, and continuous CRP, as well as other Federal, non-Federal, State, local and Tribal programs. Alternatively, producers can install structural practices through other State or Federal programs, such as WHIP, and then qualify for a future CSP contract to help with the maintenance of those and other practices.

In addition, unlike EQIP and WHIP, CSP emphasizes producers who have already met the resource concern's minimum level of treatment, encourage them to do more, and rewards them for their exceptional effort. CSP differs from existing programs by focusing on a whole farm planning approach. Programs such as EQIP do not.

Commenters asserted that NRCS should provide for on-going support rather than a one time payment for adoption of new stewardship practices. We made no changes based on these comments. New practice payments are intended to cover initial practice installation and application costs. As with other NRCS cost-share programs, the participant is required to maintain the practice for the life of the practice

as part of the contract obligation for new practice installation.

Commenters asserted that maintenance payments should be based on the level of management intensity. We made no changes based on these comments. Maintenance payments are provided for existing practices at the time of enrollment and are based according to the 2001 crop year as prescribed in the statute.

Commenters asserted that new practices should be considered "existing practices" after they are installed. We made no changes based on these comments. New practices that are installed with CSP financial assistance are required to be maintained for the life of the practice as a condition of receiving the cost-share and, thus, are not eligible for existing practice payments.

Commenters asserted that new practices should be only those that would assist producers to move from one Tier to the next. We made no changes based on these comments. NRCS is utilizing the new practice payment to assist the producers in gaining additional environmental performance when it is considered that a cost-share would be appropriate. Some of the practices selected may, in fact, assist a participant move to a higher Tier, but it is not the major consideration. The CSP is not a substitute for other conservation cost-share or assistance programs.

D. Enhancement Payment Component

CSP provides a substantial portion of the total payment as enhancements. This recognizes those who have already provided environmental benefits and are willing to do more. The interim final rule language states "Enhancement payments will be determined based on a given activity's cost and expected net environmental benefits, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance."

One group commented, "The enhanced payments * * * should not be treated as cost-share but rather as real bonuses to reward exceptional performance." NRCS agrees with the comment. No changes were made as a result of the comment. Enhancement payments are intended as payments for exceptional conservation efforts and performance above the minimum level of treatment.

Some commenters were concerned that the proposed rule did not provide for specific utilization of the 18 practices listed in the statute as enhancements. The statutory list referred to is permissive, rather than required, and includes resource conserving crop rotation, rotational grazing, and buffers, and allows the Secretary discretion to add to the list. There are certainly situations where one or more of the listed practices would provide additional environmental performance above the quality criteria for a specific resource concern. In these cases, the performance of the practice above the minimum criteria would qualify as an enhancement payment.

Alternatively in other situations, some of the practices on the list are practices necessary to achieve the minimum tier requirements of meeting the quality criteria for one or more resource concerns. An activity must contribute to exceeding the minimum requirements to become eligible for an enhancement payment. For example, nutrient and pesticide management are requirements for the minimum quality criteria for water quality on operations where nutrients and pesticides are a concern. Where nutrient and pest management are not concerns, they would not be required and should not receive additional payments unless the activities would provide an additional environmental benefit. NRCS does not intend to provide a payment for an activity on an agricultural operation that does not serve the purpose of either addressing a resource concern (stewardship payment) or providing an additional environmental benefit (enhancement payment).

Commenters asserted that enhancements should include all existing practices and not be limited to new practices only. Some commenters asserted that enhancements should be determined on a nationwide basis. We made no changes based on these comments. Enhancements are those activities that result in a level of resource treatment that exceeds the quality criteria in the FOTG. Participants will earn an enhancement payment for their conservation activities that exceed the quality criteria and, thus, provide additional benefits. NRCS will develop a list of approved enhancement practices and activities that provide additional environmental performance based upon local resource concerns.

Commenters asserted that we should add an energy component to the list of available enhancement activities. We made no changes based on these comments. Although NRCS is not making changes to the rule, NRCS is developing enhancement activities intended to provide positive impacts on energy management.

Commenters asserted that enhancement payment rates should cover the cost of implementing the enhancement activity, including management activities. Some commenters asserted that enhancement activities should be weighted according to the environmental benefit they provide. We made no changes based on these comments. Enhancement payments for practices and activities will either be based on estimated local cost, or will be commensurate with the expected net environmental benefits when utilizing an index or performance outcome scale.

Commenters asserted that NRCS should add preservation of endangered species as an enhancement. We made no changes based on these comments. CSP will provide enhancements for improving wildlife habitat for a broad range of plant and animal species, including threatened and endangered species.

Commenters asserted that enhancement should not be required as a condition for participation in CSP. We made no changes based on these comments. A producer can participate in CSP without agreeing to carry out enhancements and be eligible to collect a stewardship and existing practice payment. However, the enrollment categories are set to ensure that those who are not willing to achieve a higher level of environmental performance will be placed in a lower category than participants willing to do more.

Commenters asserted that NRCS should add a 6th category for enhancement payments, *i.e.*, a business management enhancement category. We made no changes based on these comments because the 5 categories are specified by statute.

5. Definition of Agricultural Operation

Agricultural Operation

By statute, Tier I payments are provided for conservation activities on a portion of an "agricultural operation." Also by statute, Tier II and III payments are provided for conservation activities on the entire "agricultural operation." Defining an agricultural operation for the Conservation Security Program is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation.

The proposed rule defined the term "agricultural operation" as "all agricultural land, and other lands

determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation on the date of enrollment." There was substantial concern about this definition.

Some commenters were concerned that the proposed definition was too broad in scope and subject to inconsistent interpretation. They were concerned that the definition was inconsistent with farm program operation definitions. Others were concerned that, under the current definition, this program would only be viable for small farmers who own contiguous property, rather than producers who operate many different units with multiple landowners. Some commenters suggested that the definition of agricultural operation be the same as the definition in 7 CFR Part 718 for "farm" used by Farm Services Agency (FSA). They cite ease of matching commodity programs and farm records, familiarity, and other reasons for this approach. Commenters also were concerned that that the definition would not allow tenants to work with multiple landowners.

Several groups supported a "one producer—one contract" approach. One group opposed more than one CSP contract per operator. Other commenters argued that the definition of agricultural operation should be revised to allow producers to obtain more than one contract during a sign-up. In this regard, commenters asserted that the term agricultural operation should be defined to allow the flexibility of separate CSP contracts by FSA farm numbers, should delete the requirement that an agricultural operation: constitute a cohesive management unit," be defined as "contiguous acres that are part of an agricultural operation," or be defined to exclude "other land on which food, fiber, and other agricultural products are produced."

Most producers who participated in early CSP workshops conducted by NRCS stressed a need to prevent producers from abusing the payment limitations by strategically defining agricultural operation. Concerns have also been raised that producers would reconstitute their holdings to maximize the number of contracts, and, therefore, maximize payments under CSP if the definition of agricultural operation was not sufficient to limit such reconstitution.

In defining agricultural operation in the proposed rule, NRCS attempted to balance competing concerns. If the definition allowed a producer to reconstitute or split holdings, the producer could submit numerous CSP applications for what is really a single cohesive production unit. If the definition were to be overly broad, a producer's legitimately unique operations would be inappropriately encompassed into one "agricultural operation."

In view of the many comments received in opposition to the definition in the proposed rule, we have defined agricultural operation in the interim final rule to mean "all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other." We believe this definition reflects the common meaning of the term consistent with the statutory intent to encourage as many as possible to use good conservation practices. Specifically, we agree that a program that would exclude such tenant would be inconsistent with the statutory scheme by limiting the effort to encourage conservation practices to benefit the Nation.

In addition, we have included new language in section 1469.5 that will allow producers to delineate their agricultural operation. This approach will allow producers whose land is not included in the farm program system to delineate their agricultural operation while allowing those applicants who use the FSA farm and tract system to delineate as a minimum one farm and allowing applicants to aggregate farms, if desired, into a single contract as long as they meet the definition within this interim final rule. In order to avoid a multitude of similar contracts with common conservation management, NRCS will limit each applicant to only one application per sign-up and one active CSP contract. This will minimize farm reconstitutions, provide flexibility to the applicants, and allow for a delineation of agricultural operation that is consistent with other NRCS programs.

Commenters also suggested that if the producer obtains additional land after getting a CSP contract, the additional land should not be subject to the CSP requirements. Others asserted that the additional land should be allowed to be added to the contract. NRCS has made no changes to the regulatory language. Section 1469.24 of the proposed rule allowed for existing CSP Contract to be modified upon agreement between the Chief and the participant. Similarly, in this interim rule, section 1469.24(a)(1) allows for contracts to be modified at the request of the participant, if the modification is consistent with the purposes of the conservation security program. We believe this provision might be used to allow producers to add or subtract land from their contract. However, we recognize that additional land added to contracts may constrain our funding of future contracts. We are requesting further comment on criteria that NRCS would use to determine if the addition or subtraction of land from a contract is consistent with the purposes of the conservation security program or whether other constraints should be used to ensure that the addition of land to existing contracts does not adversely affect funding of new contracts in future years.

Commenters were also suggested that if property changes ownership while a CSP contract is in effect, the new buyer should have the option of continuing the contract and the seller should be liable for any charges and penalties. We made no changes based on these comments. The interim final rule adopts provision of the proposed rule to allow a contract transfer when there is agreement to all parties of the contract.

Commenters asserted that a new buyer should be allowed to continue the contract if all of the parties, including NRCS, agree that it is advantageous to do so. We have not adopted the suggestion that the buyer alone should have the option of continuing the contract because it might not be in the interest of the Government to continue the contract. Also, any amounts due the Government would be required to be paid by the contract holder.

6. State and Local Input Into the CSP

State and Local Issues

Commenters asserted that the different aspects of the CSP should be determined by the NRCS State Conservationist in consultation with the State Technical Committee. We made no changes based on these comments. Those decisions that are national in scope, such as funding eligibility requirements and final decision making regarding watershed selection, must be made at the national level. However, the national office will regularly obtain recommendations from the state and local level for all aspects of the CSP. Further, many of the determinations regarding the CSP originate at the State or local level, such as determinations regarding conservation practices that are used for maintenance practices, new practices, and enhancements. The State Technical Committee and the local work

groups do provide advice, rather than consultation, to the NRCS State Conservationist.

Coordination With Other Programs

NRCS sought comment on the opportunity to use CSP in a collaborative mode with other programs to effectively leverage Federal contributions to natural resource improvement and enhancement.

The 2002 Farm Bill provided the funding and authorities to construct a balanced conservation portfolio that pays off for taxpayers, producers, and the environment. The commenters urged that NRCS take full advantage of this opportunity by ramping up CSP to realize its full potential, working to secure full funding for all of the programs in our conservation portfolio, and managing conservation programs in a way that balances the three components of that portfolio effectively and flexibly.

NRCS appreciates this and other comments regarding the role of CSP in the USDA conservation portfolio, and will keep these ideas in mind as policy adjustments are made in future legislation and regulations.

Commenters asserted that the CSP program should be coordinated with other programs, such as using common applications, common eligibility requirements, common cost-share rates, and common rules for incentives. We made no changes based on these comments. NRCS is working to streamline its conservation programs and is looking at adopting as many common aspects and provisions as each program authority allows.

Commenters asserted that the producer should also be required to be in compliance with other relevant laws applicable to a farming operation. No changes were made based on this comment. Although CSP is a voluntary program, applicants are required to be in compliance with relevant federal laws applicable to a farming operation, such as the Clean Water Act and cultural resources requirements. The FOTGs commonly include resource based information particular to State and local requirements such as state-level nutrient management requirements, and various other regulations concerning odor, pesticide application, and set-backs.

Section-by-Section Comments on 7 CFR Part 1469

The following discussion summarizes the changes in provisions in each section from the proposed rule, provides the basis for the approach taken, and requests public comment on open issues. Many comments of the collective were instructional and were used to provide clarity. Sections 1469.5, 1469.6, and 1469.20 were restructured for clarity as recommended by one commenter.

Section 1469.1 Applicability

The proposed rule indicated that farmers and ranchers could receive program assistance to address soil, water, air, and related natural resources concerns on private and Tribal lands, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. One commenter noted "Many private agricultural operations include leased or permitted use of federal or other public land, and these operations would not be viable without the resources available through those leases or permits. The leased or permitted use of those Federal or public resources is integral to the agricultural operation and must be considered as part of the entire agricultural operation." The commenter also recommended public land should be eligible for enrollment into the CSP, except when it is determined to be considered integral to the entire agricultural operation of the applicant. This rule language is further clarified to assure that only privately-owned or Tribal land is included within the CSP; otherwise, funds appropriated for CSP to be used on private and Tribal working lands would be supplementing the budgets of Federal, State, or local agencies whose responsibility it is to manage those lands or hold accountable those people who manage those lands for them.

One commenter suggested that we should drop "Nation" from the term "Tribal Nation" because not all tribes are designated as a Nation. NRCS agrees with this comment and has made the clarification.

Section 1469.2 Administration

Concerns were expressed regarding the roles of participation of State fish and wildlife agencies and the U.S. Fish and Wildlife Service because the State Technical Committee is not required tol seek or consider their advice. Commenters recommended requiring concurrence with the U.S. Fish and Wildlife Service and the respective state fish and wildlife agency for determination of at-risk species. NRCS will continue to follow the State Technical Committee regulation, but has made a commitment to assure that all voices are heard in this public process and appropriately documented in the minutes of such meetings.

In section 1469.2(f) the acronym NRCS was added to the section to avoid confusion with a Tribal Chief.

Section 1469.3 Definitions

Some definitions have slight editorials changes for clarification that are not discussed here.

For clarification, the term "activity" was added to define the aggregate of actions that are not included as part of a conservation practice, such as a measure or an on-farm demonstration, pilot, or assessment.

Agriculture Land

Commenters were concerned about the inclusion of different landscapes within the term "agricultural land." "The statute specifically states, grassland, prairie land, improved pasture land." These land types are now expressly included within the rangeland and pastureland definitions. Commenters were also concerned about the exclusion of agroforestry practices. Land with the agroforestry practices of strip cropping, alley cropping and silvopasture practices have been added to the definition.

Agricultural Operation

As discussed above, we have revised the definition of agricultural operation in the interim final rule to mean "all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other."

Active Personal Management

This definition was deleted as a result of the change in the agricultural operation definition.

At-Risk Species

Commenters asserted that the regulations should not include a reference to at-risk species, since the term has conflicting definitions with wildlife regulatory agencies. Other commenters asserted that we should use accepted categories of endangered or threatened species from the Endangered Species Act. NRCS has reconsidered the issue, and has deleted the term "at-risk species" and substituted appropriate language regarding "important wildlife and fisheries habitat" in Section 1469.6 (a) and (b) to achieve the same result but avoid confusion. By statute, the CSP includes "fish and wildlife habitat conservation, restoration, and

management" as intended conservation practices.

Cropland

This definition originally included cultivated and noncultivated subcategories. These distinctions resulted in unnecessary complexity in the program and were removed without affecting the types of crops included.

Farm

This definition was deleted as a result of the change in the agricultural operation definition.

Joint Operation

The regulatory citation was wrong as a result of a typographical error and was changed.

Incidental Forestland

Commenters asserted that the provisions requiring that tree-covered grazing areas must have a canopy of less than 40 percent to be eligible for a CSP contract is not acceptable for high elevation grazing areas of San Carlos Apache Reservation where even some thinned areas have estimated canopy cover of more than 40 percent. Based on this and other comments, NRCS has added a definition of incidental forestland which includes all non-linear forested riparian areas and associated small wood lots and small adjacent areas located within the boundaries of the agricultural operation that are managed to maximize wildlife habitat values.

Land Management Practice

"Resource conserving crop rotation" was excluded from this definition in the proposed rule, which was pointed out by numerous comments and has been added.

Pastured Cropland

This definition is added based on comments received. Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops.

Priority Natural Resource Concern

For clarification, this term was added to differentiate those concerns used to set enhancement payments from the Nationally Significant Resource Concerns, which are used for setting the minimum eligibility criteria and locally significant resource concern necessary to satisfy contract requirements for Tier II.

Resource Concern

One comment requested that we exclude from the definition of resource concern elements of FOTGs that are primarily related to production and may adversely effect the environment.

In response, NRCS has changed section 1469.5(e)(1)(iii) to clarify that practices or activities will not be required for participation in Tier III unless they would have an ultimate conservation benefit when combined with the other conservation treatments as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG and NRCS local professional judgment.

Resource Conserving Crop Rotation

Commenters asked for examples of this definition and they have been included.

Soil Quality

This definition has been clarified to describe the exact processes of organic matter depletion and to include salinity, which was inadvertently omitted in the proposed rule.

Stewardship Payment

One person commented that the term "base payment" for CSP was confusing with the term "base payment" used by other farm program payments. The CSP base payment has been renamed the "stewardship payment" for clarification and to better reflect its function.

Water Quality

Commenters asked that flexibility be allowed to adjust for other concerns identified by state water quality standards. This language is included.

Section 1469.4 Significant Resource Concerns

This section proposes water quality and soil quality as nationally significant resource concerns that will be addressed in all contracts and allows the Chief to designate additional nationally significant resource concerns for a given sign-up. NRCS specifically sought comment on the designation of nationally significant resource concerns. Commenters asked that flexibility be added to the rule for the Chief to add resource concerns that are not considered national in nature but comply with the intent to consider state or local conservation priorities. This was accepted and added along with the new definition for "priority natural resource concern".

Commenters expressed fear that the resource concerns are too broad and restrictive to be easily attained and practically assessed without intensive training and without an intense field examination. NRCS is setting a specific minimum level of treatment in this rule. NRCS is emphasizing water quality and soil quality because it believes such emphasis will deliver the greatest net resource benefits from the program, as noted in the above discussion. We believe the concerns can be practically assessed through the dual verification system of an interview and a follow-up field visit with NRCS' long history of developing and applying sound science and technologies that effectively address water quality and soil quality problems and conservation opportunities.

Section 1469.5 Eligibility Requirements

1. General Changes

In response to comments that the proposed rule was hard to follow, the following sections were restructured and moved to noted locations and explained. Priority watershed subsection 1469.5(e) is moved to 1469.6(a). Subsections 1469.5 (a)–(d) are restructured into subsections 1469.5(c)–(e) with eligibility criteria grouped into three general categories for improved clarity: Applicant eligibility, land eligibility, and conservation standards. A new subsection explaining the delineation of the agricultural operation has been added as 1469.5(d)(4). A new subsection explaining the minimum level of treatment for each tier has been added as 1469.5(e)(2)–(4).

Also in response to comments, a general section 1469.5(a) was added to introduce the section which now provides the requirements for participant and land eligibility, and outlines the conservation requirements for the three tiers of CSP participation.

2. Eligible Applicants

Proposed rule section 1469.5(a)(2) regarding having an interest in the farming operation was considered unnecessary since the statutory definition of "producer" for CSP requires that the "producer" share in the risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from a farm. The proposed rule section was deleted and language added to better conform to the statute in section 1469.5(c)(3).

Control. To be eligible to participate in CSP under proposed § 1469.5, an applicant must have control of the land for the life of the proposed contract period. Some commenters asserted that NRCS should allow those without long-

term commitments to participate since they need CSP payments to be able to take appropriate conservation measures. Some argued that the contracts should be for the duration of the term of the producer's rental contracts. Commenters asserted that an adequate assurance of control might be a letter of support or a statement of intent to continue leasing from the landowner rather than an actual multiyear written lease. As with the Advanced Notice of Proposed Rulemaking, many who commented on the proposed rule desired to make CSP supportive for those who actually work the land.

By statute, a Tier I conservation security contract is for a period of 5 years and a Tier II or Tier III conservation security contract must be for not less than 5 years and no more than 10 years. NRCS must have assurance that a producer will have control over the use of the property to achieve the purposes of the CSP plan and to meet the statutory requirements. We have clarified the language in the rule to provide that NRCS will continue to accept letters as proof of control of the land as is done in EQIP and will adopt similar handbook requirements for CSP.

Commenters asserted that NRCS should remove provisions requiring lands that are not under control of the operator for the entire contract to be maintained to the same level as contract acres even though they are not eligible for payment. NRCS received comments that the proposed rule requiring tenants to maintain conservation treatment on land that was not a part of their contract was unworkable. This is cited as unfair and would likely dissuade producers from participating in the program. NRCS agrees and this proposal is dropped in the interim final rule. The rule provides fair treatment for tenants, allowing a tenant's CSP contract to exclude such land entirely, or allowing the farmer or rancher to receive CSP payments on land meeting CSP standards as long as the tenant controls the land and is in the plan and contract.

Applicant. Some commenters asserted that eligibility provisions should favor small farms. Others asserted that the eligibility provisions should favor large farms. Some asserted that eligibility should be limited ownership of 50 acres or more. Others suggested that funding should go only to operators who derive the majority of their income from production agriculture. We made no changes based on these comments. Although there are other statutory caps on USDA benefits, the statutory criteria for eligibility for CSP has nothing to do with farm size or the where the majority of income is derived.

Commenters asserted that NRCS should give preferences to limited resource producers, but others argued that these producers should not be given any preferences. The interim final rule, 1469.6(b)(3)(ii), gives some preferences to limited resource producers by allowing limited resource producer participation to be a factor considered in developing the enrollment subcategories.

Commenters asserted that to be considered as "limited resource producers", such producers should have gross sales of not more than $250,000 and total income below the 150 percent of the poverty level. Commenters asserted that for purposes of identifying limited resource producers, references to county median household income should be dropped but rather should include native Americans on native American controlled/owned land with direct or indirect gross farm sales of less than $100,000 or $150,000 for livestock producers in each of 2 previous years using Commerce Department data, and has a total household income based on family size at or below poverty level in each of 2 previous years using Commerce Department data. Other commenters asserted that tribes should categorically be classified as limited resource producers. We made no changes based on these comments. The definition for a limited resource producer is a USDA-wide definition and there is no reason to change it for CSP.

Commenters asserted that the regulations should give preferences to beginning farmers so that they would have the means to improve their land. We made no changes based on these comments. Many beginning farmers will be able to participate in CSP. However, the statutory scheme does not include eligibility preferences for ensuring that beginning farmers participate. Instead, it allows for a higher rate of cost-share assistance to install new practices for beginning farmers to give increased incentives and support for those beginning farmers who do participate.

3. Eligible Land

Some commenters were unclear what "areas outside the boundary of the agricultural operation" meant in proposed rule subsection 1469.5(b)(5). That subsection has been renumbered 1469.5(d)(1)(v) and remains as proposed. The intention is to assure that for Tier III contract holders; all land including farmsteads, ranch sites, and other developed areas are treated to the high standard of performance for that tier.

The subsections from the proposed rule remain essentially unchanged with two exceptions. One group suggested clarifying that "land, such as CRP land, excluded from enrollment in CSP, may nonetheless be considered for whether an applicant meets quality criteria. This means, for example, that a producer can enroll a buffer in CRP and use that buffer to demonstrate that the producer is meeting water quality criteria." NRCS agrees and added subsection 1469.5(d)(2)(v). Also subsection 1469.5(d)(4), was added to clarify the requirements for delineation of the agricultural operation.

Statutory limitations. By statute, only certain land is eligible for enrollment in the CSP. With exclusions, enrollment is limited to private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland), certain land under the jurisdiction of an Indian tribe, and forested land that is an incidental part of an agricultural operation. The following lands are specifically excluded from eligibility for enrollment in the CSP:

- Land enrolled in the conservation reserve program;
- Land enrolled in the wetlands reserve program;
- Land enrolled in the grassland reserve program; and,
- Land used for crop production after May 13, 2002 that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the six years preceding May 13, 2002 (with certain exceptions), or that has been maintained using long-term crop rotation practices.

Commenters asserted that the list of eligible lands should be expanded to include excluded lands, such as public lands, forested lands, and lands enrolled in CRP, WRP, and GRP. We made no changes based on these comments. We have no authority to expand the list of eligible lands in contravention of the statute.

By statute, a producer may not receive payments under the conservation security program and any other conservation program administered by the USDA for the same practices on the same land. Also by statute, payments may not be made for construction or maintenance of animal waste transport or treatment facilities or associated waste transport of transfer devices for animal feeding operations or, as determined by the Secretary, for the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice. Some commenters asserted that the regulations should not follow these

provisions. We made no changes based on these comments. We have no authority to act contrary to these provisions.

Commenters asserted that land used for corn and bean production should not be eligible for CSP. We made no changes based on these comments. By statute, cropland is eligible land for the CSP.

Commenters asserted that only permanently protected farms should be eligible for CSP since they will never be developed and could be a permanent source of conservation. We made no changes based on these comments. Congress has not given any indication the CSP statutory provisions that the program be limited to permanently protected lands and has limited the CSP contracts to no more than 5 or ten years depending on tier.

Commenters asserted that CSP payments should be made to improve stewardship rather than to take the land out of production. We made no changes based on these comments. The statutory scheme concerns payments for working productive land rather than land taken out of production.

Commenters asserted that NRCS should specify a maximum allowable enrollment of forest land. Based on the comments, NRCS set size limits in the definition of "incidental forest land", such that individual parcels that are not part of a linear conservation practice are limited in size to 10 acres or less with a combined acreage, not to exceed 10% of the total offered acres.

4. Conservation Standards

The proposed rule had separately identified minimum tier eligibility requirements and the minimum level of treatment by tier. For clarity, 1469.5(e) groups these both under the term conservation standards and makes clear specific minimum standards for each national priority resource concern.

Many commenters were concerned that the minimum tier eligibility requirements were too strict or that farmers and ranchers should be allowed to enter the program prior to solving all soil and water resource concerns without suggestions on how these ideas would be carried out in the contracts in light of the budget dilemma. This is discussed earlier in this preamble.

The authority for the establishment of these minimum performance standards is section 1238A(d)(6) of the Food Security Act, 16 U.S.C. 3838a(d)(6): "Minimum Requirements. The minimum requirements for each tier of conservation contracts * * * shall be determined and approved by the Secretary."

Several commenters noted "CSP is * * * intended to be the first truly comprehensive conservation program. It is intended to let farmers address both the unique and the ordinary resource problems of their specific site. It is intended to encourage an integrated approach that solves multiple problems. It should encourage farming systems that prevent problems in the first place," and exclude "quality criteria unrelated or adverse to the environment." In response, NRCS has drafted subsection 1469.5(e)(1)(iii) to clarify that practices or activities shall not be required for participation in Tier III unless they would have an ultimate conservation benefit when combined with the other conservation treatments as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG.

Section 1469.6 Enrollment Criteria and Selection Process

Proposed subsection 1469.5(e), which relates to priority watershed selection, has been moved to section 1469.6(a) to be included in the enrollment criteria and selection process. The comments and responses regarding the watershed process and enrollment categories for this subsection are discussed above.

1. Selection and Funding of Watersheds

For FY 2004, NRCS used a watershed prioritization approach based on:

(1) A composite analysis of national agriculture datasets consisting of eligible land uses, input intensities and stewardship.

(2) Weighting factors that place greater emphasis on input intensities and stewardship categories.

(3) An analysis of NRCS's technical and staff capacity to ensure effective and efficient delivery of the program in selected watersheds for FY 2004.

(4) Recognition of a limited number of regional resource issues to enhance the program's environmental goals.

The NRCS national office compiled the quantitative data for conformance with criteria (1) and (2) using National Resource Inventory and Census of Agriculture data. This data was aggregated to the U.S. Geological Survey's 8-digit Hydrologic Unit Code and arrayed within the Economic Research Service's Farm Production Regions according to quartile distribution. Ranked, weighted watershed maps were produced.

A list of candidate watersheds was generated. State Conservationists (STC) were queried regarding Criteria 3. Watersheds were excluded based on the STC's assessment of locations where staff capacity was inadequate and required technical tools, specifically the Revised Uniform Soil Loss Equation Version 2.0 and Customer Service Toolkit would not be fully operational for a 2004 sign-up.

Watersheds were also evaluated using Criteria 4 from a national perspective in consultation with STCs regarding regional resource issues that would enhance CSP's environmental goals. The criteria were refined from the factors listed in the proposed rule to reflect potential degradation of surface and ground water, of soil quality and grazing lands. The interim final rule has been revised to update these criteria. Preference was given to a limited number of watersheds where improving resources would assist the recovery of threatened and endangered species or add measurably to critical resource recovery efforts.

NRCS is seeking additional comment on the process and proposals published in the Notice to the **Federal Register** from May 4, 2004, and this subsection of this rule.

2. Enrollment Categories

The enrollment categories identify and categorize eligible producers within the selected watersheds for funding. Applicants are eligible to be enrolled based on the criteria listed in the Notice consistent with historic conservation performance established prior to the announcement of a sign-up and their willingness to do more, such as addressing locally identified resource concerns or providing important assessment and evaluation information. NRCS is seeking additional comment on the enrollment categories published in the Notice to the **Federal Register** from May 4, 2004, and this subsection of this rule. The comments will be considered in developing the FY 2005 sign-up and a final rule.

3. Sign-Up

NRCS received comments opposed to discrete enrollment periods for CSP and suggesting the use of the continuous sign-up process used by other NRCS cost-share programs. It was expressed that this could: Make it difficult for farmers to sign-up if the limited period falls within planting and growing seasons; would concentrate requests for NRCS technical assistance in a limited period rather than spread out over the course of a full year; and result in "a stop-and-go CSP that would become subject to political manipulation". Others were opposed to the concept of CSP being implemented in any way that lacks transparency.

NRCS will make no changes based on these comments. In order to manage the

program, NRCS will continue to offer discrete sign-up periods initially. The rule provides no limit on the length of the sign-up period and could allow NRCS to move to a year-round sign-up if experience shows it to be beneficial to program management and meet customer needs. CSP sign-up will be transparent and fully accessible on the internet.

Commenters asserted that producers need at least 180 days for a sign-up. We made no changes based on these comments. Based on experience, we believe we can conduct a timely sign-up so that we establish a successful CSP in this fiscal year, which ends on September 30, 2004. The suggested 180 day sign-up would extend well beyond that date. NRCS is seeking comment on the length of sign-up in future years.

Commenters opposed the provisions allowing for additional eligibility criteria and additional contract requirements to be included in a CSP sign-up announcement. We made no changes based on these comments. Additional requirements in specific sign-up periods will allow NRCS to manage for environmental performance and budget exposure.

Section 1469.7 Benchmark Condition Inventory and Conservation Stewardship Plan

1. Benchmark Condition Inventory

This subsection proposed that the applicant conduct a self assessment and establish an inventory of the benchmark conditions to identify the resource conditions of the agricultural operation following the NRCS planning process. NRCS sought comments on the utility of a self screening tool (both web-based and hardcopy) to assist producers in determining if they should consider application to CSP.

Many commenters were supportive of the concept of an applicant-initiated screening tool and benchmark condition inventory of the agricultural operation. One commenter suggested that the benchmark condition inventory not just specify existing conservation status, but include all proposed additional conservation measures, to be called the "proposed conservation plan outline." This is done to assure that the document submitted by the applicant provides all the information necessary to permit a preliminary judgment of eligibility and document the pending conservation stewardship plan. Although not included as a regulatory requirement, NRCS is considering adopting the proposed conservation stewardship plan outline beginning in FY.

2. Conservation Stewardship Plan

NRCS found during discussions at the national listening sessions and other meetings, there was some confusion regarding the term "conservation security plan". Some were confused that it might have something to do with "Homeland Security" and some confused it with the "conservation compliance plan" required by the highly erodible land conservation requirements of the Food Security Act of 1985. NRCS decided to substitute the word "Stewardship" for "Security" to alleviate this confusion and place the emphasis of the plan name on the fundamental concept of the program—stewardship, although all characteristics and requirements set out in the authorizing statute for a "conservation security plan" will be maintained.

Section 1469.8 Conservation Practices and Activities

NRCS has adjusted the section title to include activities as well as practices. Activities include all conservation actions including measures and enhancement components, such as, on-farm demonstrations and pilots, and evaluation and assessment activities.

CSP emphasizes conservation and the improvement of quality of the soil, water, air, energy, plant, and animal life by addressing natural resource conditions, rather than using a prescriptive list of conservation practices and activities. The conservation stewardship plan will identify a suite of practices, treatments, and activities that a participant can use to mitigate or prevent a resource problem or to produce environmental benefits, such as carbon sequestration. One example is the use of the SCI. The producer has many conservation management options available to improve their rating on this index scale including changing tillage intensity or equipment, adjusting the crop rotation to include soil conserving crops, or adding additional practices or activities such as cover crops. A complete list of potential actions for selection would be impractical, but by working with a conservation professional, the options are easily revealed in the planning process and through the use of simple models. NRCS will be deploying a producer-friendly SCI web tool for use in preparing for the FY 2005 sign-up so producers will be able to assess their own progress in improving soil quality on cropland.

Conservation practices and activities. Proposed § 1469.8 set forth a mechanism for selecting conservation practices and activities eligible for CSP to include listed structural and land management practices and intensive management activities. The conservation practices are selected after the watershed selections are made. Commenters asserted that all practices approved and listed in the NRCS FOTG should be included in list of conservation practices eligible for CSP. Other commenters suggested that specific conservation practices should be included in the list of conservation practices eligible for CSP. We made no changes based on these comments. This rule attempts to avoid program redundancy by focusing CSP on a specific list of eligible practices, for both the new and existing practice payments, rather than the complete laundry list of available practices and promoting intensive management activities as enhancement payments. State Conservationists will have the ability to tailor the lists to assure they meet the pressing natural resource needs of a portion of their State or a multi-State area. NRCS has proposed to manage all of its programs using a portfolio approach to reduce redundancy in program areas. NRCS believes that management of USDA conservation programs using a portfolio approach will help direct applicants toward the programs that best fits their needs, thereby maximizing the conservation and improvement of natural resources.

Some commenters suggested that producers should be allowed to develop their conservation security plans using all practices in the FOTG in their State, so they can have a full array of practices from which to choose to solve resources concerns." Some were concerned that the Chief would be developing the nationally eligible list, and that State Conservationists would not be including the State Technical Committee and local work groups in the process. In the FY 2004 sign-up, the State Conservationist tailored the lists for each watershed following the concept of these comments. NRCS will be reviewing the practical aspects of this list creation process during the FY 2004 sign-up. Since the State Conservationist is a designee of the Chief, subsection 1469.8(a)(2) from the proposed rule was determined to be redundant and has been removed.

Commenters asserted that NRCS should allow conditional approval of conservation practices that are not included in NRCS standards. We made no changes based on these comments. Procedures are already in place to evaluate, and where appropriate add new conservation practices. This process is designed to insure that new technologies can be expeditiously

considered and be evaluated for safety and effectiveness.

Commenters asserted that the most pressing local resource concerns should be funded first. We made no changes based on these comments. Although the NRCS uses national criteria for initial eligibility requirements, conservation practices and contracts are developed locally which should address those concerns.

Commenters asserted that the CSP should give producers incentive to pursue sustainable agricultural practices. We made no changes based on these comments. The CSP is designed to address these activities. This is specifically evident in the provisions concerning enrollment categories and enhancements.

Commenters asserted that farmers should have soil sampling done by agricultural professionals to be eligible for CSP. We made no changes based on these comments. NRCS has no requirement as to who analyzes soils samples; but in accordance with the FOTG the soil samples must be analyzed by a creditable entity, *e.g.*, certified professional, soils lab, or university, or by the producer using an accredited field kit.

Commenters asserted that we should specify certain conservation practices to be required for the various Tier levels. We made no changes based on these comments. Tiers are based on resource concerns, rather than practices. There are typically many alternatives available to reaching a resource concern minimum treatment. Because of site specific variations and resource needs, a list of required conservation practices is simply not feasible. However, criteria was added to this rule to address the need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

Commenters asserted that farmers who spray fields 2 or 3 times a year should be ineligible for CSP. We made no changes based on these comments. Although activities conducted by producers would affect the ability to meet minimum conservation criteria, the regulations do not exclude producers based on criteria such as the number of sprayings in a time period. NRCS believes it is more appropriate to make eligibility determinations based on the operation's overall conservation management.

Section 1469.9 Technical Assistance

Some commenters were confused that conservation stewardship plans will be developed by certified conservation planners and also that technical service providers could work on CSP. NRCS has a program to train and certify conservation planners including technical service providers. This means a farmer could work with a TSP to produce the plan and perform component plan activities if the TSP. was a certified planner.

Some were also concerned that NRCS might delegate its approval authority of CSP contracts, plans, or payments to private TSPs. NRCS does not have the authority to provide those delegations.

NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers (TSP).

Subpart B—Contracts and Payments

Section 1469.20 Application for Contracts

This section is pared back so that it just deals with application requirements. Previously, the description of application requirements was used also to discuss, in essence, eligibility requirements and selection procedures, which have been moved to other sections.

Section 1469.21 Contract Requirements

One commenter proposed that we delete, "* * * on the violation of a term or condition of the contract;" and replace with, "* * * if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract." NRCS accepted this adjustment in wording which provides a clear timeline and process.

NRCS proposed that as the tier transition occurs, that the contract be at the next tier for a period of no less than 18 months to ensure that the practices are functional and are being managed as an integral part of the agricultural operation. This timeframe has been changed to 12 months. The transition contract will retain the original contract length.

Commenters asserted that the effective date for payments should be the application date. We made no changes based on these comments. By statute, a participant is not eligible for payments until the participant has entered into a contract.

Section 1469.22 Conservation Practice Operation and Maintenance

One commenter asked to change subsection 1469.23(d), "When NRCS finds that a participant is not operating and maintaining practices installed through CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract" to read, "* * * NRCS will request a refund of any associated payments made for the operation or maintenance for that practice under the contract." The change is not necessary since NRCS will only be making existing practice payments for practices existing when the application was made. Those payments would be the only type of payment that could be refunded.

Another commenter asked the question, "* * * after a new practice is installed, and a cost-share payment for installation has been made, does the practice become an "existing" practice and eligible for existing practice payments?" No, part of the cost-share obligation for a new practice is to maintain the practice for its performance life, payment is not made for something already required.

Commenters asserted that NRCS should add a requirement that participants annually certify compliance with the key elements of the conservation security plan prior to receipt of payments each year. We made no changes based on these comments, as NRCS already has strict contract quality control procedures in place for all NRCS-related contracts.

Commenters asserted that those participants who are not in compliance should be given the opportunity to come into compliance. We made no changes based on these comments. We do work with participants to retain compliance. However, the interim final rule has language to clarify that if a producer is found to be deficient during the field verification process, they will be granted a reasonable time to correct the problem and come into compliance with the contract.

Commenters asserted that NRCS should allow a participant to go to a lower Tier without adverse consequences. We made no changes based on these comments. NRCS already has authority to take such action if warranted.

Commenters asserted that producers with multiple Tier I contracts should be able to transition to a single Tier II contract. We made no changes based on this comment. This rule allows only one active contract per CSP producer.

Section 1469.23 Program Payments

Numerous comments were made regarding the clarity of this section. Changes in the stewardship rate methodology, subsection 1469.23(a)(2) were made to clarify the process used and allow some flexibility to make adjustments in the rates as information

becomes available, but which will not affect existing contracts. Subsection 1469.23(a)(3) provides a technical correction in the calculation to assure that land not under the control of the applicant is excluded from the stewardship acreage calculation and the calculation is corrected to include the reduction factor. Subsection 1469.23(a)(4) was added to describe the payment for incidental forest land and parcels specified in 1469.5(d)(1)(iv). Subsection 1469.23(b)(4) was corrected to assure internal consistency. Subsections 1469.23(b)(5) and (6) and (c)(3) were changed to clarify existing and new practice payment intent. Subsections 1469.23(c)(6) simplifies language about how long a new practice must be in place before the participant may advance to a higher tier. Previously, language was arguably phrased as a requirement to keep in a lower tier. This 18 month requirement was changed to 12 months.

A change in subsection 1469.23(d)(5) clarifies the basis on which enhancement payments will be made, moving from cost-effectiveness to the actual cost or expected net environmental benefits. Cost-effectiveness is better used in reference to new practice payments where the participant is required to examine the least cost alternative to fix the conservation problem. In the case of enhancements, the strategy is moving towards an index approach, where in several cases the enhancement is measured on a scale of environmental outcomes as opposed to the completion of tasks. The cost to the government is borne in reimbursing the contract holder a portion or all of the conservation benefits achieved by attaining a higher level of performance. Not all resource concerns have a tested index, but NRCS is developing them for future sign-ups.

Subsection 1469.23(h) was added to clarify that in the event that the annual CSP funding was insufficient to fund the existing contract commitments, the contract payments would be prorated.

Section 1469.24 Contract Modifications and Transfers of Land

NRCS received comments concerned that the proposed rule is silent on contract renewal. Although adding a subsection was considered, there is no need to repeat direction from the statute.

As with other sections of the regulation, the timeframe for establishing of measures has been adjusted to 12 months, rather than 18 months, based on comments discussed elsewhere in this document.

Commenters asserted that the final rule should address changes that are likely to occur during contract periods. We made no changes based on these comments. The interim final rule adopts provisions from the proposed rule which allow modifications as required.

Section 1469.25 Contract Violations and Termination

Commenters asserted that there should be no liquidated damages or interest paid for termination of contract. Other commenters asserted that if a contact is terminated early, NRCS should demand refund plus interest and liquidated damages only in cases of fraud, gross negligence or willful failure to carry out mandated conservation practices. NRCS agrees with these comments and adjusted the rule accordingly.

Penalties

Commenters asserted that NRCS should add stiff penalties for fraud in completing self-assessment. We made no changes based on theses comments. Federal law already imposes penalties for such types of fraud (*see e.g.*, 18 U.S.C. 1001).

Commenters asserted that NRCS should allow a participant to terminate a contract without adverse consequences. NRCS agrees with these comments and adjusted the rule accordingly to allow termination by the producer if NRCS determines that all terms and conditions of the contract have been complied with prior to termination.

Commenters asserted that a participant should be able to advance to a higher Tier after 12 months rather than 18 months based on the assertion that this would be compatible with the annual crop cycle. In response, we are making the requested change because the information NRCS needs for determining adequacy of the additional practices can be reviewed within a 12-month period.

Commenters asserted that a producer who would have been eligible for CSP, but for a natural disaster, should be eligible for the amount that would have been paid had the natural disaster not occurred. We made no changes based on these comments. As a general matter, the statutory provisions do not allow for NRCS to waive minimum eligibility requirements for such situations. However, after a contract has been entered, NRCS will work with producers that have suffered natural disasters to allow them to get back into compliance as soon as possible.

Section 1469.31 Appeals

Appeals

The proposed rule provides that participants cannot appeal decisions regarding payment rates, payment limits, cost-share percentages, eligible conservation practices, or other matters of general applicability. Commenters asserted that participants should be allowed to obtain review of these non-appealable decisions with NAD making the determinations. We made no changes based on these comments. The appeals process requirements for CSP are consistent with appeals in all other Food Security Act conservation programs and with the statutory provisions for the NAD 7 U.S.C. 6992(d).

Commenters asserted that appeals should be submitted to the State Executive Committee or the Soil and Water Conservation District. We made no changes based on these comments. NRCS administers the CSP and is responsible for appeals of program determinations until review by the NAD.

Proposed § 1469.31 also provides that a participant must exhaust all administrative appeal procedures before seeking judicial review. Commenters asserted that participants should have a choice between administrative review process and courts without being required to exhaust administrative remedies. We made no changes based on these comments. The requirement to exhaust all administrative appeals is set out in the regulation of the NAD, 7 CFR Part 11.13

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, Natural Resources Conservation Service (NRCS) conducted a benefit/cost analysis of the Conservation Security Program interim rule. A summary of that analysis follows. The alternatives presented in the analysis do not reflect the payment limits used in the interim final rule. Therefore, results reported are illustrative in nature. More precise results will be presented in the benefit cost analysis for the final rule.

Mechanics of CSP: The rule states that the Chief, NRCS, will provide a list of structural and land management practices and activities eligible for each CSP payment component. When determining lists of practices and activities and their associated rates, the Chief will consider: (1) Cost and potential conservation benefits of each; (2) effectiveness in treating significant resource concerns; (3) the number of

resource concerns the practice will address; (4) locally available technology; (5) new and emerging conservation technology; and, (6) ability to address the resource concern based on site-specific conditions.

To address unique resource conditions, the Chief may make other conservation practices, measures, and enhancement activities eligible that are not included in the national list. NRCS will make the list of eligible practices and associated cost-share payment rates available. Where new technologies or conservation practices exist, NRCS may approve interim conservation practice standards and financial assistance for work that evaluates performance and effectiveness of the technology or conservation practices.

To encourage producers to enroll, payments may have as many as four components: (1) Base conservation stewardship payment; (2) maintenance payment; (3) new practice cost-share payment; and, (4) enhancement payment.

The Analytical Model: Benefits and costs are modeled using a database of 6,105 representative farms reflecting the diversity of farm types and resource conditions of U.S. agriculture. Each farm has multiple CSP participation options based on tier level, resource concerns to be addressed, and portion of the farm to be enrolled (Tier 1 only). Potential payments, costs, on-site benefits and off-site (environmental) benefits are assigned to each participation option for each farm. An expansion factor is associated with each farm to expand results to all U.S. farms.

Modeling of CSP benefits and costs is done through a series of database queries designed to select likely participants and participation options. For eligible watersheds (using a new set of watersheds for each program year in multi-year rotation), farms are selected based on likelihood of CSP participation along with their most likely participation option. Selections are guided by a set of producer decision rules that account for expected net return to participation, demographic data relevant to participation decisions, and participation history of given farm types.

Once participants and their likely participation option are selected, data associated with farms and options are aggregated to produce estimates of key measures of program performance, including environmental benefits, on-site benefits to producers, the cost of installing and maintaining conservation practices, and government expenditures.

Producer and Social Benefits of CSP: Environmental benefits arising from CSP are similar to those available through EQIP and detailed in *Environmental Quality Incentive Program (EQIP) Benefit Cost Analysis, Final Report, May 9, 2003.* Like EQIP, CSP provides payments for installation of new practices to address un-treated resource concerns. However, CSP differs from EQIP in some key aspects. Unlike EQIP, CSP provides payments for maintenance of practices already installed. If maintenance payments for practices are received, it is expected that they will be maintained for full effectiveness for the life of the contract. Therefore, benefits can be derived by delaying loss of practice effectiveness that would be normally expected. CSP also provides for contract "enhancements." Enhancements can fund a number of activities but will focus on increasing conservation practice "management intensity" which consists of actions that expand environmental performance beyond the quality criteria that has been used in NRCS programs.

Only a small proportion of benefits likely to result from CSP can be quantified. This analysis considers three general types of benefits likely obtained through CSP: (1) Quality criteria achieved by installation of practices; (2) exceedance of quality criteria by installation or maintenance of practices with enhancements for increasing "management intensity"; and, (3) maintenance of conservation performance through existing practices (not otherwise covered by a maintenance agreement).

Where new practice benefits can be quantified and credited to CSP, benefit estimates are similar to those used in the EQIP analysis. This analysis, however, uses a great deal more spatial detail available in some more recent benefit studies. In some cases, watershed level benefits estimates are available. In other cases, benefits are estimated for NASS farm production regions.

New practice payments can be made under § 1469.23 of the rule. In limited instances, practices installed that take resource concerns to the quality criteria level can receive cost-sharing under CSP. For example, producers who enter Tier II contracts can receive new practice payments for eligible practices applied that address a third resource concern (in addition to soil and water quality) by the end of the contract. Some portion of benefits likely to flow from application of new practices designed to meet basic, quality criteria can be quantified. Note, however, that in most cases benefits of addressing soil quality and water quality to the quality criteria level in Tiers I and II and the benefits of addressing all resource concerns to meet quality criteria in Tier III cannot be claimed for CSP because these resource concerns must be addressed prior to CSP enrollment. Thus, environmental benefits associated with soil erosion reduction and nutrient management cannot be attributed to CSP. By extension, wind erosion-related air quality benefits cannot be counted, either because these benefits are largely captured by meeting the quality criteria level for soil quality (which includes reducing erosion to T).

Contract enhancement payments under § 1469.23 of the rule are assumed to account for up to 75 percent of CSP payments. The benefits associated with these enhancement activities are unknown, but a qualitative discussion of them is included in the Benefit Cost analysis. A modest level of benefits is likely to be realized through maintenance of conservation practices. To the extent that cost-sharing of maintenance cost ensures more effective maintenance, practice life may be extended, thus increasing overall environmental benefits. Other potential benefits, although not quantified here, are discussed in Appendix 3 of the CSP Interim Final Rule Benefit Cost Analysis.

Producer and Government Costs of CSP

Producers must incur certain costs in order to participate in CSP. Following are four costs that a producer may incur, depending on their enrollment tier and amount of land enrolled: (1) Pre-enrollment conservation practice implementation costs; (2) costs associated with the maintenance of existing practices; (3) costs to install new practices; and, (4) costs associated with enhancement activities.

The analysis assumes that some producers must implement practices to enroll. The Interim Final Rule states that producers must address soil and water quality on a portion of their operation for Tier I, soil and water quality on their entire operation for Tier II and all relevant resource concerns on their entire operation for Tier III. Pre-enrollment implementation cost is the cost to the producer to implement structural and management practices needed to address resource concerns and acres that have not already been treated to be eligible to enroll in CSP at a given tier. This cost is used to determine a producer's willingness to participate, but is not included in program related costs in calculating program net benefits.

Existing practice costs are incurred by producers to maintain structural

practices on treated acres. These costs do not include cost to maintain practices that are part of the pre-enrollment implementation cost because these practices may have been installed through another federal program with maintenance required as part of the contract.

New practice installation costs are costs incurred by the producer enrolled in Tier II to address a third resource concern on their operation. These costs apply to both structural and management practices. Producers choosing to move from Tier I to Tier II incur costs to install structural and management practices to achieve the new level. They must address the third resource concern by the end of the contract.

Discussion of Program Alternatives

NRCS has discretion over several important program parameters that significantly affect program participation and costs. Assumptions used in the alternatives do not reflect the limits used in the interim final rule. Therefore, results reported are illustrative in nature. More precise results will be presented in the benefit cost assessment for the final rule.

Results: Program Net Benefits and Transfer Payments

Program net benefit is the sum of all CSP-related benefits less all CSP-related costs. CSP-related benefits include both onsite and environmental (offsite) benefits that accrue from practice installation, adoption, and maintenance and payments to producers. Net benefits are only a partial accounting of total benefits, and do not include the benefits attributed to enhancements. CSP-related costs include financial assistance to producers, the cost of practice installation, adoption, and maintenance, and the cost of technical assistance provided to producers. Payments to producers cancel as they are a benefit to producers but a cost to taxpayers. Thus, transfer payments received by producers—payment above CSP-related conservation costs— also cancel out of the net benefit calculation. Note that costs incurred by producers in anticipation of CSP participation (see above "Producer and Government Costs of CSP") are not counted against CSP payments. If these costs were counted, transfer payments would be lower. On the other hand, the cost of maintaining practices is counted against program payments in calculating the transfer. To the extent producers would maintain practices even without cost-sharing, transfer payments may be underestimated.

Results indicate that the level of cost share has little impact on CSP participation rates. However, stewardship payment rates and participation rates are positively related. Further information on the results of program alternatives can be found in the interim final rule benefit-cost assessment.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to Section 2702 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the Secretary "shall use the authority provided under section 808(2) of title 5, United States Code." As required by 5 U.S.C. 808(2), NRCS hereby finds that additional public notice and comment prior to the effective date of this interim final rule are unnecessary and contrary to the public interest. Even though proposed rulemaking was not required for this rulemaking, NRCS published in the **Federal Register** an Advance Notice of Proposed Rulemaking on February 18, 2003 (68 FR 7720), and a Notice of Proposed Rulemaking on January 2, 2004 (69 FR 194). In this interim final rule, NRCS responds to the comments received during the comment period for the proposed rulemaking. Thus, NRCS does not believe that additional public notice through 5 U.S.C. 808(1) is necessary prior to the effective date of this interim final rule, even though the agency has provided for an additional comment period. Additionally, Congress authorized $41.443 million to be available to implement CSP in FY 2004. NRCS needs to obligate these funds by September 30, 2004, in order for them to be available for payment to CSP program participants. To ensure that NRCS has the regulatory framework in place for the FY 2004 sign-up, NRCS determines that it is in the public interest for this interim rule to be in effect upon its publication in the **Federal Register**.

Environmental Analysis

A final Environmental Assessment (EA) has been prepared to assist in determining whether this interim final rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the final EA, NRCS issued a Finding of No Significant Adverse Impact (FONSI) on May 25, 2004. Copies of the final EA and FONSI may be obtained from Thomas Christensen, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under "Program Information".

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS is proposing to develop an online application and information system for public use.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from Thomas Christensen, Director, Financial Assistance Programs Division,

Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under "Program Information".

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects in 7 CFR Part 1469

Agricultural operations, Conservation practices, Conservation stewardship contract, Conservation stewardship plan, Plant and animal management, Soil and water conservation, Soil quality, Water and air quality.

■ Accordingly, title 7, chapter XIV of the Code of Federal Regulations is amended by adding a new part 1469 to read as follows:

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Contracts and Payments

Subpart C—General Administration

Authority: 16 U.S.C. 3830 *et seq.*

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Marianna Islands.

(c) Through the CSP the Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of a Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Tribe or Tribal Nation and the NRCS Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in (7 U.S.C. 1991(a)). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day

activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land conservation committee," or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

Conservation system means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.

Enhancement payment means CSP payments available to all tiers as described in § 1469.23(d).

Enrollment categories means a classification system used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in § 1469.23(b).

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop lines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at *http://www.nrcs.usda.gov/technical/efotg/*.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide.

Incidental forest land means forested land that includes all nonlinear forested riparian areas (*i.e.*, bottomland forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standard will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

Indian tribe means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

(1) With direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the CSP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in 1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in 1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and has signed a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Practice life span means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

Priority resource concern means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

Producer means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

Quality criteria means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, prairie, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a

legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource management system means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

Secretary means the Secretary of the U.S. Department of Agriculture.

Sharecropper means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

Soil quality means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship payment means the CSP base payment component of the payment as described in 1469.23(a).

Structural practice means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the activities as defined in 7 CFR part 1466.

Technical Service Provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

Tenant means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds therefrom.

Tier means one of the three levels of participation in CSP.

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

Watershed or regional resource conservation plan means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

Wetlands Reserve Program (WRP) means the Commodity Credit Corporation program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837–3837f.

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) Applicants may submit only one application for each sign-up. Producers who have an active CSP contract are not eligible to submit another application.

(c) Eligible applicants. To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner.

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations).

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a);

(5) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to information related to eligibility criteria in the sign-up notice; and information to verify the applicant's status as a beginning farmer or rancher;

(d) Eligible land. (1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

(ii) Private non-industrial forested land that is an incidental part of the agricultural operation;

(iii) Agricultural land that is Tribal, allotted, or Indian trust land;

(iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, incidental forest land, turn rows, intermingled small wet areas or riparian areas); or

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of

the agricultural operation such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

(2) The following land is not eligible for enrollment in CSP:

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

(iii) Land enrolled in the Grassland Reserve Program pursuant to 16 U.S.C. 3838n;

(iv) Public land including land owned by a Federal, State or local unit of government;

(v) Land referred to in paragraphs (d)(2)(i), (ii), (iii), and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (1)(d)(iv) of this section, and other lands, identified in paragraph (1)(d)(v) of this section under the control of the participant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) Conservation standards. (1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment meets or exceeds the quality criteria according to the NRCS technical guides for these specific resource considerations: nutrients, pesticides, salinity and sediment for surface waters and nutrients, pesticides, and salinity for groundwater.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance, proper livestock distribution, and timing of use and managing livestock access to water courses.

(4) The minimum level of treatment for Tier III.

(i) The minimum level of treatment for Tier III is meeting the quality criteria for the local NRCS FOTG for all existing resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive; and

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use efficiency value of at least 50%.

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5.

(5) In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

§ 1469.6 Enrollment criteria and selection process.

(a) Selection and funding of priority watersheds. (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues *e.g.* location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) Enrollment categories. The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories will be defined by criteria related to resource concerns and levels of historic conservation treatment, and the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

(i) Willingness of the applicant to participate in local conservation enhancement activities;

(ii) Targeting program participation for Limited Resource Producers;

(iii) Targeting program participation to water quality priority areas for nutrient or pest management;

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) Sign-up process. (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in § 1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in § 1469.21;

(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;

(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;

(vi) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(vii) The schedule for the sign-up process, including the deadline(s) for applying.

(2) NRCS will accept applications according to the timeframes specified in the sign-up notice.

(d) Selection of contracts. (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category based on the criteria specified in the sign-up notice. Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations. NRCS will determine in which Tier the participant is eligible to participate, and will notify applicants of the determination.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the group of contracts funded in the given sign-up, NRCS will make payments as described in the contract in return for their implementation and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

§ 1469.7 Benchmark condition inventory and conservation stewardship plan.

(a) The benchmark condition inventory must include:

(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage.

(2) A description of the applicant's production system(s) on the agricultural operation to be enrolled;

(3) The existing conservation practices and resource concerns, problems, and opportunities on the operation.

(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans; and

(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures.

(6) A list of enhancements that the producer may be willing to undertake as part of their contract.

(b) Conservation stewardship plan. (1) The conservation stewardship plan must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A verified benchmark condition inventory as described in § 1469.7(a);

(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;

(v) A description and implementation schedule of:

(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up;

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns;

(C) Eligible enhancement activities as selected by the participant and approved by NRCS; and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of the conservation activities that are required for a participant to transition to a higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS and described to the applicant.

(3) The conservation stewardship plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(4) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

§ 1469.8 Conservation practices and activities.

(a) Conservation practice and activity selection. (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief's designee provides the list, it will be approved by the Director of the Financial Assistance Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice or activity will address;

(iv) Locally available technology;

(v) New and emerging conservation technology;

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

(2) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except for provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application for the program.

(d) New practice payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract, unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level; however, the State Conservationist may supplement specific criteria to meet localized conditions within the State or areas.

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation stewardship plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and quality assurance activities.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the CSP contracts and contract payments.

(e) Conservation stewardship plans will be developed by NRCS certified conservation planners.

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts.

(a) Applications must include:

(1) A completed self-assessment workbook.

(2) Benchmark condition inventory and conservation stewardship plan in accordance with § 1469.7 for the entire operation or, if Tier I, for the portion being enrolled.

(3) Any other requirements specified in the sign-up notice;

(4) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP;

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice;

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Producers can only have one active contract at any one time.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other things, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

(b) Program participants will only receive payments from one conservation stewardship contract per agricultural operation.

(c) CSP participants must address the following requirements or additional resource concerns to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirement: additional practices and activities including the treatment of an additional locally significant resource concern as described in Section III of the NRCS FOTG other than the nationally significant resource concerns, as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) Transition to a higher tier of participation.

(1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract in which a participant transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and,

(iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract in which a participant transitions from Tier I to a higher tier

will not authorize higher payments for that transition until the participant has demonstrated that they have achieved that tier level for a period of at least 12 months.

(4) A contract in which a participant transitions from Tier II to Tier III must include a participation period of no less than 12 months at Tier II.

(5) The transition contract will retain the original contract length.

(e) A conservation stewardship contract must:

(1) Incorporate by reference the conservation stewardship plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Implement and maintain the practices as identified and scheduled in the conservation stewardship plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements;

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract;

(iii) Refund any CSP payments received with interest and liquidated damages, and forfeit any future payments under CSP, if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract;

(iv) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments:

(i) Relate to the schedule for implementing additional conservation measures as described in the security plan;

(ii) Relate to the participant's actual implementation of additional conservation measures as described in the security plan; and,

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation.

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(f) The participant must apply and maintain the practice(s) within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract. A participant may apply for a new conservation stewardship contract in a subsequent sign-up.

(h) Participants must:

(1) Implement the conservation stewardship contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(i) NRCS will determine the payments under the contract as described in § 1469.23.

(j) NRCS will not pay participants for: practices within their conservation stewardship plan that are required to meet conservation compliance requirements found in 7 CFR part 12; practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the participant's conservation stewardship contract approval; or the maintenance of equipment.

(k) For contracts encompassing the participant's entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

(l) An applicant will be awarded only one contract per sign-up period.

§ 1469.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which the participant has received a new practice or enhancement payment its intended purpose for the life span of the conservation practice(s), as identified in the contract or conservation stewardship plan, as determined by NRCS.

(c) Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract whether or not an existing practice payment is made.

(d) NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through the CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract. If an existing practice is part of a system that meets the quality criteria, but does not technically meet NRCS minimum practice standards, the practice must be modified or updated to meet the standard according the FOTG as specified in § 1469.25(a) of this part.

§ 1469.23 Program payments.

(a) Stewardship component of CSP payments.

(1) The conservation stewardship plan, as applicable, divides the land area to be enrolled in the CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, pastured cropland and range land, among other categories.

(2) NRCS will determine an appropriate stewardship payment rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraphs (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

(3) NRCS will compute the stewardship component of a participant's CSP payment as the product of: the number of acres in each land use category (not including "other" or land not in the applicant's control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II

payments, and 15 percent for Tier III payments.

(4) Other incidental parcels as defined in § 1469.5(d)(1)(iv) including incidental forest land may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in § 1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) Existing practice component of CSP payments.

(1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with § 1469.8(a).

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4)of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay participants for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

(c) New practice payments. (1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with § 1469.8(a).

(2) If a participant's CSP contract requires the participant to implement a new structural, vegetative, or management practice, NRCS may pay the participant a percentage of the cost of installing the new practice. In no case will the payment exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) NRCS may not make new practice payments to participants for:

(i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;

(ii) The purchase or maintenance of equipment; or

(iii) A non-land based structure that is not integral to a land based practice, as determined by the Chief.

(4) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(5) Cost-share payments may be provided by other USDA programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(6) If additional practices are installed or implemented to advance a participant from one tier of participation to a higher tier, the practice must be certified by NRCS and be maintained prior to advancing to a higher tier as described in § 1469.24(b).

(7) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(8) NRCS will not pay a new practice payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(9) The Chief may reduce the rates in any given sign-up notice.

(d) Enhancement component of CSP payments. (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation stewardship plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy management as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the participant's Tier of participation as outlined in the sign-up notice and as described in § 1469.5(e) and the contract requirements in § 1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up notice; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation stewardship plan as outlined in the sign-up notice.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(5) Eligible enhancement payments. (i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each practice and activity.

(ii) Enhancement payments will be determined based on a given activity's cost or expected net conservation benefits above the minimum criteria, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform or continue a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance.

(iii) NRCS will provide the list of approved enhancement activities and payment amounts for each activity with the CSP sign-up notice.

(6) The Chief may set a not-to-exceed limit for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

(1) $20,000 per year for a Tier I conservation stewardship contract, (2) $35,000 per year for a Tier II conservation stewardship contract, or

(3) $45,000 per year for a Tier III conservation stewardship contract.

(4) Stewardship components of CSP payments cannot exceed $5,000 per year for Tier I, $10,500 per year for Tier II, or $13,500 per year for Tier III.

(5) The total of the stewardship, existing and enhancement payment cannot exceed a percentage of the unadjusted stewardship payment rate described in (a)(2)(i) through (iii). The tier-specific percentage is 15 percent for Tier I contracts, 25 percent for Tier II contracts, and 40 percent for Tier III contracts.

(f) The new practice and enhancement components of the CSP contract payment may increase once the participant applies and maintains additional conservation practices and activities as described in the conservation stewardship plan

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified:

(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;

(2) As required by the State Conservationist due to changes to the type size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program. In lieu of modifying the contract—

(i) The producer may terminate the contract; and,

(ii) Retain payments received under the contract, if the participant has fully complied with the terms and conditions of the contract before the termination.

(b) Participants may request a modification to their contract to change their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 12 months.

(c) Contract transfers are permitted when there is agreement among all parties to the contract.

(1) NRCS must be notified within 60 days of the transfer of interest or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

(d) The Chief may require a participant to refund all or a portion of any assistance earned under CSP if the participant sells or loses control of the land under a CSP contract, and the new owner or controller is not eligible to participate in CSP, or refuses to assume responsibility under the contract within 60 days after the date of the transfer or change in the interest of the land and the participant has not fully complied with the terms and conditions of the contract to the extent that the purposes of the program have not been achieved.

§ 1469.25 Contract violations and termination.

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the CSP contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has: Submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights for future payments under the contract, and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with part 1403 of this chapter. The State Conservationist may require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(e) When making any contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the producer has fully complied with the terms and conditions of the contract before termination of the contract.

(g) In carrying out the role in this section, the State Conservationist may consult with the local conservation district.

Subpart C—General Administration

§ 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that producers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from the participant's performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the producer prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a producer erroneously represented any fact affecting a CSP determination made in accordance with this part, are not entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with § 1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest determined in accordance with § 1469.25 received by such producer with respect to all contracts. In addition, NRCS will terminate the participant's interest in all CSP contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

Signed in Washington, DC, on June 10, 2004.

Bruce I. Knight,

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

[FR Doc. 04–13745 Filed 6–18–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

RIN 0578–AA36

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Notice.

DATES: The administrative actions announced in the notice are effective on June 21, 2004

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@usda.gov*, Attention: Conservation Security Program.

SUMMARY: This document announces the first sign-up for the Conservation Security Program. This sign-up for the Conservation Security Program (CSP) will be open from July 6, 2004, through July 30, 2004, in selected 8-digit watersheds in Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin.

SUPPLEMENTARY INFORMATION: In an Interim Final Rule published elsewhere in this issue of the **Federal Register**, USDA's Natural Resources Conservation Service (NRCS) established the Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS using authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. On May 4, 2004, NRCS published a notice in the **Federal Register** (69 FR 24560), announcing the process NRCS will use in determining priority watershed, and the details of the enrollment categories that will be used in the FY 2004 sign-up.

This document announces that the first sign-up for the CSP will be open from July 6 through July 30, 2004 in selected 8-digit watersheds in Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin, which can be viewed at *http://www.nrcs.usda.gov/programs/csp/watersheds04.html*.

These watersheds were selected using the process set forth in the May 4, 2004, notice to the **Federal Register**. In addition to other data sources, this process used National Resources Inventory data to assess land use, agricultural input intensity, and historic conservation stewardship in watersheds nationwide. A list of candidate watersheds was generated. State Conservationists were queried and watersheds were excluded based on the assessment of locations where staff capacity was inadequate, soils were not digitized, and required technical tools, specifically the Revised Uniform Soil Loss Equation Version 2.0 (RUSLE2) and Toolkit would not be fully operational for a 2004 sign-up.

Watersheds were also evaluated from a national perspective in consultation with State Conservationists regarding regional resource issues that would enhance CSP's environmental goals. Preference was given to two watersheds, the Lemhi and Hondo watersheds, where improving resources would assist the recovery of threatened and endangered species or add measurably to critical resource recovery efforts and extensive watershed level measures were in place.

To be eligible for CSP, a majority of the agricultural operation must be within the limits of the watershed. Applications which meet the minimum requirements as set forth in the final rule (listed below) will be placed in enrollment categories for funding consideration. Categories will be funded in order from A through H until funds are exhausted. If funds are not available to fund an entire category, then the applications will fall into subcategories and funded in order until funds are exhausted.

Applicants can submit only one application for this sign-up. Producers should begin the application process by filling out a self assessment to determine if they meet the basic qualification for CSP. Self assessment workbooks are available in hard copy at USDA Service Centers within the watersheds, and electronically for download or an interactive Web site linked from *www.nrcs.usda.gov/programs/csp*. The self assessment workbook includes a benchmark inventory where the applicant documents the conservation practices and activities that are ongoing on their operation. This benchmark inventory serves as the basis for the stewardship plan.

In order to apply, applicants must submit:

1. A completed self assessment workbook, including the benchmark inventory;

2. Documentation for calendar years 2002 and 2003 to show the stewardship completed including fertilizer, nutrient, and pesticide application schedules, tillage, and grazing schedules.

3. Completed CCC–1200 available through the self assessment online guide, Web site, and any USDA Service Center.

Applicants are encouraged to attend preliminary workshops, which will be announced locally, the basic qualifications will be explained, and assistance provided to complete the self assessment workbook and benchmark inventory.

CSP is offered at three tiers of participation. Some payments are adjusted based on the tier, and some payments are tier-neutral. See payment information below.

Minimum Tier Eligibility and Contract Requirements

The following are the minimum tier eligibility and contract requirements:

CSP Tier I—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for any landuse on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

CSP Tier II—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for all land uses on the entire agricultural operation. Additionally, the applicant must agree to add another significant resource concern of their choice to be completed by the end of the contract period.

CSP Tier III—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the existing resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation, including other land.

Delineation of the Agriculture Operation

Delineating an agriculture operation for the Conservation Security Program is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation. The applicant will delineate the agriculture operation to include all agricultural lands, and other lands such as farmstead, feedlots, and headquarters and incidental forestlands, under the control of the participant and constituting a cohesive management unit that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. In delineating the agriculture operation, Farm Service Agency farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agriculture operation.

Minimum Eligibility Requirements

To be eligible to participate in CSP, the applicants must meet the requirements for eligible applicants, the land offered under contract must meet the definition of eligible land, and the application must meet the conservation standards for that land as described below.

Eligible Applicants

To be eligible to participate, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions;

(2) Tenants must show control of the land for the life of the proposed contract period by providing NRCS with the written evidence or assurance of control from the landowner. In the case of land allotted by the Bureau of Indian Affairs (BIA) or tribal land, there is considered to be sufficient assurance of control.

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agriculture operation landlords and owners are ineligible to submit an application for exclusively cash rented agriculture operations.

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a) in the Interim Final Rule;

(5) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to, information related to eligibility criteria in this sign-up announcement; and information to verify the applicant's status as a beginning farmer or rancher if applicable.

Eligible Land

To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation;

(3) Agricultural land that is Tribal, allotted, or Indian trust land;

(4) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, linear practices, field borders, turn rows, intermingled small wet areas or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural operation or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts.

Land Not Eligible for Enrollment in CSP

The following lands are ineligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program, the Wetlands Reserve Program, or the Grassland Reserve Program; and

(2) Public land including land owned by a Federal, State, or Local unit of government.

Land referred to above may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

Land Not Eligible for Any Payment Component in CSP

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002, is not eligible for any payment component in CSP.

Conservation Standards for Tier I and Tier II

The following conservation standards apply for Tier I and Tier II:

1. The minimum level of treatment on cropland:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index is positive;

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment meets or exceeds the quality criteria according to the NRCS technical guides for these specific resource considerations: nutrients, pesticides, salinity and sediment for surface waters and nutrients, pesticides, and salinity for groundwater, if applicable.

2. The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management, which enhances the soil resource by following a grazing management plan that provides a forage animal balance, proper livestock distribution, and timing of use and managing livestock access to water courses.

Conservation Standards for Tier III

The minimum level of treatment for Tier III on any landuse is meeting the quality criteria for the local NRCS FOTG for all existing resource concerns with these exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive.

(B) The minimum requirement for water quality—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use efficiency value of at least 50%.

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5 on the NRCS wildlife habitat index.

CSP Contract Payments and Limits

CSP contract payments include one or more of the following components subject to the described limits:

- An annual per acre stewardship component for the benchmark conservation treatment. This component is calculated separately for each land use by multiplying the number of acres times the tier factor (0.05 for Tier I, 0.10 for Tier II, and 0.15 for Tier III) times the stewardship payment rate established for the watershed times the tier reduction factor (0.25 for Tier I and 0.50 for Tier II, and 0.75 for Tier III).

• An annual existing practice component for maintaining existing conservation practices. Existing practice payments will be calculated as a flat rate of 25% of the stewardship payment.

• A new practice component for additional practices on the watershed specific list. New practice payments will be made at not more than a 50% cost-share rate and are limited to $10,000 cumulative total for the contract.

• An annual enhancement component for exceptional conservation effort and additional conservation practices or activities that provide increased resource benefits beyond the prescribed level. Enhancement payments will not exceed $10,000 for Tier I, $17,500 for Tier II, and $22,500 for Tier III annually.

• An advance enhancement payment, not-to-exceed $10,000, available in the FY 2004 sign-up. The advance enhancement payment is available to contracts with an initial enhancement payment as determined in the benchmark inventory and interview. The advance enhancement payment would shift that annual enhancement payment amount into the first year payment and deduct it from the following year's payments. This is in addition to the enhancement payment limit.

Tier I contracts are for a 5 year duration, Tier II and Tier III contracts are for a 5 to 10 year duration at the option of the participant.

The combined stewardship, existing practice, and enhancement payments cannot exceed the following contract limits:

• Tier I—15% of the stewardship rate times the enrolled acres

• Tier II—25% of the stewardship rate times the enrolled acres

• Tier III—40% of the stewardship rate times the enrolled acres

Total annual maximum payments limits are $20,000 for Tier I, $35,000 for Tier II, and $45,000 for Tier III.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web at *http://www.nrcs.usda.gov/programs/csp/watersheds04.html*.

Enhancement Components Available in This Sign-up

The following are the enhancement components available this sign-up:

1. Additional conservation treatment above the quality criteria for soil quality, nutrient management, pest management, irrigation water management, prescribed grazing, and energy management; and

2. Addressing locally identified conservation needs shown on the watershed specific enhancement lists.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web at *http://www.nrcs.usda.gov/programs/csp/watersheds04.html*.

The Administration budget projects that about 3000 contracts will be available under this sign-up, with roughly 45 percent of those in Tier I, 45 percent in Tier II, and 10 percent in Tier III.

CSP Enrollment Categories and Subcategories

Technical adjustments to the enrollment categories were made based on field testing of the criteria published in a previous notice. This notice provides updated enrollment category criteria.

The CSP will fund the enrollment categories A through H in alphabetical order (Attachment #1). If an enrollment category cannot be completely funded, then subcategories will be funded in the following order:

1. Applicant is a limited resource producer;

2. Applicant is a participant in an ongoing monitoring program;

3. Agricultural operation in a designated water conservation area or aquifer zone;

4. Agricultural operation in a designated drought area;

5. Agricultural operation in a designated water quality area, such as designated watersheds with Total Maximum Daily Loading (TMDL) limits with a priority on pesticides;

6. Agricultural operation in a designated water quality area, such as designated watersheds with TMDL limits with a priority on nutrients;

7. Agricultural operation in a designated water quality area, such as designated watersheds with TMDL limits with a priority on sediment;

8. Agricultural operation in a designated non-attainment area for air quality or other local or regionally designated air quality zones;

9. Agricultural operation in a designated area for threatened and endangered species habitat creation and protection;

10. Participating in an ongoing watersheds plan or conservation project;

11. Agricultural operation is intermingled with public land where there is no way to distinguish the public from the private land for management purposes; and

12. Other applications.

(Designated means "officially assigned a priority by a Federal, State, or local unit of government" prior to this notice.)

If a subcategory cannot be fully funded, applicants will be offered the FY 2004 CSP contract payment on a prorated basis.

Signed in Washington, DC, on June 9, 2004.

Bruce I. Knight,

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

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Attachment 1 **CSP Enrollment Categories – Criteria by Land Use and Category**

	Category	Criteria			
		Soil Conditioning Index	Stewardship Practices (from list below) in place for two or more years	Stewardship Activities (from list below) in place for two or more years	Actions to be completed by the third contract year
Cropland (row crops, closely grown crops, hay or pasture in rotation with row or closely grown crops, orchards, vineyards, horticultural crops, and permanent hayland)	A	at least 0.1	at least 3 practices	at least 3 activities	Agree to move to next Tier or to complete two additional Stewardship Practices or Activities from list below
	B	at least 0.0	at least 3 practices	at least 3 activities	Agree to move to next Tier or to complete two additional Stewardship Practices or Activities from list below
	C	at least 0.1	at least 2 practices	at least 2 activities	Agree to complete two additional Stewardship Practices or Activities from list below
	D	at least 0.0	at least 2 practices	at least 2 activities	Agree to complete two additional Stewardship Practices or Activities from list below
	E	at least 0.1	at least 2 practices	at least 1 activity	Agree to complete two additional Stewardship Practices or Activities from list below
	F	at least 0.0	at least 1 practice	at least 1 activity	Agree to complete two additional Stewardship Practices or Activities from list below
	G	at least 0.0	at least 1 practice	any number of activities	Agree to complete two additional Stewardship Practices or Activities from list below
	H	Must meet minimum program eligibility requirements as defined in 7CFR1469			Do not agree to do complete additional actions by the end of the third contract year

Attachment 1 **CSP Enrollment Categories – Criteria by Land Use and Category**

Stewardship Practice List for Cropland, including Orchards, Vineyards, Horticultural Crops, and Permanent Hayland (Conservation practices from the Field Office Technical Guide that improve soil and/or water quality)

- Alley Cropping (ac.) (311)
- Atmospheric Resources Quality Management (370)
- Composting (317)
- Conservation Crop Rotation (328)
- Constructed Wetland (656)
- Contour Buffer Strips (332)
- Contour Orchard and Other Fruit Area (331)
- Cover Crop (340)
- Critical Area Planting (342)
- Cross Wind Ridges (589A)
- Cross Wind Trap Strips (589C)
- Drainage Water Management (554)
- Field Border (386)
- Filter Strip (393)
- Forage Harvest Management (511)
- Hedgerow Planting (422)
- Herbaceous Wind Barriers (603)
- Hillside Ditch (423)
- Irrigation System-Micro-irrigation (441)
- Irrigation Water Management (449)
- Lined Waterway or Outlet (468)
- Low Disturbance Cropping (No Till/Strip Till/Direct Seed) (329d1)
- Mulching (484)
- Pasture & Hayland Planting (512)
- Prescribed Grazing (on cropland) (528)
- Residue Management (329)
- Riparian Forest Buffer (391)
- Riparian Herbaceous Cover (390)
- Sediment Basin (350)
- Soil Salinity Management-Nonirrigated (571)
- Stream Habitat Improvement and Management (395)
- Stripcropping (585)
- Structure for Water Control (587)
- Water & Sediment Control Basin (638)
- Well Decommissioning (351)
- Wetland Enhancement (659)
- Windbreak/Shelterbelt Establishment (380)

Stewardship Activity List for Cropland, including Orchards, Vineyards, Horticultural Crops, and Permanent Hayland (Activities that mitigate off-site resource damage or improve soil and/or water quality)

- Addition of soil amendments such as polyacrylamide (PAM) or gypsum
- Collection of yield data
- Conduct an energy audit on the agricultural operation
- Conduct spraying activities and other control of noxious/invasive weeds on a spot basis
- Enhance sustainable drainage management through seasonal on-farm water storage and retention
- Harvest crops from center of field outward
- Increase amount of sod or perennial crops in rotation for a minimum of 2 years
- Irrigation system efficiency evaluations and adjustment
- Low energy precision application sprinklers
- Minimize the use of irrigation by planting alternative crops with reduced water needs
- Minimize the use of pesticides by using pest resistant plant varieties
- Precise application of nutrients such as – banding, side dressing, injection, fertigation
- Split Nitrogen Application to meet crop needs
- Surge irrigation
- Test soil and/or plant tissue on annual basis
- Use a risk assessment tool such as WINPST to select the least toxic product to minimize harmful effects on human health and environmental resources
- Use established local guidelines to set economic thresholds for pest to minimize use of pesticides and herbicides
- Use of a resource-conserving crop rotation
- Use of beneficial insects
- Use of data from on-farm weather station
- Use of tensiometers or other techniques to assess and improve irrigation water management
- Use of yield monitoring data
- Weather stations installation and/or data collection

Attachment 1 **CSP Enrollment Categories – Criteria by Land Use and Category**

	Category	Criteria			
		Overall Pasture Condition Scoring Assessment	Stewardship Practices (from list below) in place for two or more years	Stewardship Activities (from list below) in place for two or more years	Actions to be completed by the third contract year
Pasture	A	at least 45	at least 3 practices	at least 3 activities	Agree to move to next Tier or to complete two additional Stewardship Practices or Activities
	B	at least 45	at least 2 practices	at least 2 activities	Agree to complete two additional Stewardship Practices or Activities
	C	at least 35	at least 3 practices	at least 3 activities	Agree to move to the next Tier or to complete two additional Stewardship Practices or Activities
	D	at least 35	at least 2 practices	at least 2 activities	Agree to complete two additional Stewardship Practices or Activities
	E	at least 35	at least 2 practices	at least 1 activity	Agree to complete two additional Stewardship Practices or Activities
	F	at least 25	at least 1 practice	at least 1 activity	Agree to complete two additional Stewardship Practices or Activities
	G	at least 25	at least 1 practice	any number of activities	Agree to complete two additional Stewardship Practices or Activities
	H	Must meet minimum program eligibility requirements as defined in 7CFR1469			Do not agree to do complete additional actions by the end of the third contract year

CSP Enrollment Categories – Criteria by Land Use and Category

Stewardship Practice List for Pasture

(Conservation practices from the Field Office Technical Guide that improve soil and/or water quality)

- Animal Trails and Walkways (575)
- Brush Management (314)
- Channel Bank Vegetation (322)
- Critical Area Planting (342)
- Fence (for sensitive area protection only) (382)
- Grassed Waterway (412)
- Grazing Land Mechanical Treatment (516)
- Heavy Use Area Protection (561)
- Irrigation Water Management (449)
- Pasture and Hay Planting (512)
- Pipeline (516)
- Pond (378)
- Prescribed Burning (338)
- Riparian Herbaceous Cover (390)
- Soil Salinity Management – Nonirrigated (571)
- Spring Development (574)
- Stream Crossing (578)
- Stream Habitat Improvement and Management (395)
- Streambank & Shoreline Protection (580)
- Waste Utilization (pathogen and organic runoff control) (633)
- Water & Sediment Control Basin (638)
- Water Well (642)
- Watering Facility (614)
- Wetland Enhancement (659)
- Wetland Restoration (657)
- Wildlife Watering Facility (648)

Stewardship Activity List for Pasture

(Activities that mitigate off-site resource damage or improve soil and/or water quality)

- Added functional group pastures
- Conduct an energy audit on the agricultural operation
- Confinement animal wastes, if applied, are injected
- Flash graze riparian corridors to keep healthy grass stands on stream banks in former prairie areas
- Grazing distribution facilitated by watering locations, based on locally identified distances between water locations and water available in each sub-divided pasture
- Improved laneways
- Increased plant diversity – forbs and legumes greater than 40%
- Integrated pest management activities for weeds, brush, insects, or diseases
- Interseeding
- Livestock ponds and watering areas have controlled access points or are outfitted with watering facility
- Pastured bottomland or riparian area is treated as a separate grazing treatment unit and alternative watering facilities in place
- Rotate feeding and salting areas
- Rotational grazing
- Test soil and/or plant tissue test every 3 years on pastures not receiving confinement wastes
- Timed grazing on a portion of paddocks to create habitat for targeted species
- Use of decision support tools in development of grazing management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), Water Erosion Prediction Project (WEPP), etc.
- Where confinement wastes are applied, test soil and/or plant tissue on annual basis prior to next application
- Where fertilizer nitrogen is applied, split applications to meet current crop needs

Attachment 1 **CSP Enrollment Categories – Criteria by Land Use and Category**

	Category	Criteria		
		Rangeland Health Assessment	Stewardship Practices and Activities (from list below) in place for two or more years	Actions to be completed by the third contract year
Range	A	none to slight for all 3 attributes	Prescribed grazing plus 3 or more practices or activities in place, including brush management or range seeding resource needs adequately addressed	Agree to move to next Tier or to complete two additional Stewardship Practices or Activities from list below
	B	none to slight for all 3 attributes	Prescribed grazing plus 2 or more practices or activities in place and either brush management or range seeding resource needs adequately addressed	Agree to move to next Tier or to complete two additional Stewardship Practices or Activities from list below
	C	none to slight for 2 attributes and slight to moderate for 1 attribute	Prescribed grazing plus 3 or more practices or activities in place and either brush management or range seeding resource needs adequately addressed	Agree to complete two additional Stewardship Practices or Activities from list below
	D	none to slight for 2 attributes and slight to moderate for 1 attribute	Prescribed grazing plus 2 or more practices or activities in place and either brush management or range seeding resource needs adequately addressed	Agree to complete two additional Stewardship Practices or Activities from list below
	E	none to slight for 2 attributes and slight to moderate for 1 attribute	Prescribed grazing plus 1 or more practices or activities in place and either brush management or range seeding resource needs adequately addressed	Agree to complete two additional Stewardship Practices or Activities from list below
	F	none to slight for 1 attribute and slight to moderate for 2 attributes	Prescribed grazing plus 2 or more practices or activities in place	Agree to complete two additional Stewardship Practices or Activities from list below
	G	slight to moderate for 2 attributes	Prescribed grazing plus 1 or more practices or activities in place	Agree to complete two additional Stewardship Practices or Activities from list below
	H	Must meet minimum program eligibility requirements as defined in 7CFR1469		Do not agree to do complete additional actions by the end of the third contract year

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Attachment 1 **CSP Enrollment Categories – Criteria by Land Use and Category**

Stewardship Practice and Activity List for Range

(Conservation practices from the Field Office Technical Guide that improve soil and/or water quality)

- Animal Trails and Walkways (575)
- Brush Management (314)
- Channel Bank Vegetation (322)
- Channel Stabilization (584)
- Critical Area Planting (342)
- Fence (for sensitive area protection only) (382)
- Grazing Land Mechanical Treatment (548)
- Heavy Use Area Protection (561)
- Pipeline (516)
- Pond (378)
- Prescribed Burning (338)
- Range Planting (550)
- Riparian Herbaceous Cover (390)
- Spring Development (574)
- Stream Crossing (578)
- Stream Habitat Improvement and Management (395)
- Streambank and Shoreline Protection (580)
- Upland Wildlife Habitat Management (645)
- Water and Sediment Control Basin (638)
- Watering Facility (614)
- Water Well (642)
- Wetland Enhancement (659)
- Wetland Enhancement (659)
- Wetland Restoration (657)
- Wildlife Watering Facility (648)

(Activities that mitigate off-site resource damage or improve soil and/or water quality)

- Application of monitoring protocols
- Brush and weed management utilizing integrated techniques that include follow-up treatment
- Conduct an energy audit on the agricultural operation
- Create a mosaic or pattern to enhance wildlife habitat linkages and corridors through mechanical, chemical or burning means
- Management that provides for shallow water wildlife habitat improvement
- Management that provides for upland wildlife habitat improvement
- Management that provides for wetland wildlife habitat improvement
- Managing vegetative fuels to reduce wildfire hazards
- Participating in grassbanking
- Planting high diversity native grassland mixes
- Prescribed burn prescriptions designed to create a mosaic or pattern to enhance wildlife habitat linkages and corridors
- Use of decision support tools in development of grazing management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), Water Erosion Prediction Project (WEPP), etc.
- Vegetation manipulation to reduce sediment and other pollutants in surface runoff

Federal Register

Monday,
June 21, 2004

Part IV

Department of Housing and Urban Development

24 CFR Parts 954 and 1003
Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 954 and 1003

[Docket No. FR–4915–P–01]

RIN 2577–AC56

Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove barriers to the participation of religious (also referred to as "faith-based") organizations in HUD regulations implementing the Indian HOME Program, the Indian Community Development Block Grant Program, the Indian Housing Block Grant Program, the Title VI Loan Guarantee Assistance Program, and the Section 184 Loan Guarantees for Indian Housing Program. These proposed changes are consistent with revisions of program regulations being undertaken on a department-wide basis. In general, no group of applicants competing for HUD funds or seeking to participate in HUD programs should be subject to greater or fewer requirements than other organizations solely because of their religious character or affiliation or absence of religious character or affiliation.

DATES: *Comment Due Date:* August 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ryan Streeter, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410–0001, telephone: (202) 708–2404 (this is not a toll-free number). For program specific information, contact Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Suite 3390, 1919 Broadway, Denver, CO 80202, telephone (303) 675–1600, extension 3325 (this is not a toll-free number). Individuals with speech or hearing impairments may access these telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 6, 2003 (68 FR 648), HUD published a proposed rule to amend certain HUD regulations that imposed, or appeared to impose, unwarranted barriers to the participation of religious organizations in HUD programs. HUD recognizes that religious organizations are important contributors to HUD's mission of assisting low-income families obtain housing and revitalizing distressed communities. These organizations frequently have the experience needed to assist beneficiaries in HUD programs. Consistent with the President's Executive Order 13198, Agency Responsibilities with Respect to Faith-Based and Community Initiatives, issued January 31, 2001 (66 FR 8497), HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract interest and participation by nonprofit organizations. Executive Order 13198 directed five agencies, including HUD, to undertake this review and to take steps to ensure that federal policy and programs are fully open to faith-based community groups in a manner that is consistent with the Constitution.

As a result of that comprehensive review, HUD identified regulations that imposed (or appeared to impose) barriers to participation of faith-based organizations in eight programs administered by HUD's Office of Community Planning and Development. HUD's proposed rule of January 6, 2003, was designed to eliminate these barriers and to ensure that these HUD programs were open to all qualified organizations, regardless of their religious character. After a period of public comment, HUD finalized this rule on September 30, 2003 (68 FR 56396).

On December 12, 2002, President George W. Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, published in the **Federal Register** on December 16, 2002, at 67 FR 77141. The executive order establishes fundamental principles and policymaking criteria to guide all executive branch agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection of the laws for these organizations in programs receiving federal financial assistance.

Executive Order 13279 is part of the Administration's broader faith-based and community initiative, directing the executive branch agencies, including HUD, to ensure that federal policy and programs are fully open to faith-based and community organizations in a manner consistent with the Constitution. The Administration believes that all eligible organizations, including faith-based organizations, should be able to participate in federal programs and activities and compete, where required, for federal financial assistance on an equal footing.

HUD published a second proposed rule on March 3, 2004 (69 FR 10126), which would amend the general HUD program requirements at 24 CFR part 5 to extend the equal participation protections to HUD programs and activities not covered by the September 30, 2003, final rule. Neither the September 30, 2003, final rule, nor the March 3, 2004, proposed rule applied to HUD's Native American programs. HUD's Native American programs were excluded from the September 30, 2003, and March 3, 2004, rules so that HUD could first consult with Indian tribal governments in accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, issued on November 6, 2000. HUD has now provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of these proposed regulatory changes that would extend the equal participation protections to the Indian HOME Program at 24 CFR part 954; the Indian Housing Block Grant Program (IHBG) at 24 CFR part 1000; the Title VI Loan Guarantee Assistance (Title VI Loan Guarantee) program at subpart E of 24 CFR part 1000; the Indian Community Development Block Grant Program (ICDBG) at 24 CFR part 1003; and the Section 184 Loan Guarantees for Indian Housing Program (Section 184) at 24 CFR part 1005.

II. Indian Home and ICDBG Programs

Only the Indian HOME and ICDBG program regulations have sections that specifically address the participation of religious organizations. Although the Indian HOME Program was terminated by section 505 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA), the

regulation at 24 CFR part 954 continues to govern outstanding funds remaining from that program and part 954 would, accordingly, be amended by this proposed rule. Specifically, the requirements concerning religious organization at § 954.301 would be revised to parallel the revision made to § 92.257 of the HOME program regulation by the September 30, 2003, final rule. Similarly, § 1003.600 of the ICDBG regulation would be amended to parallel the revision made to § 570.200(j) of the Community Development Block Grant (CDBG) program regulation by the September 30, 2003, final rule.

III. IHBG, Title VI Loan Guarantee, and Section 184 Programs

The regulations for the IHBG, Title VI Loan Guarantee, and Section 184 programs do not have sections that specifically address the participation of religious organizations. Such organizations could participate in those programs as subrecipients or contractors, as appropriate. This rule does not propose any amendments to those program regulations. Rather, this preamble provides notice that, following the appropriate tribal consultation, the proposed rule amending the general HUD program requirements at 24 CFR part 5 and published on March 3, 2004, would, upon being issued as a final rule, extend the equal participation protections to these Native American programs, as well as to the other HUD programs and activities not covered by the September 30, 2003, final rule.

IV. Policies and Requirements

The specific policies and requirements that would be codified by this proposed rule, consistent with the September 30, 2003, final rule and the March 3, 2004, proposed rule, are as follows:

1. *Equal participation of faith-based organizations in HUD programs and activities.* This proposed rule would clarify that faith-based organizations are eligible, on the same basis as any other eligible organization, to participate in HUD's programs and activities. The phrase "participate in HUD's programs and activities" and its variants are used in this rule to mean participate in the full range of HUD programs and activities, including programs that make funds available through contracts, grants, cooperative agreements or other instruments for eligible goods, services, and activities, and programs that do not make funds available but involve other forms of benefit or resources. For example, the Title VI Loan Guarantee program does not provide funds, but guarantees the notes or other obligations issued by Indian tribes to finance affordable housing activities. Neither the federal government, nor a state, local, or tribal government, nor any other entity that administers any HUD program or activity shall discriminate against an organization on the basis of the organization's religious character or affiliation. Nothing in the rule would preclude those administering Department-funded programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

2. *Inherently religious activities.* Organizations that receive direct HUD funds [1] under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under the HUD program or activity. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds, and participation must be voluntary for the beneficiaries of these programs, activities, or services.

3. *Independence of faith-based organizations.* A faith-based organization that participates in a HUD program or activity will retain its independence from federal, state, local and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services supported by direct HUD funds. Among other things, faith-based organizations may use space in their facilities to provide services under a HUD program, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Exemption from Title VII employment discrimination requirements.* A faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of applicable requirements.

5. *Nondiscrimination requirements.* This proposed rule clarifies that an organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Organizations participating in HUD programs and activities must also comply with any other applicable fair housing and nondiscrimination requirements.

6. *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property from the authorized purpose, is subject to government-wide regulations governing real property disposition (*see, e.g.*, 24 CFR parts 84 and 85).

7. *Commingling of federal and state, local, or tribal funds.* If a state, local, or

[1] As used in this proposed rule, the term "direct HUD funds" refers to direct funding within the meaning of the Establishment Clause of the First Amendment. For example, direct HUD funding may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular HUD program selects an organization and purchases the needed services straight from the organization (*e.g.*, via a contract or cooperative agreement). In contrast, indirect funding scenarios may place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

tribal government voluntarily contributes its own funds to supplement federally funded activities, the state, local, or tribal government may segregate the federal funds or commingle them. However, if the funds are commingled, the policies and requirements of this rule would apply to all of the commingled funds. If a state, local or tribal government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and subject to the requirements of this proposed rule. Some HUD program requirements govern any project or activity assisted under that program. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

V. Findings and Certifications

Consultation With Indian Tribal Governments

In accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, issued on November 6, 2000, HUD has consulted with representatives of tribal governments concerning the subject of this rule. HUD, through a letter dated February 23, 2004, provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the proposed regulatory changes during the development of this proposed rule. The comments received by HUD have been considered by HUD in the preparation of this proposed rule for publication. Additionally, this proposed rule provides Indian tribes with an additional opportunity to comment on the proposed regulatory changes.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any change made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Environmental Impact

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to ensure the equal participation of faith-based organizations (irrespective of size) in HUD's programs. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are: Indian Home Program—14.239; ICDBG—14.862; Section 184—14.865; IHBG—14.867; Title VI Loan Guarantee—14.869.

List of Subjects

24 CFR Part 954

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

PART 954—INDIAN HOME PROGRAM

1. The authority citation for 24 CFR part 954 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Revise § 954.301 to read as follows:

§ 954.301 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in the Indian HOME program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the Indian HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the program or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the Indian HOME program will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide services under the Indian Home program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the Indian HOME program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the Indian HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) Indian HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Indian HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Indian HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Indian HOME funds in this part. Sanctuaries, chapels, or other rooms that an Indian HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for Indian HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

3. The authority citation for 24 CFR part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

4. Revise § 1003.600 to read as follows:

§ 1003.600 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other eligible organization, to participate in the ICDBG program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the ICDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the ICDBG program will retain its independence from federal, State, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide ICDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the ICDBG program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) Exemption from Title VII employment discrimination requirements. A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the ICDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) ICDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. ICDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, ICDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ICDBG funds in this part. Sanctuaries, chapels, or other rooms that an ICDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for ICDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to

contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs.

Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

Dated: May 28, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Interstate ozone transport; nitrogen oxides (NOx) SIP call, technical amendments, and Section 126 rules; response to court decisions; published 4-21-04
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Technical amendments; published 5-20-04
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A.O. Smith Water Products Co.; waiver from water heater test procedure; comments due by 6-28-04; published 5-27-04 [FR 04-12033]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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S.J. Res. 28/P.L. 108–236

Recognizing the 60th anniversary of the Allied landing at Normandy during World War II. (June 15, 2004; 118 Stat. 659)

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CFR CHECKLIST

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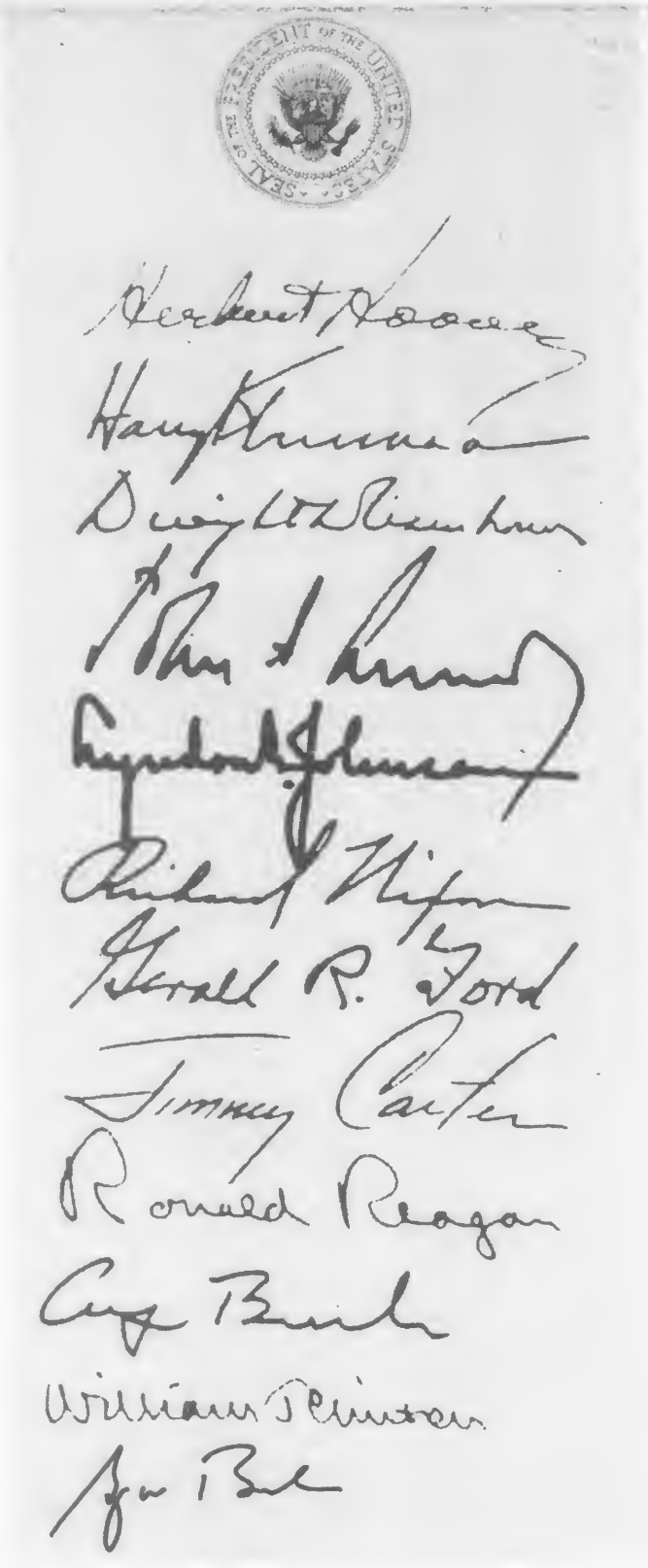

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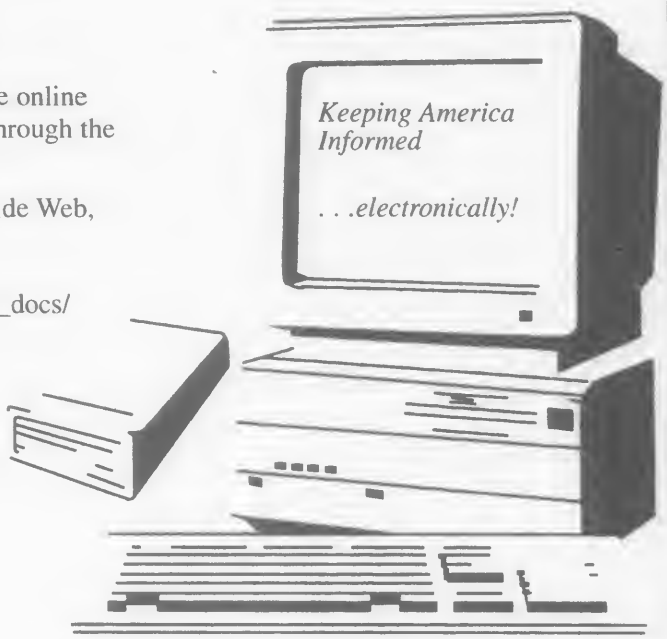

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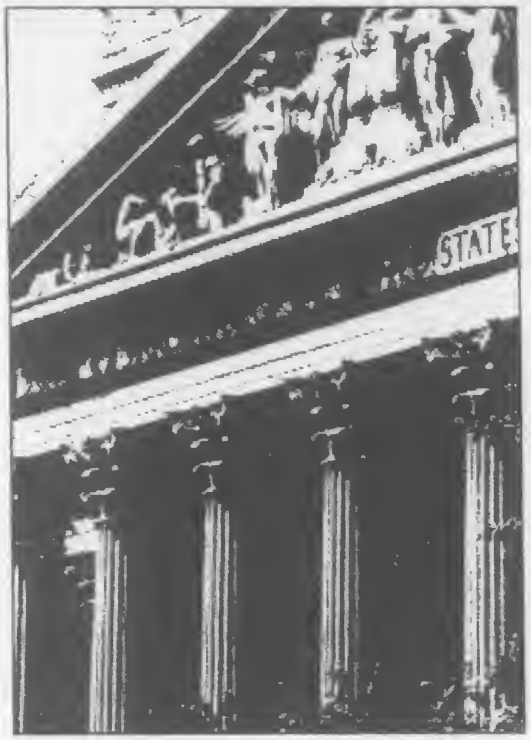

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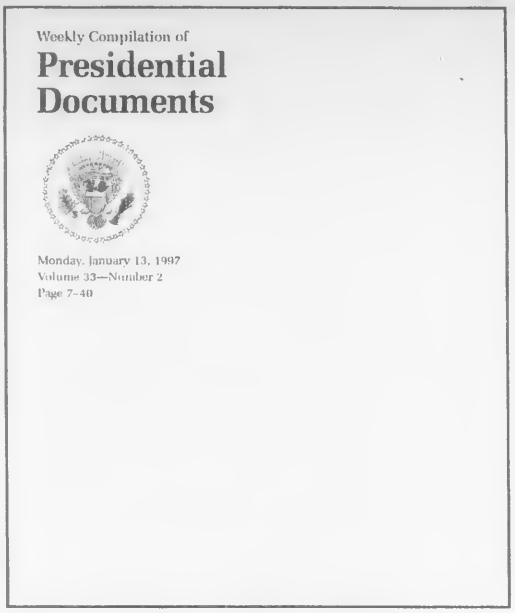

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