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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 550, and 551

[No. 2002–57]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule specifying the recordkeeping and confirmation requirements for savings associations that effect securities transactions. Under a rule issued by the Securities and Exchange Commission (SEC), savings associations may perform certain broker-dealer activities without registering with the SEC. Today's final rule affords savings association customers the same protections and disclosures provided to bank customers; ensures that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and provides savings associations with formal guidance for effecting securities transactions. It does not modify savings associations' authority to effect these transactions.

OTS also is amending its regulations governing the fiduciary powers of Federal savings associations. The final rule codifies a series of OTS legal opinions regarding fiduciary powers. The final rule also streamlines application procedures, clarifies when a Federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, clarifies the scope of Federal preemption of state law in the fiduciary area, and makes other minor or technical changes to OTS's fiduciary powers regulations.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Judith McCormick, Trust Specialist, (202) 906–5636, Supervision Policy Division, Office of Supervision; or Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, or Kevin Corcoran, Assistant Chief Counsel, (202) 906–6962, Business Transactions Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2002, OTS published a notice of proposed rulemaking seeking comment on regulations setting out recordkeeping and confirmation requirements for savings associations that effect securities transactions and on amendments to OTS's regulations governing the fiduciary powers of Federal savings associations. 67 FR 39886 (June 11, 2002). Four commenters, two trade groups and two Federal savings associations that conduct fiduciary activities, responded to the proposal. The commenters generally supported the proposal. Unless specifically discussed below, the proposed rules are adopted without change.

A. Recordkeeping and Confirmation Requirements for Securities Transactions

Until recently, savings associations could not effect securities transactions for customers directly unless they registered with the SEC as a broker-dealer. Under an interim final rule issued by the SEC, savings associations are now treated as banks under the definitions of ''broker'' and ''dealer'' in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (Exchange Act). 66 FR 27760 (May 18, 2001).[1] As a result, a savings association may now perform certain broker-dealer activities without registering with the SEC as broker-dealers.

The OCC, Federal Deposit Insurance Corporation (FDIC), and Federal Reserve Board (FRB) regulations include recordkeeping and confirmation requirements for securities transactions effected by banks. The proposed OTS rule was intended to afford savings association customers the same protections and disclosures provided to bank customers; to ensure that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and to provide savings associations with formal guidance for effecting securities transactions.

Two commenters made specific suggestions regarding the proposed recordkeeping and confirmation requirements for securities transactions. We discuss those comments below.

1. Need for Regulations

Before passage of the the Gramm-Leach-Bliley Act (GLBA), the terms ''broker'' and ''dealer'' in the Securities Exchange Act of 1934 did not include a bank. As a result, banks could engage in securities transactions without registering as a broker or a dealer with the SEC. In Title II of GLBA, Congress replaced this general exception with eleven functional exceptions covering specified bank securities activities. Pending issuance of a final rule implementing the Title II exceptions, the SEC has extended banks a blanket exception from the definitions of ''broker'' and ''dealer.'' The SEC has stated it will treat savings associations as banks for purposes of the eleven exceptions, and has included savings associations in the extended blanket exception.

One commenter, a Federal savings association, questioned the need for recordkeeping and confirmation requirements. Once the SEC issues a

[1] The SEC extended until May 12, 2003 the savings association exception from the definition of ''broker'' under the Exchange Act, and extended until February 10, 2003 the savings association exception from the definition of ''dealer'' under the Exchange Act. SEC Release Nos. 34–46751 (October 30, 2002) and 34–45897 (May 8, 2002); *see also* SEC Release No. 34–44570 (July 18, 2001). On October 31, 2002, the SEC issued a proposed rule exempting banks from the definition of ''dealer'' when performing certain *de minimis* riskless principal transactions, defining certain terms used in the bank exceptions to dealer registration, and exempting banks from the definitions of ''broker'' and ''dealer'' when engaging in securities lending transactions with a qualified investor. 67 FR 64495 (November 5, 2002). Because savings associations are treated as banks they are covered by this proposed rule as well.

final rule, the commenter notes, the eleven GLBA exceptions will be much narrower in scope than the pre-GLBA blanket exception. Accordingly, the commenter predicts that the vast majority of bank and thrift securities transactions will no longer be excepted.

As a result, the commenter believes that banks and thrifts will have to register as a broker or dealer (which is not practical given the capital requirements to do so) or contract with a registered broker or dealer in order to continue to engage or participate in most current security transactions. Since these security transactions would be subject to SEC recordkeeping and confirmation requirements, rather than banking agency rules, the commenter argued that the new OTS recordkeeping and confirmation rules will have a very limited application, and urged OTS not to issue a final rule.

OTS believes that many, if not all, of the securities transactions that savings associations currently conduct will continue to fit within the Title II exceptions. For instance, savings associations already effect securities transactions as fiduciaries, effect safekeeping and custody transactions, conduct sweep activities, and enter into networking arrangements. *See* 15 U.S.C. 78c(a)(4)(B)(i), (ii), (v), and (viii). Given this, OTS believes that recordkeeping and confirmation requirements are necessary to afford savings association customers the same protections and disclosures provided to bank customers, to ensure that examiners will be able to evaluate a savings association's compliance with securities laws and assess whether savings associations effect securities transactions safely and soundly, and to provide savings associations with formal guidance for effecting securities transactions.[2]

2. Section 551.140—Securities Trading Policies and Procedures

Proposed § 551.140 required a savings association that effects securities transactions to maintain and follow written policies and procedures addressing several areas of operation.[3] One commenter, a trade association, questioned the need for significant new policies and procedures in the absence of an SEC final rule implementing the Title II exceptions. Until the SEC acts, this commenter argued, it is unclear whether the Federal banking agencies will have to revise applicable banking and savings association regulations, including the proposed recordkeeping and confirmation requirements for savings associations. The commenter asked that OTS be mindful of requiring savings associations to put in place significant policies and procedures that shortly might have to be substantially revised.

While we appreciate the commenter's concern, the creation and implementation of written securities trading policies and procedures is critical, especially during the period until the SEC promulgates its final rules implementing all of the Title II exceptions.[4] Absent such a requirement, a savings association, alone among financial institutions, could act as a broker-dealer without having written trading policies and procedures in place. In our view, this state of affairs is untenable. Accordingly, the final rule requires savings associations to develop and maintain written policies and procedures for securities trading.

B. Fiduciary Activities of Federal Savings Associations

OTS also proposed amendments to 12 CFR part 550, which governs the fiduciary activities of Federal savings associations. The proposal codified a series of OTS legal opinions regarding the fiduciary powers of Federal savings associations and was consistent with the Office of the Comptroller's (OCC) recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks.[5] The proposal also streamlined application procedures, clarified when a Federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and made other minor or technical changes.

1. Section 550.60—What Other Definitions Apply to This Part?

OTS proposed amending § 550.60 to include a definition of the term ''activities ancillary to your fiduciary business.'' The proposal codified OTS legal opinions that concluded that a Federal savings association is not ''located'' in a state for purposes of section 5(n) of the Home Owners' Loan Act (HOLA)[6] when the association conducts in that state activities that are ancillary to the association's fiduciary business.

The proposal defined ''activities ancillary to your fiduciary business'' to include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. One commenter suggested adding the phrase ''* * * or services similar in nature to those listed above'' at the end of the definition to provide Federal savings associations more flexibility.

The OCC's corresponding definition includes language indicating that the list of ancillary activities in the definition is illustrative and not comprehensive. 12 CFR 9.2 (definition of ''trust representative office''). The OCC definition further notes that ''[o]ther activities may also be 'ancillary activities' for purposes of this definition.'' To provide flexibility, we have added language similar to that found in the OCC definition.[7]

2. Section 550.70—Must I Obtain OTS Approval or File a Notice Before I Exercise Fiduciary Powers?

Proposed § 550.70 required a Federal savings association to obtain prior approval from OTS before conducting fiduciary activities that are ''materially different'' from the activities that OTS has previously approved for the association. The final rule clarifies that

[2] At the request of OTS trust examiners, many Federal savings associations with trust departments have been keeping records similar to those required by the final recordkeeping and confirmation rules.

[3] Under the proposed rule, the association's policies and procedures must assign responsibility for the supervision of officers and employees engaged in various aspects of the trading process; provide for the fair and equitable allocation of securities and prices to accounts when the savings association receives orders for the same security at approximately the same time and it places orders individually or in combination; provide for the crossing of buy and sell orders on a fair and equitable basis; and require certain officers and employees to make quarterly reports containing specific information on personal securities transactions.

[4] As noted, the SEC has just issued a proposed rule implementing certain limited bank exceptions from the definition of ''dealer.'' 67 FR 64495 (November 5, 2002).

[5] *See* 66 FR 34792 (July 2, 2001).

[6] 12 U.S.C. 1464(n) (2001). Under that section, OTS may authorize a Federal savings association:

[T]o act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations that compete with Federal savings associations are permitted to act *under the laws of the State in which the Federal savings association is located*. (emphasis added). Thus, under HOLA, the scope of a Federal savings association's fiduciary powers is expressly tied to the laws of the state in which the Federal savings association is ''located.''

[7] Distinguishing between key fiduciary activities and ancillary activities in § 550.60 assists in determining where the Federal savings association is acting in a fiduciary capacity for purposes of section 5(n) of the HOLA. The classification as ancillary does not affect the importance of those activities or change in any way an association's fiduciary duty with respect to those activities. *See* 66 FR 34792, 34793, n.2.

a Federal savings association engages in ''materially different'' activities when, among other things, it acts under fiduciary powers that it has held but not exercised for five or more years.

The purpose of the ''materially different'' standard was to identify those situations where a complete OTS review is necessary to ensure that proposed operations are consistent with the association's experience, resources, and expertise. If a Federal savings association wishes to commence fiduciary activities under powers it has held but not exercised for more than five years, its ability to conduct fiduciary operations could have changed since that time. Accordingly, under § 550.70, the association must submit a new trust application to allow OTS to review its current expertise and resources.

We have also revised § 550.70 to make clear that OTS must approve the exercise of fiduciary powers by a Federal savings association. If, for instance, a Federal thrift without fiduciary powers merges with a state institution with fiduciary powers, a resulting Federal savings association would have to obtain OTS approval before exercising fiduciary powers.

3. Section 550.135(b)—What State Laws Apply to My Operations?

Proposed § 550.135(b) provided that, except for those state laws specifically mentioned in section 5(n) of the HOLA, ''[s]tate laws that purport to regulate any other aspect of your fiduciary activities do not apply to your fiduciary operations.'' One commenter has asked that we clarify what types of state laws ''purport to regulate'' a Federal thrift's fiduciary operations. As one example, the commenter asks whether state securities laws requiring investment adviser licensing of a Federal savings association or its employees are applicable state laws.

To clarify OTS's views on preemption of state law in the context of fiduciary activities, OTS has included language similar to that found in the lending and deposit-taking regulations that discuss preemption. *See* 12 CFR 557.11–.13 and 560.2. Fiduciary activities, like lending and deposit-taking, are authorized by section 5 of the HOLA. Section 5 authorizes OTS, ''under such regulations as [it] may prescribe * * * to provide for the * * * operation and regulation of * * * Federal savings associations * * * giving primary consideration of the best practices of thrift institutions in the United States.'' 12 U.S.C. 1464(a) (2001).

OTS intends that, except with regard to those specific state laws identified in section 5(n) of the HOLA (scope of fiduciary powers, investment in state trust companies, access to examination reports regarding trust activities, deposit of securities, oaths and affidavits, and capital), a determination whether Federal law preempts state law will follow the same analysis set out in the lending and deposit-taking regulations.

OTS has moved proposed § 550.135(b) into a separate section, § 550.136, entitled ''To what extent do State laws apply to my fiduciary operations?'' Proposed § 550.135(a) is now § 550.135 of the final rule, with the new title ''How do I determine which State's laws apply to my fiduciary operations?'

Section 550.136 of the final rule tracks § 560.2 of the lending regulations. Section 550.136(a) includes a general statement regarding Federal preemption of state law under HOLA. Paragraph (a) makes clear that, to enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations.

In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Federal savings associations may exercise fiduciary powers as authorized under HOLA and OTS regulations, without regard to state laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (state laws regarding scope of fiduciary powers, investments in state trust companies, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or as provided in paragraph (c), discussed below. Paragraph (a) also clarifies that for purposes of § 550.136, ''state law'' includes any state statute, regulation, ruling, order, or judicial decision.

Paragraph (b) then lists illustrative examples of the types of state laws that are preempted. That list includes state registration and licensing laws, state recordkeeping requirements, state advertising and marketing laws, state laws affecting the ability of a Federal savings association acting in a fiduciary capacity to maintain an action or proceeding in state court, and state laws regarding fiduciary-related fees. These examples are drawn from prior OTS opinion letters and inquiries that OTS has received from thrifts that conduct fiduciary activities.[8]

Finally, paragraph (c) specifies that certain state laws generally are not preempted.[9] The list of those laws is the same as in § 560.2(c) (contract and commercial law, real property law, tort law, and criminal law), with the addition of state probate law.[10] Generally, Federal law will not preempt these laws to the extent the state law only incidentally affects the fiduciary operations of Federal savings associations or is otherwise consistent with the purposes of the preemption regulation. The final rule provides that OTS may decline to preempt state laws other than those listed in the above categories if the law furthers a vital state interest and either has only an incidental effect on the association's fiduciary operations or is not otherwise contrary to the purposes of the preemption regulation.

When confronted with interpretive questions under § 550.136, we anticipate that courts will, in accordance with well established principles of regulatory construction, look to the regulatory history of § 550.136 for guidance. The purpose of paragraph (c) is to preserve the traditional infrastructure of basic state laws that undergird commercial transactions, not to open the door to state regulation of a Federal savings association's fiduciary activities.

When analyzing the status of state laws under § 550.136, the first step will be to determine whether the type of law in question is listed in paragraph (b). If so, the analysis will end there; the law is preempted. If the law is not covered by paragraph (b), the next question is whether the law affects fiduciary activities. If it does, then, in accordance with paragraph (a), the presumption

[8] *See, e.g.*, OTS Op. Chief Counsel (January 3, 2001) (preempting state restriction on out-of-state Federal savings association conducting fiduciary activities in an agency office); OTS Op. Chief Counsel (July 1, 1998) (preempting state restrictions on who may act as trustee of a pre-need funeral trust); OTS Op. Chief Counsel (August 8, 1996) (preempting state marketing restrictions); OTS Op. Chief Counsel (June 21, 1996) (preempting state marketing restrictions); OTS Op. Chief Counsel (March 28, 1996) (preempting state licensing requirement); OTS Op. Acting Chief Counsel (June 13, 1994) (preempting state licensing requirement).

[9] In clarifying the scope of Federal preemption of state law in the fiduciary area, OTS does not intend to supplant areas in which state law has long governed the duties of a fiduciary, such as state principal and income laws and state ''prudent man'' or ''prudent investor'' laws.

[10] Acting as an executor is a classic fiduciary activity. 12 CFR 550.30(b). Moreover, institutions acting as executors have always been subject to state laws governing the administration of estates. OTS has no intention of changing this in the final rule.

arises that the law is preempted. This presumption can by reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

For example, under this approach Federal law would not preempt a provision in a state corporation code requiring an out-of-state corporation doing business in that state to appoint a state resident or official as the corporation's agent for service of process purposes. The law is not included in the list of illustrative examples in paragraph (b). The law does, however, affect a thrift's fiduciary activities, so a presumption of preemption arises. This presumption can by reversed if the law fits within the confines of paragraph (c).

In our view, a service of process statute falls within the exception in subparagraph (c)(1) for commercial laws. Moreover, a requirement that an out-of-state thrift appoint a resident or official for purposes of service of process would only incidentally impact the fiduciary activities of a Federal savings association. Furthermore, finding such a state law applicable to a Federal savings association is consistent with the purposes of the preemption regulation. The preemption regulation is intended to allow Federal savings associations to exercise fiduciary powers in accordance with a uniform Federal scheme. Appointing a state resident or official to receive service of process is largely ministerial and should not affect a Federal savings association's ability to offer fiduciary services free of overlapping, varying state regulation. Accordingly, the state law would not be preempted.

As questions arise, OTS will issue interpretive guidance consistent with the foregoing. While recognizing that no regulation can anticipate and expressly resolve all questions, we believe § 550.136 provides thrifts with substantially more guidance than was previously available. This should enable thrifts to plan and operate their fiduciary activities more efficiently. From time to time, OTS will review, update, and modify § 550.136 to ensure that it reflects new developments and promotes ''best practices'' and safety and soundness.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires Federal agencies to prepare a final regulatory flexibility analysis with a final rule that was subject to notice and comment unless the agency certifies that the rule will not have a significant impact on a substantial number on small entities.

Most of the changes to part 550 merely codify existing OTS regulatory interpretations regarding the scope of fiduciary powers, multi-state operations, and the impact of Federal law. To the extent that the final rule modifies existing requirements of part 550, the final rule will reduce burden by eliminating application requirements under certain circumstances, by substituting notices for applications in other circumstances, by providing greater flexibility regarding the collateralization of deposits of fiduciary funds, and by clarifying the scope of Federal preemption of state laws in the fiduciary area. The final rule also clarifies the scope of activities that are exempt from part 550 under section 5(l) of the HOLA. While the final rule eliminates § 550.580(c), which exempts Federal savings associations that act as trustees of fiduciary accounts that involve no active fiduciary duties, OTS is not aware of any small Federal savings associations that rely on that provision. Accordingly, OTS certifies to the Chief Counsel of Advocacy of the Small Business Administration that the final changes to part 550 will not have a significant economic impact on a substantial number of small entities.

In the proposal, OTS published an initial regulatory flexibility analysis for part 551. OTS includes here a final regulatory flexibility analysis for part 551.

Because the recordkeeping and confirmation requirements are new for savings associations, OTS cannot determine whether the addition of part 551 will have a significant impact on a substantial number of small entities. However, we have consulted supporting statements filed by the OCC for substantially identical requirements in connection with a 1999 submission under the Paperwork Reduction Act. Because savings associations are now considered ''banks'' for purposes of the broker-dealer registration requirements and because OTS has modeled the final rule on the OCC's recordkeeping and confirmation rules, OTS believes that the OCC's estimated annual paperwork cost of complying with the regulations provides a reasonable starting point for OTS's analysis of the cost to small business entities to comply with the proposed rule. These estimates are discussed under section B—Requirements of the proposed rule.

A description of the reasons why OTS is issuing this final rule, and a statement of the objectives of, and legal basis for, proposed part 551 are included in the supplementary material above. OTS did not receive any comments on its initial regulatory flexibility analysis for part 551.

A. Small Entities to Which the Proposed Rule Would Apply

Part 551 applies to savings associations that effect securities transactions for customers. OTS calculates that as of October 21, 2002, it regulates approximately 982 savings associations. Of these savings associations approximately 529 savings associations hold assets under $150 million. Small depository institutions are generally defined, for RFA purposes, as those with assets under $150 million.

In all likelihood, however, this number substantially overstates the number of small savings associations that will be effected by the final rule. No savings associations are currently registered with the SEC as broker-dealers, although some provide such services to their customers through arrangements with a third party broker-dealer. Because the new SEC rule permitting savings associations to perform broker-dealer activities without registering is so recent, OTS has no information concerning how many of its savings associations, large or small, have commenced or are contemplating commencing these operations.

B. Requirements of the Final Rule

As set out in detail in the regulatory text, the final rule requires savings associations to retain records of securities transactions, send confirmation of the transactions to customers, settle securities transactions within certain timeframes, and establish and maintain specific written policies and procedures regarding securities transactions.

Subpart A of the final rule establishes the minimum recordkeeping requirements for savings associations concerning securities transactions with their customers. This provision requires that the savings association maintain essential records necessary to track securities transactions. This type of recordkeeping is a usual and customary process for a savings association. Consequently, most savings associations should be partially or fully prepared to meet the recordkeeping requirements. While we believe that this requirement should not impose significant burdens, savings associations may incur additional personnel (managerial, computer, and support staff), data storage, and other costs to the extent that existing resources are insufficient.

Subpart B establishes requirements for confirmation notices and subpart C

addresses the timing of settlement for securities transactions. To the extent that existing practices and available resources are insufficient, savings associations may need the assistance of legal and securities professionals and other personnel (managerial, computer, and support staff) to ensure that notices meet the content requirements and are provided within the time frames set forth in the regulation, and to ensure that securities transactions close within the times specified in the rule.

Finally, subpart D requires the savings association to establish and follow various policies and procedures to govern securities transactions. Savings associations commonly develop and implement policies and procedures in many of the areas addressed by the final rule (for example, the assignment of responsibility for the oversight of personnel). Accordingly, most savings associations should be partially prepared to meet these requirements. However, the development of policies and procedures on matters specific to securities transactions may require the assistance of legal and securities professionals. Compliance with these policies and procedures may require additional personnel, training, and other costs.

Based on OCC estimates, OTS calculates that this rule will impose at least $264 in additional costs on small savings associations that begin to effect securities transactions on behalf of customers.[11] The development of policies and procedures, however, may require the assistance of legal or securities professionals that were not included in the OCC's estimate. Accordingly, OTS has included additional costs of $305 to $403 to reflect the efforts of these professionals.[12] Accordingly, OTS estimates that the total cost of complying with this rule will be $569 to $667 per small institution. OTS notes that these costs will drop in subsequent years because thrifts will not be required to develop, and will only be required to update, policies and procedures on effecting securities transactions.

C. Significant Alternatives

Section 604(a)(5) requires OTS to describe the steps it has taken to minimize the significant economic impact on small entities consistent with the objectives of the statute and regulations. OTS solicited comment on other alternatives that would minimize the burden on small savings associations that effect securities transactions, including whether any modifications or exemptions from the rules for small savings associations would be appropriate. OTS received no comments.

As noted in the proposal, OTS considered recommending, rather than requiring, recordkeeping and confirmation provisions regarding securities transactions conducted by savings associations, but decided that such an approach was inappropriate. The SEC and the other Federal banking regulators have created a regulatory scheme designed to protect investors through adequate disclosure of information and to discourage and detect fraudulent securities practices through prudent recordkeeping requirements. OTS believes that similar provisions are necessary to bring the savings association industry into conformity with the standards of the securities and banking industries for effecting securities transactions.

OTS, however, has attempted to minimize the economic impact of the final rule on savings associations, including small savings associations, while still achieving the overall objectives of the regulation. OTS has included several exemptions to the rule that may be available to small savings associations. For example, § 551.20(b)(1) exempts savings associations from certain recordkeeping and policy and procedure requirements if the institution conducts fewer than 500 securities transactions for customers (excluding transactions in government securities). Similarly, § 551.20(b)(2) exempts savings associations who conduct fewer than 500 government securities transactions from certain recordkeeping requirements. OTS believes that many small associations will take advantage of these exemptions.

Moreover, OTS continues to have the ability under 12 CFR 500.30(a) to waive any recordkeeping or confirmation requirements upon a finding of good cause. This provision permits OTS to minimize any significant economic impact of a provision on a specific institution on a case-by-case basis.

Finally, OTS has included a substantial amount of flexibility in the final rule. For example, a savings association may maintain required records in any manner, form, or format that it deems appropriate. Further, the rules would specifically permit the use of electronic storage media and the provision of notices through electronic means. *See* §§ 551.60 and 551.110. In addition, several provisions permit a savings association, through the agreement with the customer, to modify the requirements of the part.

D. Other Matters

There are no Federal rules or statutes that duplicate, overlap, or conflict with the proposed rule. However, as noted above, the SEC and the other banking regulators have adopted substantially similar recordkeeping and confirmation requirements for broker-dealers and other depository institutions.

III. Paperwork Reduction Act

OTS in the proposal solicited specific comment on the paperwork collection requirements in the proposed rule. No commenters included any comments or suggestions regarding paperwork.

The information collection requirements contained in the final rule are virtually identical to those included in the proposed rule on theses subjects published in June 2002. The burden on respondents remains unchanged from those in the proposal, which OMB approved in July 2002. *See* OMB Nos. 1550–0109 (July 15, 2002; expires July 31, 2005) and 1550–0037 (July 22, 2002; expires July 31, 2005). Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

IV. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act.

V. Effective Date

Under the Administrative Procedure Act, an agency must publish a rule at least 30 days before its effective date. 5 U.S.C. 553(d). The agency may, however, waive this 30-day delayed publication requirement if the rule relieves a restriction (5 U.S.C. 553(d)(1)) or for good cause (5 U.S.C. 553(d)(3)).

OTS waives the 30-day requirement for the amendments to its fiduciary powers regulations because the rule imposes no new burden and relieves a

[11] OCC estimated that banks would incur 11 hours of additional burden in their first year and an additional 4 hours thereafter. It further estimated that 80 percent of the burden would be clerical at a cost of $20 per hour and that 20 percent of the burden would be managerial at $40 per hour. Thus, the average annual cost of each hour is $24.

[12] The average billing rate for a partner in a United States law firm with less than nine lawyers is $183 per hour. The average billing rate for an associate in such a firm is $139 per hour. 1999 Survey of Law Firm Economics, Altman Weil Pensa Publications, Inc., reported at *www.lawyers.com.* Using OCC's estimate that the rule imposes a maximum of 2.2 managerial burden hours, OTS estimates that these costs will be between $305 and $403.

restriction, specifically the restriction against a Federal savings association exercising fiduciary powers in a new state without OTS's approval.

With regard to the recordkeeping and confirmation rules, OTS waives the 30-day delayed effective provision for good cause. OTS finds good cause for making the recordkeeping and confirmation rules effective at the beginning of the next quarter because the new rules will fill a current gap in the rules applicable to securities transactions of securities transactions.

Moreover, as noted in section I(A)(1), n. 2, above, at the request of OTS trust examiners, many Federal savings associations with trust departments have been keeping records similar to those required by the final recordkeeping and confirmation rules. For those securities transactions conducted by a savings association outside the trust department, keeping records and sending confirmations are standard industry practice in the securities business, so a savings association should already be following these, or similar, requirements simply as a matter of sound business practices. Accordingly, savings associations should not need the benefit of the full 30-day delayed effective date in order to have enough time to comply with the rule. As a result, the final rule will be effective January 1, 2003.

VI. Executive Order 12866

OTS has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

VII. Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that may have federalism implications or taking action that preempts state law. In accordance with those requirements, OTS has consulted with the Conference of State Bank Supervisors, the National Association of Attorneys General, and the American Council of State Savings Supervisors.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 551

Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend § 506.1(b) by adding in numerical order, the following entry to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 551	1550–0109
* * * * *	

PART 550—[AMENDED]

3. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

4. Section 550.20 is revised to read as follows:

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that OTS permits you to exercise under 12 U.S.C. 1464(n).

5. Section 550.60 is amended by adding definitions of the phrases ''activities ancillary to your fiduciary business'' and ''fiduciary activities'' in alphabetical order, to read as follows:

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be ''ancillary activities'' for purposes of this definition.

* * * * *

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

6. Section 550.70 is revised to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct . . .	Then . . .
(a) Fiduciary activities for the first time and OTS has not previously approved an application that you submitted under this part.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities.
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a that are notice with OTS.

7. Section 550.125 is added to subpart A to read as follows:

§ 550.125 How do I file the notice under § 550.70(c)?

(a) If you are required to file a notice under § 550.70(c), within ten days after you commence the fiduciary activities in a new State, you must file a written notice that identifies each new State in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new State, and provide sufficient information supporting a conclusion that the activities are permissible in the State.

(b) You must file the notice with the appropriate OTS Regional Office at the address in § 516.40(a) of this chapter.

8. Section 550.130 is revised to read as follows:

§ 550.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one State.* You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) *Serving customers in more than one State.* When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

9. Section 550.135 is added to read as follows:

§ 550.135 How do I determine which State's laws apply to my operations?

(a) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(b) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

10. Section 550.136 is added to read as follows:

§ 550.136 To what extent do State laws apply to my fiduciary operations?

(a) *Occupation of field.* To enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations. In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, investments in state trust companies, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, ''State law'' includes any State statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of State laws that are preempted by the HOLA and this section include those regarding:

(1) Registration and licensing;

(2) Recordkeeping;

(3) Advertising and marketing;

(4) The ability of a federal savings association conducting fiduciary activities to maintain an action or proceeding in State court; and

(5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Real property law;

(3) Tort law;

(4) Criminal law;

(5) Probate law; and

(6) Any other law that OTS, upon review, finds:

(i) Furthers a vital State interest; and

(ii) Either has only an incidental effect on fiduciary operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

11. Section 550.310 is amended by removng the first sentence and adding two new sentences in its place to read as follows:

§ 550.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit, you must set aside collateral as security. If the FDIC does not insure the entire amount of an affiliate deposit, you or your affiliate must set aside collateral as security.

* * *

12. Section 550.580is amended by revising the section heading and the introductory text and by removing paragraph (c) to read as follows:

§ 550.580 When may I conduct fiduciary activities without obtaining OTS approval?

Subject to the requirements of this subpart E, you do not need OTS approval under subpart B if you conduct fiduciary activities in the following fiduciary capacities:

* * * * *

13. The section heading and introductory text of § 550.600 are revised to read as follows:

§ 550.600 How may funds be invested when I act in an exempt fiduciary capacity?

If you act in an exempt fiduciary capacity under § 550.580, the funds of the fiduciary account may be invested only in the following:

* * * * *

14. A new part 551 is added as follows:

PART 551—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.
551.10 What does this part do?
551.20 Must I comply with this part?
551.30 What requirements apply to all transactions?
551.40 What definitions apply to this part?

Subpart A—Recordkeeping Requirements

551.50 What records must I maintain for securities transactions?
551.60 How must I maintain my records?

Subpart B—Content and Timing of Notice

551.70 What type of notice must I provide when I effect a securities transaction for a customer?
551.80 How do I provide a registered broker-dealer confirmation?
551.90 How do I provide a written notice?
551.100 What are the alternate notice requirements?
551.110 May I provide a notice electronically?
551.120 May I charge a fee for a notice?

Subpart C—Settlement of Securities Transactions

551.130 When must I settle a securities transaction?

Subpart D—Securities Trading Policies and Procedures

551.140 What policies and procedures must I maintain and follow for securities transactions?

551.150 How do my officers and employees file reports of personal securities trading transactions?

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 551.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a savings association (''you'') effects certain securities transactions for customers.

§ 551.20 Must I comply with this part?

(a) *General.* Except as provided under paragraph (b) of this section, you must comply with this part when:

(1) You effect a securities transaction for a customer.

(2) You effect a transaction in government securities.

(3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. If you are a Federal savings association, you also must comply with 12 CFR part 550 when you effect such a transaction. If you are a State savings association, you must comply with applicable law when you effect such a transaction.

(b) *Exceptions*—(1) *Small number of transactions.* You are not required to comply with § 551.50(b) through (d) (recordkeeping) and § 551.140(a) through (c) (policies and procedures), if you effected an average of fewer than 500 securities transactions per year for customers over the three prior calendar years. You may exclude transactions in government securities when you calculate this average.

(2) *Government securities.* If you effect fewer than 500 government securities brokerage transactions per year, you are not required to comply with § 551.50 (recordkeeping) for those transactions. This exception does not apply to government securities dealer transactions. *See* 17 CFR 404.4(a).

(3) *Municipal securities.* If you are registered with the SEC as a ''municipal securities dealer,'' as defined in 15 U.S.C. 78c(a)(30) (see 15 U.S.C. 78o-4), you are not required to comply with this part when you conduct municipal securities transactions.

(4) *Foreign branches.* You are not required to comply with this part when you conduct a transaction at your foreign branch.

(5) *Transactions by registered broker-dealers.* You are not required to comply with this part for securities transactions effected by a registered broker-dealer, if the registered broker-dealer directly provides the customer with a confirmation. These transactions include a transaction effected by your employee who also acts as an employee of a registered broker-dealer (''dual employee'').

§ 551.30 What requirements apply to all transactions?

You must effect all transactions, including transactions excepted under § 551.20, in a safe and sound manner. You must maintain effective systems of records and controls regarding your customers' securities transactions. These systems must clearly and accurately reflect all appropriate information and provide an adequate basis for an audit.

§ 551.40 What definitions apply to this part?

Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period. *Asset-backed security* includes any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

Common or collective investment fund means any fund established under 12 CFR 550.260(b) or 12 CFR 9.18.

Completion of the transaction means:

(1) If the customer purchases a security through or from you, except as provided in paragraph (2) of this definition, the time the customer pays you any part of the purchase price. If payment is made by a bookkeeping entry, the time you make the bookkeeping entry for any part of the purchase price.

(2) If the customer purchases a security through or from you and pays for the security before you request payment or notify the customer that payment is due, the time you deliver the security to or into the account of the customer.

(3) If the customer sells a security through or to you, except as provided in paragraph (4) of this definition, the time the customer delivers the security to you. If you have custody of the security at the time of sale, the time you transfer the security from the customer's account.

(4) If the customer sells a security through or to you and delivers the security to you before you request delivery or notify the customer that delivery is due, the time you pay the customer or pay into the customer's account.

Customer means a person or account, including an agency, trust, estate, guardianship, or other fiduciary account for which you effect a securities transaction. *Customer* does not include a broker or dealer, or you when you: act as a broker or dealer; act as a fiduciary with investment discretion over an account; are a trustee that acts as the shareholder of record for the purchase or sale of securities; or are the issuer of securities that are the subject of the transaction.

Debt security means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security). *Debt security* also includes a fractional or participation interest in these debt securities. *Debt security* does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*

Government security means:

(1) A security that is a direct obligation of, or an obligation that is guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest if the Secretary of the Treasury has designated the security for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by a corporation if a statute specifically designates, by name, the corporation's securities as exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a government security described in this definition, other than a put, call, straddle, option, or privilege:

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

Investment discretion means the same as under 12 CFR 550.40(a).

Investment company plan means any plan under which:

(1) A customer purchases securities issued by an open-end investment company or unit investment trust registered under the Investment

Company Act of 1940, making the payments directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; or

(2) A customer sells securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 under:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code; or

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, securities in specified amounts (calculated in security units or dollars) at specified time intervals, and stating the commissions or charges (or the means of calculating them) that the customer will pay in connection with the purchase.

Municipal security means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision.

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond, the interest on which is excludable from gross income under section 103(a) of the Code (26 U.S.C. 103(a)).

Periodic plan means a written document that authorizes you to act as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940). The written document must authorize you to purchase or sell in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and must set forth the commission or charges to be paid by the customer or the manner of calculating them.

SEC means the Securities and Exchange Commission.

Security means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security'; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. *Security* does not include currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of less than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount (master) note of a borrower of prime credit; U.S. Savings Bonds; or any other instrument OTS determines does not constitute a security for purposes of this part.

Sweep account means any prearranged, automatic transfer or sweep of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

Subpart A—Recordkeeping Requirements

§ 551.50 What records must I maintain for securities transactions?

If you effect securities transactions for customers, you must maintain all of the following records for at least three years:

(a) *Chronological records.* You must maintain an itemized daily record of each purchase and sale of securities in chronological order, including:

(1) The account or customer name for which you effected each transaction;

(2) The name and amount of the securities;

(3) The unit and aggregate purchase or sale price;

(4) The trade date; and

(5) The name or other designation of the registered broker-dealer or other person from whom you purchased the securities or to whom you sold the securities.

(b) *Account records.* You must maintain account records for each customer reflecting:

(1) Purchases and sales of securities;

(2) Receipts and deliveries of securities;

(3) Receipts and disbursements of cash; and

(4) Other debits and credits pertaining to transactions in securities.

(c) *Memorandum (order ticket).* You must make and keep current a memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities (whether executed or not), including:

(1) The account or customer name for which you effected each transaction;

(2) Whether the transaction was a market order, limit order, or subject to special instructions;

(3) The time the trader received the order;

(4) The time the trader placed the order with the registered broker-dealer, or if there was no registered broker-dealer, the time the trader executed or cancelled the order;

(5) The price at which the trader executed the order;

(6) The name of the registered broker-dealer you used.

(d) *Record of registered broker-dealers.* You must maintain a record of all registered broker-dealers that you selected to effect securities transactions and the amount of commissions that you paid or allocated to each registered broker-dealer during each calendar year.

(e) *Notices.* You must maintain a copy of the written notice required under subpart B of this part.

§ 551.60 How must I maintain my records?

(a) You may maintain the records required under § 551.50 in any manner, form, or format that you deem appropriate. However, your records must clearly and accurately reflect the required information and provide an adequate basis for an audit of the information.

(b) You, or the person that maintains and preserves records on your behalf, must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of a particular record;

(2) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(3) Provide promptly any of the following that OTS examiners or your directors may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records.

(4) In the case of records on electronic storage media, you, or the person that

maintains and preserves records for you, must establish procedures:

(i) To maintain, preserve, and reasonably safeguard the records from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, your directors, and OTS examiners; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(c) You may contract with third party service providers to maintain the records.

Subpart B–Content and Timing of Notice

§ 551.70 What type of notice must I provide when I effect a securities transaction for a customer?

If you effect a securities transaction for a customer, you must give or send the customer the registered broker-dealer confirmation described at § 551.80, or the written notice described at § 551.90. For certain types of transactions, you may elect to provide the alternate notices described in § 551.100.

§ 551.80 How do I provide a registered broker-dealer confirmation?

(a) If you elect to satisfy § 551.70 by providing the customer with a registered broker-dealer confirmation, you must provide the confirmation by having the registered broker-dealer send the confirmation directly to the customer or by sending a copy of the registered broker-dealer's confirmation to the customer within one business day after you receive it.

(b) If you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 551.90 How do I provide a written notice?

If you elect to satisfy § 551.70 by providing the customer a written notice, you must give or send the written notice at or before the completion of the securities transaction. You must include all of the following information in a written notice:

(a)Your name and the customer's name.

(b)The capacity in which you acted (for example, as agent).

(c) The date and time of execution of the securities transaction (or a statement that you will furnish this information within a reasonable time after the customer's written request), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security the customer purchased or sold.

(d) The name of the person from whom you purchased or to whom you sold the security, or a statement that you will furnish this information within a reasonable time after the customer's written request.

(e) The amount of any remuneration that you have received or will receive from the customer in connection with the transaction unless the remuneration paid by the customer is determined under a written agreement, other than on a transaction basis.

(f) The source and amount of any other remuneration you have received or will receive in connection with the transaction. If, in the case of a purchase, you were not participating in a distribution, or in the case of a sale, were not participating in a tender offer, the written notice may state whether you have or will receive any other remuneration and state that you will furnish the source and amount of the other remuneration within a reasonable time after the customer's written request.

(g) That you are not a member of the Securities Investor Protection Corporation, if that is the case. This does not apply to a transaction in shares of a registered open-end investment company or unit investment trust if the customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or a designated broker or dealer who sends the customer either a confirmation or the written notice in this section.

(h) Additional disclosures. You must provide all of the additional disclosures described in the following chart for transactions involving certain debt securities:

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(1) A debt security subject to redemption before maturity.	A statement that the issuer may redeem the debt security in whole or in part before maturity, that the redemption could affect the represented yield, and that additional redemption information is available upon request.
(2) A debt security that you effected exclusively on the basis of a dollar price.	(i) The dollar price at which you effected the transaction; and (ii) The yield to maturity calculated from the dollar price. You do not have to disclose the yield to maturity if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(3) A debt security that you effected on basis of yield.	(i) The yield at which the transaction, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call). If you effected the transaction at yield to call, you must indicate the type of call, the call date, and the call price; (ii) The dollar price calculated from that yield; and (iii) The yield to maturity and the represented yield, if you effected the transaction on a basis other than yield to maturity and the yield to maturity is lower than the represented yield. You are not required to disclose this information if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(4) A debt security that is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.	(i) A statement that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (ii) A statement that you will furnish information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) upon the customer's written request.

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(5) A debt security, other than a government security.	A statement that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 551.100 What are the alternate notice requirements?

You may elect to satisfy § 551.70 by providing the alternate notices described in the following chart for certain types of transactions.

If you effect a securities transaction . . .	Then you may elect to . . .
(a) For or with the account of a customer under a periodic plan, sweep account, or investment company plan.	Give or send to the customer within five business days after the end of each quarterly period a written statement disclosing: (1) Each purchase and redemption that you effected for or with, and each dividend or distribution that you credited to or reinvested for, the customer's account during the period; (2) The date of each transaction; (3) The identity, number, and price of any securities that the customer purchased or redeemed in each transaction; (4) The total number of shares of the securities in the customer's account; (5) Any remuneration that you received or will receive in connection with the transaction; and (6) That you will give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(b) For or with the account of a customer in shares of an open-ended management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share.	Give or send to the customer the written statement described at paragraph (a) of this section on a monthly basis. You may not use the alternate notice, however, if you deduct sales loads upon the purchase or redemption of shares in the money market fund.
(c) For an account for which you do not exercise investment discretion, and for which you and the customer have agreed in writing to an arrangement concerning the time and content of the written notice.	Give or send to the customer a written notice at the agreed-upon time and with the agreed-upon content, and include a statement that you will furnish the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(d) For an account for which you exercise investment discretion other than in an agency capacity, excluding common or collective investment funds.	Give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a written request by the person with the power to terminate the account or, if there is no such person, any person holding a vested beneficial interest in the account.
(e) For an account in which you exercise investment discretion in an agency capacity.	Give or send each customer a written itemized statement specifying the funds and securities in your custody or possession and all debits, credits, and transactions in the customer's account. You must provide this information to the customer not less than once every three months. You must give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a customer's written request.
(f) For a common or collective investment fund	(1) Give or send to a customer who invests in the fund a copy of the annual financial report of the fund, or (2) Notify the customer that a copy of the report is available and that you will furnish the report within a reasonable time after a written request by a person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account.

§ 551.110 May I provide a notice electronically?

You may provide any written notice required under this subpart B electronically. If a customer has a facsimile machine, you may send the notice by facsimile transmission. You may use other electronic communications if:

(a) The parties agree to use electronic instead of hard copy notices;

(b) The parties are able to print or download the notice;

(c) Your electronic communications system cannot automatically delete the electronic notice; and

(d) Both parties are able to receive electronic messages.

§ 551.120 May I charge a fee for a notice?

You may not charge a fee for providing a notice required under this subpart B, except that you may charge a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

Subpart C—Settlement of Securities Transactions

§ 551.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The third business day after the date of the contract. This deadline is no later than the fourth business day after

the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6–1, 17 CFR 240.15c6–1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.

Subpart D—Securities Trading Policies and Procedures

§ 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

§ 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) *Contents and filing of report.* The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.*, purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) *Report not required for certain transactions.* Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of $10,000 or less during the calendar quarter.

(c) *Alternate report.* When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an ''access person'' may fulfill his or her reporting requirements under this section by filing with you the ''access person'' personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

Dated: December 2, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 560, 590 and 591

[No. 2002–59]

RIN 1550–AB51

Alternative Mortgage Transaction Parity Act; Preemption Delay of Effective Date

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: The Alternative Mortgage Transaction Parity Act (AMTPA) authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, certain state chartered housing creditors must comply with regulations issued by the Office of Thrift Supervision (OTS). OTS recently revised its rule identifying the OTS regulations that apply under AMTPA. This document delays the effective date of that revised rule.

EFFECTIVE DATE: This amendment modifies the effective date of the final rule published September 26, 2002 at 67 FR 60542. The effective date of the revision to 12 CFR 560.220 is delayed until July 1, 2003. The effective date of

amendments to 12 CFR 590.4 and 591.2 remains January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa Stark, Senior Project Manager, Compliance Policy, (202) 906–7054; Karen Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

AMTPA authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, however, certain state chartered housing creditors must comply with designated OTS regulations on alternative mortgage transactions. On September 26, 2002, OTS published a final rule revising 12 CFR 560.220, which identifies the OTS regulations that apply to state housing creditors making alternative mortgage transactions under AMTPA.[1] Under the final rule, OTS will no longer identify its regulations on prepayments and late charges as applicable to state housing creditors. As a result, alternative mortgage transactions made by state chartered housing creditors under AMTPA will become subject to state and local laws on these subjects. The rule was to become effective on January 1, 2003.

In late November and early December 2002, several representatives of financial service trade associations (petitioners) filed written requests for extensions of the January 1, 2003 effective date. The petitioners argued that the three-month delayed effective date did not provide a sufficient time for the industry to address implementation issues.

II. Discussion

A. Implementation Issues

Upon reconsideration, OTS believes that an extension is warranted to provide state housing creditors with additional time to adapt to newly applicable state and local requirements.[2] Specifically, OTS believes that a delay is necessary to permit state housing creditors to: (1) Determine applicable legal requirements; (2) reprogram systems and rewrite documents; and (3) conduct training.

Under the revised OTS rule, state housing creditors that engage in alternative mortgage transactions under AMTPA will become subject to state laws on prepayment penalties and late charges. During the last six years, state housing creditors have been able to rely on AMTPA to avoid these state limitations. As a result, many will have little recent experience with applicable state laws on prepayment penalties and late charges. Because state prepayment penalty and late charge restrictions for alternative mortgage transactions frequently differ substantially from restrictions on fixed-rate products, any experience that a state housing creditor may have with applicable restrictions on fixed-rate mortgages may be irrelevant.

Thus, as a result of the final rule, state housing creditors will be required to conduct an in-depth review of applicable state laws to ensure that their alternative mortgage transactions will not violate these laws—a significant endeavor for state housing creditors that operate nationwide or in multiple jurisdictions.

In addition to ascertaining the scope of applicable restrictions on prepayment penalties and late charges, state housing creditors will be required to undertake the following significant modifications to systems and documents to ensure compliance with state law: (1) Rewrite promissory notes and loan agreements; (2) prepare and program newly required disclosures, including disclosures to be delivered at or prior to origination and disclosures required during loan servicing; (3) modify loan origination systems to accurately reflect legal requirements and applicable codes; (4) modify servicing systems; and (5) develop audit and quality control programs.

Finally, state housing creditors will have to retrain their employees and agents on the new legal requirements for their various loan products and on the use of the updated systems and documents. Such activities may require the production of appropriate training materials and conducting training sessions for employees.

B. New Effective Date

In determining the effective date for new regulations that impose additional requirements on insured depository institutions, OTS must consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that the regulation would place on depository institutions and customers of depository institutions, and the benefits of the regulation.[3]

Based on the administrative burdens described by petitioners, OTS believes that the original January 1, 2003 effective date was inadequate to permit state housing creditors, including insured depository institutions, to perform all of the tasks necessary to respond to the new regulatory environment in a coherent manner.[4] OTS is reluctant to place state housing creditors in a position where they are unable to comply or are forced to put unready or untested systems into operation. Such an action could result in borrowers receiving loans that do not meet the requirements under state law. This may harm consumers to the extent that they are charged prepayment penalties that are prohibited under state law, or are precluded from electing a lower rate in return for a prepayment penalty where such penalties are permitted. In addition, such an action could result in lawsuits, which could undermine consumer confidence in the mortgage industry. Accordingly, OTS will extend the effective date of the AMTPA rule.

Almost three months have passed since the issuance of the September 26, 2002 final rule. By now, OTS anticipates that most state housing creditors have researched and analyzed the applicable law and are beginning to update their operating systems and documents and take other steps toward compliance with the revised regulatory environment. OTS believes that a delay of an additional six months, as requested by several petitioners, will be sufficient for state housing creditors, including companies with regional or national operations, to complete good faith efforts to implement the remaining changes required by the revised rule. OTS notes that this extended date is more than nine months after the publication of the final rule on September 26, 2002.

OTS also considered whether to extend the effective date to January 1, 2004, as requested by some petitioners. However, OTS believes that this effective date raises other issues, including new implementation issues. As one commenter observed, changes required by the end of a calendar year are particularly problematic because so many functions must be performed at the year-end that sufficient staff is often

[1] 67 FR 60542 (Sept. 26, 2002).

[2] The September 26, 2002 final rule also made unrelated revisions to 12 CFR part 590 (Preemption of State Usury Laws) and 12 CFR part 591 (Preemption of State Due-on-Sale Laws). OTS is not revising the effective date of these other rule changes. Therefore, the changes to parts 590 and 591 will be effective on January 1, 2003.

[3] 12 U.S.C. 4802.

[4] While commenters on the proposed rule addressed various compliance burdens, the effective date of the rule was not identified as a significant issue in the comments or discussed at any length.

not available to make the changes, test the changes, and train other employees. OTS believes that this factor weighs against an effective date of January 1, 2004. Moreover, a January 1, 2004 effective date will unreasonably delay, and thus deny, consumers the protections accorded under state law with regard to prepayment penalties and late charges on loans made by state housing creditors. In the final rule, OTS examined the AMTPA rule's impact on predatory lending and concluded that the widespread use of prepayment penalties may deter consumers from seeking to refinance high cost loans with burdensome provisions and may have other adverse consequences for sub-prime borrowers. OTS further concluded that state laws on prepayment penalties and late charges are a key component in states' regulation of predatory lending, and that its current AMTPA rules may frustrate these state efforts. OTS is disinclined to thwart these efforts to combat predatory lending by unnecessarily extending the implementation period.

In light of these factors, OTS will extend the effective date of the revised AMTPA rule for six additional months until July 1, 2003.[5]

III. Regulatory Analyses

To the extent that this extension of the effective date is deemed to be a rule under the Administrative Procedure Act (APA), OTS makes the following regulatory findings.

A. Administrative Procedure Act

Under the APA, an agency may suspend general notice-and-comment rulemaking procedures if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). OTS finds that it has good cause to delay the effective date without first soliciting comment concerning this action. Because the effective date of the final rule (January 1, 2003) is fast approaching, it is impracticable to seek further public comment before issuing this amendment delaying the effective date of those rules. In addition, such a delay is in the public interest for the reasons explained above. For similar reasons, OTS also finds that this action delaying the effective date of the final rule must take effect on January 1, 2003, which is less than 30 days after publication of this amendment to the final rules.

B. Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since OTS has found that there is ''good cause'' under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the effective date for the final rules, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment. Moreover, OTS provided a regulatory flexibility analysis in the preamble to the final rule published on September 26, 2002 (67 FR 60551–60554). In that regulatory flexibility analysis, OTS considered the likely impact of the final rule on small entities.

C. Executive Order 12866

The OTS determination that the final rule does not constitute a ''significant regulatory action'' (67 FR 60551) applies to the rule, as amended by this effective date revision.

D. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS has determined, for good cause, that this amendment to the final rule may be issued without prior notice and comment. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this amendment to the final rules. Moreover, OTS provided an UMA analysis in connection with the final rule. 67 FR 60551.

E. Executive Order 13132—Federalism

As described in the preamble to the final rule (67 FR 60554), Executive Order 13132 imposes certain requirements on an agency when it formulates and implements policies that have federalism implications. In accordance with those requirements, OTS consulted with the Conference of Bank Supervisors and the National Association of Attorneys General concerning this amendment to delay the effective date of the rule.

Dated: December 6, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–31228 Filed 12–11–02; 8:45 am]

BILLING CODE 6720–01–P

[5] Thus, loans consummated on or after July 1, 2003 will be governed by revised § 560.220. However, if a loan is made pursuant to a legally binding loan commitment made before July 1, 2003, the loan will be governed by the prior OTS rule. Where a prospective borrower pays no fee for a commitment, state housing creditors should closely review the loan commitment to determine if a legally binding commitment exists. These agreements typically contain broad provisions permitting the lenders to decline to fund the loan on subjective grounds that effectively render the commitment unenforceable and therefore not legally binding.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13819; Airspace Docket No. 02–AGL–10]

Establishment of Class E Airspace; Milbank, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Milbank, SD. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Milbank Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Milbank Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Milbank, SD (67 FR 53533). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending

upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air). Adoption of the Amendment.

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL SD E5 Milbank, SD [New].

Milbank Municipal Airport, SD,
(Lat. 45° 13′ 50″ N., long. 96° 33′ 57″ W.).
Watertown VORTAC,
Lat. 44° 58′ 47″ N., long. 97° 08′ 30″ W.).

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of the Milbank Municipal Airport, and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by lat. 45° 34′ 00″ N., on the west by long. 97° 30′ 00″ W., on the south by lat. 44° 38′ 00″ N., and on the east by the South Dakota/Minnesota border excluding that airspace within the Watertown, SD, Class E airspace area, that airspace within the Ortonville, MN, Class E airspace area, and that airspace area within the state of Minnesota.

* * * * *

Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–31342 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 4214]

RIN 1405–AB45

Exchange Visitor Program: SEVIS Regulations

AGENCY: Department of State.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes regulations and procedures for designated Exchange Visitor Program sponsors to gain access to the Student and Exchange Visitor Program (SEVP) database through the Student and Exchange Visitor Information System (SEVIS) for the reporting of information essential to the administration of their exchange visitor program in an electronic environment. It also provides a means for organizations interested in being considered for designation to apply for authorization. The purpose of this rule is to provide immediate access to SEVIS to enable the Attorney General to meet the legislative mandate established in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Pub. L. 104–208), which requires the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop an electronic system to collect information on aliens who have, or are applying for nonimmigrant status under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (Act).

Although the Attorney General has the primary responsibility for implementing SEVIS, the Department is promulgating this rule to set forth the SEVIS requirements that specifically pertain to exchange visitor program sponsors. INS will specifically address those areas over which they have responsibility for exchange visitors (*e.g.*, admission, change of status, and duration of status) in a separate rule.

DATES: *Effective Date:* This rule is effective December 12, 2002.

Comment Dates: Written comments regarding this rule must be submitted on or before January 13, 2003.

Comments on proposed information collections must be submitted on or before 60 days from December 12, 2002.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: U.S. Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 734, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 734, Washington, DC 20547; 202–401–9810; fax: 202–401–9809.

SUPPLEMENTARY INFORMATION:

I. Introduction

What Is the Student and Exchange Visitor Program (SEVP)?

The SEVP is a statutorily mandated information system designed to electronically track and record the entry and presence in the United States of student and exchange visitor non-immigrants. The SEVP is the responsibility of the Immigration and Naturalization Service (INS) who has developed the enterprise architecture necessary to implement the electronic tracking of student and exchange visitors. The Department of State (Department) is promulgating this rule in order to advise future applicants for Exchange Visitor Program designation of certain procedures now necessary for

the administration and oversight of exchange programs in light of the INS implementation of SEVIS. In September 1996, Pub. L. 104–208 (Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)) was enacted. IIRIRA directed the Attorney General to develop, in consultation with the Department of Education and the Department of State, an electronic information collection system that would track the entry and presence in the United States of non-immigrants in F, M and J visa status. The INS developed the program known as the Student and Exchange Visitor Program (SEVP) to meet this mandate. The electronic system that implements SEVP is known as the Student and Exchange Visitor Information System (SEVIS). SEVIS creates a means for information collection and reporting via the Internet and a reduction in data latency, and paper record maintenance.

On October 26, 2001, Section 416 of the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), Public Law 107–56 subsequently amended IIRIRA. It mandated that SEVIS be fully implemented and expanded prior to January 1, 2003 and collect the date and port of entry of an exchange visitor or student. It also expanded the data collection specified in IIRIRA to include ''other approved educational institutions'' and identified these to be any [air] flight school, language training school, or vocational schools approved under subparagraph (F), (J) of (M) of section 101(a)(15) of the Immigration and Nationality Act (INA).

IIRIRA was once again amended on May 14, 2002. The Enhanced Border Security and Visa Reform Act of 2002, Pub. L. 107–173, Title V, strengthened requirements for the implementation and monitoring of the SEVIS program by requiring schools, sponsors, the INS and the Department to share data on foreign students and participants of exchange programs (e.g., the issuance of documentation of acceptance; the issuance of a visa to a foreign student or exchange visitor; the admission of the foreign student or exchange visitor into the United States; the registration and enrollment or the participation of an exchange visitor in their program; and, any other relevant act by the foreign student or exchange visitor, including changing schools or sponsors and any termination of studies or participation in an exchange program). Sponsors must report to SEVIS the failure of any exchange visitor to begin his or her program participation as scheduled. Sponsors shall report this failure not later than 30 calendar days following the scheduled commencement date.

What Is the Purpose of This Rule?

The Department of State, in coordination with the INS, has established January 30, 2003, as the date on which use of SEVIS for the issuance of all future DS–2019 will be mandatory. In order to facilitate transition to SEVIS, the Department is issuing this interim final rule. This rule creates a new subpart F to specifically address the requirements of SEVIS and provides additional instructions to existing sponsors on getting immediate access to SEVIS. This rulemaking does not change the existing regulations governing the Exchange Visitor Program (22 CFR Part 62) even though, in practicality, these requirements will be affected. The Department will finalize this rule in the near future by incorporating this new Subpart into the rest of the regulations. The Department will issue future rulemakings as additional SEVIS capabilities become available.

What Impact Will SEVIS Have on the Exchange Visitor Program?

Under the existing regulations and procedures, in order to sponsor a non-immigrant as an exchange visitor, a sponsor must complete and send a multi-copy paper, Certificate of Eligibility for Exchange Visitor (J–1) Status (the non-SEVIS Form DS–2019, formerly known as Form IAP–66) to the potential exchange visitor. The sponsor maintains a copy of the non-SEVIS Form DS–2019; a copy is provided to the non-immigrant; a copy is provided to the INS for their records; and, a copy is routed to the Department for data-entry purposes, which is not accessible for use by the sponsor. The current process is entirely manual and paper-based.

At this time, SEVIS creates a means for sponsors to comply with some of the information collection and reporting requirements of the existing Exchange Visitor Program via the Internet, reducing data latency and paper record maintenance and routing. SEVIS will provide sponsors with the ability to create a one-page Form DS–2019 (with one page of instructions for the non-immigrant and a watermarked version of the DS–2019 for use by INS at entry points) by entering information electronically into the database, thus instantly collecting the data in a central database before the Form is ever printed. As the information is centrally located and instantly collected, the need for multiple copies can be phased out. The sponsor can access the data by logging into SEVIS, and the Department will no longer be required to collect the information contained on the Form through a data-entry contract. Over the next several months the Department will phase-in the use of SEVIS to implement other regulatory requirements of the Exchange Visitor Program regulations (22 CFR part 62). (See ''IV. Anticipated Improvements'', below.)

How Will Sponsors Be Notified of the Arrival of Exchange Visitors in the United States?

Title V of the Enhanced Border Security and Entry Reform Act of 2002 (Pub. L. 107–173) directs the INS to notify schools and programs sponsors when a student or exchange visitor has been admitted to the United States. The Department is advised that this notification process will be available electronically through SEVIS, on or about January 1, 2003.

Prior to the availability of this function in SEVIS, SEVIS will generate an original SEVIS Form DS–2019 and a watermarked version of the Form when the Form is issued to a potential exchange visitor to begin a new program. (The watermarked version of the SEVIS Form DS–2019 will not contain a barcode and is easily identified by the words, ''Data Entry Purposes'' printed across the face.) Upon initial admission of the exchange visitor at the port-of-entry, the INS inspector will properly annotate both the original SEVIS Form DS–2019 and the watermarked version. The INS inspector will return the original SEVIS Form DS–2019 to the exchange visitor and the watermarked version will be forwarded by the inspector to the INS' data processing center. The watermarked version will be returned to the sponsor within approximately 10 days of the exchange visitor's arrival. The sponsor will be responsible for notifying the INS and the Department that the exchange visitor has failed to commence program participation by updating the record in SEVIS. Non-SEVIS generated Forms DS–2019 will continue to be processed by INS in the same manner as it has done in the past.

What Is the SEVIS Timeline for Exchange Visitor Program?

Pursuant to statute, the Department of State, in coordination with the INS, has established January 30, 2003, as the date after which all sponsors must use SEVIS. Accordingly, all designated exchange visitor program sponsors are required to be enrolled in SEVIS by this date in order to continue sponsoring non-immigrants as exchange visitors.

After January 30, 2003, only SEVIS-generated Forms DS–2019 can be used for change of non-immigrant classification, reinstatement, transfers, extensions, change of category or any other immigration benefit. During a transition period, previously issued paper Forms DS–2019 will be accepted for visa issuance and admission, so long as the exchange visitor's Form was issued by a sponsor prior to January 30, 2003.

In order to ensure that all current sponsors have access to SEVIS by January 30, any sponsor that wishes to continue administering an exchange visitor program must complete and submit an SEVIS Form DS–3036 (Exchange Visitor Program Application) through SEVIS to the Department no later than December 16, 2002. (See ''How does a current sponsor enroll to participate in SEVIS?'' below.) The Department will need this time to undertake the administrative actions necessary to authorize sponsor access to SEVIS.

By August 1, 2003, sponsors will also be required to enter information on all exchange visitors continuing to participate in their program after that date, including those that entered the country on a non-SEVIS Form DS–2019, IAP–66 or IAP–66P. Exchange visitors who end their participation in the sponsor's exchange visitor program before this date need not be entered. Accordingly, sponsors must enter the required information for all exchange visitor program participants (including accompanying spouse and/or dependent children) who continue in exchange visitor status after August 1. It is important to note that a separate, SEVIS-generated Form DS–2019 must be prepared for the accompanying spouse and each dependent child.

Sponsors are not required to enter any of their current or continuing exchange visitors into SEVIS prior to August 1, 2003, except for those current or continuing exchange visitors who need a new Form DS–2019 due to a reportable action (*i.e.*, extensions, reinstatements, transfers, changes of category, changes of status, replace a lost form, amendments, corrections or visa issuance).

What Is the Relationship Between SEVIS and NSEERS?

SEVIS requires the timely reporting and updating of a change in actual and current U.S. address of an exchange visitor. This reporting, however, does not satisfy certain address reporting requirements that are imposed by other regulations or statutes. Specifically, the National Security Entry-Exit Registration System (NSEERS) imposes a separate address-reporting requirement. Address reporting through SEVIS does not satisfy the NSEERS reporting requirement.

What Is the Relationship Between ISEAS and SEVIS?

ISEAS (Interim Student and Exchange Authentication System) is a web-based system that allows consular officers to verify the acceptance of foreign students and exchange visitors who apply to enter the United States in student (F or M) and exchange visitors (J) nonimmigrant visa categories based on information the schools or exchange visitor program sponsors enter directly into the system. ISEAS was intended to be an interim mechanism to collect information on foreign students and exchange visitors pending SEVIS development and is not a comprehensive solution to better track these non-immigrants. Because ISEAS is an interim system designed solely to meet the requirement of section 501(c) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), the data in ISEAS will not be shared with SEVIS. This is significant because until SEVIS is fully implemented, schools and program sponsors will have to electronically register visa applicants into two separate databases (ISEAS and SEVIS). ISEAS will sunset when SEVIS is fully implemented.

Must a Sponsor Continue To Use ISEAS Once Enrolled in SEVIS?

Until SEVIS is fully implemented, sponsors will be required to enter exchange visitors into both ISEAS and SEVIS. While the Department recognizes that this is a significant duplication of burden on the sponsors, it is a necessary transitional measure to ensure that consular officials issuing visas have access to the appropriate information.

II. Implementation

How Will Sponsors Enter Data Into SEVIS?

Data can be entered into SEVIS through an interactive mode or through batch processing. The interactive mode is the web-based interaction between the sponsor (responsible officer/alternate responsible officer) and SEVIS. Using a user ID and password to gain access to SEVIS, the sponsor will enter data directly into the database. A completed SEVIS Form DS–2019 will print through the sponsor's computer to the sponsor's printer. The Department anticipates virtually no cost to using the interactive mode. This capability only requires Internet access and a browser, most of which are commonly available at no charge. No other software is necessary, and there are no recurring fees for access to SEVIS.

Batch processing is an electronic data exchange that takes place between the sponsor's database system and SEVIS. Technical requirements for the development of sponsor specific batch processing software are posted on the INS SEVIS website. It is anticipated that SEVIS will be able to accept batch submission by December 2002. The use of batch processing is a choice to be made voluntarily by each sponsor. Given the tremendous variation in the size of programs designated by the Department, we anticipate that some sponsors will prefer to develop batch-processing capabilities while others will have no need to pursue this choice.

How Does a Sponsor Enroll to Participate in SEVIS?

Currently designated sponsors must complete the SEVIS Form DS–3036 in order to enroll in SEVIS. A temporary user ID and password is required in order to access, create, retrieve and submit an electronic SEVIS Form DS–3036 (see ''How to register for a SEVIS temporary user ID'' below). Only one application (the SEVIS Form DS–3036) can be created using this temporary user ID. The temporary ID remains valid for 30 calendar days; if the SEVIS Form DS–3036 is not submitted within 30 calendar days, the temporary ID is deactivated. No changes can be made to the SEVIS Form DS–3036 once it is submitted. However, after the SEVIS Form DS–3036 has been submitted, the temporary user ID remains active for viewing and printing purposes until the application has either been approved or denied. Upon either approval or denial of the application, the temporary ID will be deactivated and will no longer provide the user with access to SEVIS.

Sponsors completing the SEVIS Form DS–3036 in order to enroll their currently designated program in SEVIS need not submit any documentation and/or fee normally associated with the paper Form DS–3036 to the Department. Sponsors will complete the SEVIS Form DS–3036 using the information contained in their most recent letter of designation or redesignation. Enter the name of the sponsor as it is stated in the letter of designation/redesignation; select ''currently designated sponsor'' as the type of application; and, enter the program number as assigned by the Department. Enter only the exchange visitor categories authorized by the Department at time of SEVIS enrollment

(amendments to the categories authorized can take place electronically after the program is enrolled in SEVIS). Once the application has been submitted, no further changes can be made. The person submitting the SEVIS Form DS–3036 will receive an email advising that the application was successfully received. The applicant is not required to print out the completed SEVIS Form DS–3036.

The Department will review the electronic submission and compare the information entered into SEVIS with the sponsor's program file. When the information has been verified, the Department will approve access to SEVIS. At that time, SEVIS will generate permanent user IDs for the responsible officer and alternate responsible officer(s) identified on the SEVIS Form DS-3036 and will email them to each person, along with instructions for acquiring passwords to the system.

When enrollment authorization has been granted, the sponsor must return all unused non-SEVIS Forms DS–2019 on hand, with a reconciliation of form usage. Once enrolled in SEVIS, a sponsor is prohibited from issuing non-SEVIS Forms DS–2019 for any purpose.

How Does a New Organization Apply for Designation to Conduct an Exchange Visitor Program?

An organization wishing to apply for designation to conduct an Exchange Visitor Program must submit an Exchange Visitor Program Application (DS–3036) to the Department, including the SEVIS Form DS–3036 and the documentation and fees currently associated with the Form DS–3036. In order to access the SEVIS Form DS–3036, a temporary user ID and password is required (see ''How to register for a SEVIS temporary user ID'' below).

Only one SEVIS Form DS–3036 can be created using this temporary user ID. The temporary ID remains valid for 30 calendar days; if you do not submit the application within 30 calendar days, the temporary ID is deactivated. No changes can be made to the SEVIS Form DS–3036 once it is submitted. Upon either approval or denial of the application, the temporary ID will be deactivated and will no longer provide the user with access to SEVIS.

When completing the SEVIS Form DS–3036, be certain to choose ''new'' as the type of application if this is the first time applying for designation as an exchange visitor program; do *not* choose ''currently designated sponsor'' as this option is only for sponsors who are currently designated to conduct an exchange program.

Once the SEVIS Form DS–3036 has been completed, the applicant must print-out, sign and notarize the SEVIS Form DS–3036 and mail it with the non-reimbursable fee and required supporting documentation (*see* 22 CFR 62.5(b), (c) and (d)) to the Department within 30 days of the electronic submission.

At the time of receipt, the Department will note in SEVIS that the complete application package has been received, and SEVIS will send the applicant an email advising that the application and required fee has been received and that the application is pending review. If the application submitted to the Department does not include the required fee or supporting documentation, the Department will make a note in SEVIS, and SEVIS will email the applicant. The email will advise that either the fee or supporting documentation must be submitted to the Department in order for the process to continue. When the Department receives the subsequent submission (i.e., required fee or supporting documentation), the Department will record it in SEVIS, and SEVIS will email the applicant advising of the receipt of the subsequent mailing and the process will continue.

If the Department does not record in SEVIS that the complete application (SEVIS Form DS–3036, fee and supporting documentation), or any part thereof, has been received prior to the expiration of the 30-calendar day submission period, SEVIS will automatically cancel the application request. If an application request is cancelled by SEVIS, all fees submitted will be forfeited. During the review process should the Department determine that additional information is required to render a decision, the Department will note this fact in SEVIS and send the applicant a written letter (outside of SEVIS) outlining the information required in order to continue the review. SEVIS will notify the applicant by email, advising of the need for additional information and the forthcoming written letter. The review process is suspended pending receipt of the additional information requested by the Department. On receipt of the requested information, the Department again records this in SEVIS, the applicant is notified by email, and the review process continues.

Upon approval of the application, the Department will update SEVIS. SEVIS will notify the applicant by email, as well as the individuals identified in the application as the responsible officer and alternate responsible officer(s). In addition, the responsible officer and alternate responsible officer(s) will receive emails providing them with their own unique user IDs and instructions on how to set up passwords. The Department will continue to issue a formal letter of designation to the applicant outside of SEVIS. If the request for designation is denied, the Department will record it in SEVIS accordingly; however, the Department will notify the applicant of the decision in writing by letter outside of the SEVIS system.

Upon implementation of this rule, all new applicants for Exchange Visitor Program designation must use SEVIS to generate and submit the SEVIS DS–3036 to the Department in addition to the existing requirements of the paper Form DS–3036.

How Do I Register for a SEVIS Temporary User ID?

The SEVIS Log in Page (*http://www.ins.usdoj.gov/sevis*) includes a link used to obtain a temporary user ID and a password for creating and submitting the electronic Exchange Visitor Program Application (SEVIS Form DS–3036). Once this site is accessed, a user should click the ''Register for New Account'' link at the bottom of the screen and the System will display a ''Register for a New SEVIS Account'' screen. At a minimum, a user must complete all fields preceded by a red asterisk (*). When authorization is granted by the Department the temporary user will receive two e-mail messages, one containing the temporary ID and a second e-mail containing instructions on how to access SEVIS for the first time.

To facilitate the initial use of SEVIS, the System has been developed to provide the user with features such as user manuals, tutorials and a ''Help'' feature. A new user to the System should review these tools before attempting to complete the SEVIS Form DS–3036. If a user should forget his or her password, contact the SEVIS Help Desk at 1–800–892–4829. The current temporary account will be disabled and a new one will be created.

What Happens If a Sponsor Does Not Provide Information to SEVIS?

Pursuant to the provisions of section 641(d)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208), a designated exchange visitor program failing to provide the information specified, is subject to program revocation.

III. Effect on Existing Exchange Visitor Program Regulations

Existing Exchange Visitor Program regulations are not amended by this rule. SEVIS will, however, be utilized to submit information electronically. The Department has identified the following regulations for which the information required therein will be submitted or transmitted in SEVIS:

Subpart A—General Provisions

Section 62.5 Application Procedure

This section of the Exchange Visitor Program regulations remains unchanged. However, SEVIS provides for the electronic submission of the Exchange Visitor Program Application (Form DS–3036) (see ''Submission of New Applications for Designation (Form DS–3036)''). The required fee and supporting documentation will continue to be submitted in paper format. The submission of fees and supporting documentation will be, at some point in the future, accomplished electronically as the INS further develops the SEVIS enterprise architecture.

Section 62.6 Designation

In addition to the Department's formal letter of designation, SEVIS will provide applicants with an email notifying of a favorable determination.

Section 62.7 Redesignation

Sponsors continue to be required to apply for redesignation. SEVIS, however, produces an alert prior to the end of the designation cycle to assist sponsors in filing the redesignation request in a timely manner.

Section 62.9 General Obligations of Sponsors

Requirements of this section remain unchanged. Section 62.9(g)(3) permits the Department to limit the number of alternate responsible officers appointed by the sponsor. SEVIS limits the sponsor from appointing more than ten (10).

Section 62.10 Program Administration

The regulatory provisions of this section remain unchanged. Sponsors shall ensure that only the responsible officer and/or alternate responsible officer(s) issue the SEVIS-generated Form DS–2019. Sponsors shall continue to retain all records relating to their exchange program and exchange visitors for a minimum of three years. However, SEVIS-generated records will no longer be subject to this requirement as they have been provided electronically.

The sponsors' obligation to monitor the exchange participants in their program continues unchanged. However, sponsors will now report the actual and current U.S. address of all sponsored participants to SEVIS. Sponsors must update the actual and current U.S. address information for participants within 21 days of being notified by a participant of a change in his or her address. A sponsor's failure to update the actual and current U.S. address information within 21 days of receipt may be grounds for revocation of their Exchange Visitor Program status.

Sponsors shall report a U.S. mailing address, i.e., P.O. box address, in those limited circumstances where mail cannot be delivered to the current and actual U.S. address. In those limited circumstances where a mailing address is reported, sponsors will continue to be required to maintain the actual and current U.S. address, e.g., dorm, building and room number, of the participant.

Section 62.11 Duties of Responsible Officers

These regulatory provisions remain unchanged. However, as SEVIS will generate Form DS–2019 by the use of a user ID and password, the responsible officer and alternate responsible officer(s) are prohibited from dispensing and/or sharing their ID and password with others.

Section 62.12 Control of Forms DS–2019

While the regulatory provisions of this section remain unchanged, access, completion and printing of SEVIS-generated, Forms DS–2019 is restricted to facilities that house the responsible officer and/or alternate responsible officers located within the United States or its U.S. territories. All SEVIS-generated Forms DS–2019 must printed and signed in blue ink by the responsible officer or alternate responsible officer(s) so that the original Forms DS–2019 can be easily distinguished from any photocopies that may be made of the Form. At no time is the sponsor permitted to forward, via facsimile or other electronic means, unsigned SEVIS Forms DS–2019 to exchange visitors, either directly or via an employee, officer or agent of the sponsor, or to an individual designated by the exchange visitor. Sponsors are also prohibited from scanning the Form DS–2019 to create an electronic image of the Form.

In addition, while sponsors are able to generate and cancel a SEVIS Form DS–2019, sponsors are required to destroy damaged and unusable Forms on the sponsor's premises (e.g., Forms with errors or Forms damaged by the printer); and, are required to continue to request exchange visitors and prospective exchange visitors to return any unused SEVIS Form DS–2019 to the sponsor for destruction by the sponsor.

Further, sponsors will submit requests for SEVIS Form DS–2019 allotments electronically. As SEVIS electronically generates the Form DS–2019, safeguarding the Forms and information will now be accomplished by electronic storage. SEVIS will also automatically record the sponsor's allotment of Forms DS–2019, as well as their issuance.

Section 62.13 Notification Requirements

While the requirements of this section remain unchanged, SEVIS enables sponsors to electronically report these events. SEVIS enables sponsors to update its SEVIS record to indicate a change in address, telephone or facsimile number. It also enables sponsors to update the program status of exchange visitors who have completed their programs or who have otherwise been terminated from his or her program. A sponsor who is no longer interested in conducting an exchange program, or whose financial circumstances render the sponsor unable to comply with its obligations (as set forth in section 62.9), can electronically notify the Department through SEVIS of this decision.

Sponsors will continue to promptly notify the Department directly by telephone (confirming in writing) or facsimile of any serious problem or controversy that could be expected to bring the Department of State or the sponsor's exchange visitor program into notoriety or disrepute. Sponsor will also notify the Department, outside of SEVIS, of a change in composition of the sponsoring organization affecting its U.S. citizenship (as defined in section 62.2); a major change in control of the sponsor's organization; loss of licensure or accreditation; and/or, litigation related to the sponsor's exchange visitor program where the sponsor is a party.

Sponsors must report within 30 calendar days that an exchange visitor has begun his or her program participation as scheduled. Sponsors must also report, to SEVIS, not later than 30 calendar days after the program start date on the Form DS–2019, the failure of any non-immigrant to begin his or her program as scheduled.

Section 62.15 Annual reports.

Sponsors continue to be required to submit annual reports to the Department. SEVIS assists sponsors in the completion of the report by electronically producing the report form and automatically identifying and

populating the categories of participants authorized by the Department. In order to meet the regulatory certification requirements of section 62.14, sponsors must complete the narrative sections, print, sign and mail the annual report to the Department. SEVIS provides sponsors with an alert in advance of the deadline for filing the annual report. However, due to the transition period whereby sponsors convert from the use of the paper Form DS–2019 to the SEVIS-generated Form DS–2019, sponsors will be required to report to the Department their use of both the paper Form DS–2019 and the SEVIS-generated Form DS–2019. Sponsors will submit the existing, non-SEVIS annual report form currently utilized by sponsors to provide a numerical count, by category, of all exchange visitors participating in the sponsors program for the reporting year. Sponsors will also generate a report in SEVIS that must be printed, signed, and sent to the Department, accounting for those forms issued through SEVIS to exchange visitor participants. This dual reporting will only be required until such time as the sponsor's annual report cycle falls completely within the period of time in which SEVIS-generated Forms DS–2019 are issued.

Subpart B—Specific Program Provisions

Sponsors must utilize SEVIS to complete the Form DS–2019 issued to all non-immigrants (and accompanying spouse and dependent children) selected to participate in their programs. Sponsors issuing a Form DS–2019 to an alien physician to enable them to participate in their program for the purposes of observation, consultation, teaching or research shall continue to sign and append a certification to the SEVIS-generated Form DS–2019 as specified in section 62.27(c)(1)(i) or (ii). Placement reports used by the Department for monitoring and oversight of the summer work/travel and camp counselor program will continue to be submitted as required by existing regulations as will the management audit required of au pair program sponsors. The requirements for the authorization of student employment and academic training will now be documented in SEVIS (*see* 22 CFR 62.73 and 62.74), and thus program sponsors will no longer be required to retain or produce paper documents for these two functions.

Also, SEVIS will now automatically record the matriculation level of students (e.g., secondary, associate, bachelors, masters, doctorate and non-degree) and whether a trainee is engaged in specialty or non-specialty training.

Subpart C—Status of Exchange Visitors

The regulatory requirements of subpart C are not changed. However, SEVIS assists sponsors in the administration of their programs by electronically capturing and submitting data on requested actions and sending the Department an advance notification of an impending request. Requests for changes of category, extensions beyond the maximum duration of participation and reinstatement to valid program status will be filed electronically. Paper documentation requirements remain in place until infrastructure software necessary for the submission of such documentation electronically is in place. Review of these requests may not be completed until supporting documentation and the required fee is received. SEVIS will be utilized to transmit approvals.

As discussed above, mandatory compliance with SEVIS is January 30, 2003. For the period of time between the promulgation of this rule and the mandatory compliance date, some exchange visitor program sponsors will be utilizing SEVIS procedures while others are not. The on-line SEVIS user manual sets forth the procedures that will facilitate the transfer of an exchange participant to or from a non-SEVIS and SEVIS participating sponsor. These procedures will become redundant on January 30, 2003. Also discussed in the SEVIS user manual are the procedures for submitting requests for an extension of program, change of category and reinstatement to valid program status of exchange participants.

Subpart D—Sanctions

The regulatory provisions of this Subpart remain unchanged.

Subpart E—Termination and Revocation of Programs

The regulatory provisions of this Subpart remain unchanged.

Subpart H—Fees

The regulatory provisions of this Subpart remain unchanged.

Subpart G—Summer Work/Travel

The regulatory provisions of this Subpart remain unchanged.

How Does SEVIS Affect the J–2?

SEVIS requires the issuance of a separate SEVIS Form DS–2019 to the J–2 accompanying spouse and each dependent child, coming with or following to join, an exchange visitor.

If sought, a request for employment authorization for the J–2 accompanying spouse and dependent children must be submitted to and authorized by the INS outside of SEVIS. INS has determined that monitoring of non-immigrants being educated and trained in the United States is of vital importance to the national security of the United States. Accordingly, any J–2 spouse or dependent child wishing to pursue full-time study in the United States (other than avocational or recreational) is required to petition the INS for a change of status to that of an F–1, J–1 or M–1 non-immigrant.

IV. Anticipated Improvements

The Department anticipates a series of future expansions and improvements of the SEVIS enterprise architecture. These expansions will focus on automating the existing Exchange Visitor Program processes, including: collecting all data required by statute and regulations (e.g., the electronic reporting of academic training, student employment and notification of visa issuance and port of entry, etc.); accepting electronic signatures and documents in lieu of paper signatures and notarizations; and accepting electronic fee transfers. As these capabilities become available, the Department will revise the Exchange Visitor Program regulations as appropriate.

In December 2002, SEVIS will enable sponsors to submit multiple SEVIS Forms DS–2019 simultaneously through a batch-processing mode. The Department anticipates that this will save a sponsor significant time by not having to use the interactive mode to enter one record at a time and will allow sponsors to update SEVIS directly from their own information systems. Information on the batch processing mode is available at: *http://www.ins.gov/graphics/services/tempbenefits/sevp.htm.*

In the longer term, the Department is working actively to convert the Exchange Visitor Program from exchanges of paper to electronic submission and review. As part of this conversion, the Department is reviewing its entire business process to determine the most productive use of SEVIS and other information technology, including opportunities to streamline existing processes and improve collaboration. These changes may result in future rulemakings.

V. Request for Comments

This rulemaking, while not changing the majority of the Exchange Visitor Program regulations, will have a major effect on the ways in which sponsors comply with these regulations. The Department seeks comments on the new subpart F, its relationship to SEVIS, and

its relationship with the existing 22 CFR part 62.

Looking forward to the eventual acceptance of electronic documents in SEVIS, the Department would like comments on the availability of required documentation in electronic formats.

The Department would also like to solicit comments from the exchange community and the general public on how the Department can streamline and/or strengthen the Exchange Visitor Program and the sponsors' exchange visitor programs. The Department particularly welcomes ideas on the use of information technology to gain greater efficiencies. The most useful comments will address the Department's obligations to the exchange community and to Homeland Security, in the context of the program's limited resources.

Implementation Schedule

All requirements set forth in subpart F are effective on December 12, 2002.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 30-day provision for post-promulgation public comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Good Cause Exception

This rule is effective on publication in the **Federal Register**. The Department finds that good cause exists both for adopting this rule without prior notice and comment period ordinarily required by 5 U.S.C. 553, and for making this rule immediately effective, rather than having it enter into force 30 days after publication. The USA Patriot Act, Public Law 107–56, mandates that SEVIS be fully implemented and expanded prior to January 1, 2003. Because of vital national security concerns that underpin the USA Patriot Act, and the Border Security Act, promulgation of this rule as a proposed rule would be contrary to the public interest.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, Section 1(b), Principles of Regulation. The Department of State has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, Section 3(f), Regulatory Planning and Review and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have 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, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor an information collection if it does not display a currently approved OMB Control Number. Notwithstanding other provisions of law, no person may be penalized for failing to comply with an information collection that does not display a currently OMB Control Number. Information collections include reporting requirements, record keeping requirements, and any requirement that provides for the disclosure of information to other persons or the public.

This rulemaking imposes new information collection requirements on exchange visitor program sponsors. These include:

- Requirement for current sponsors to register for SEVIS using the SEVIS Form DS–3036.
- Requirement for new applicants to use SEVIS to complete the SEVIS Form DS–3036.
- Requirement for sponsors to complete the SEVIS DS–2019.
- Requirement for some existing written notification requirements to be reported through SEVIS.
- Requirement for sponsors to gather and report exchange visitor change of address information.
- Requirement for sponsors to report employment and training data for students that is currently maintained as a record.

These information collections, and all information collections conducted through SEVIS, have been approved under OMB Control Number 1115–0252, expiration date: 12/31/2002. For additional information on these information collections or copies of the INS request to OMB, contact Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536.

The Department has also identified information collection provisions of 22 CFR part 62 that require OMB approval. These include all record keeping and information collection requirements in part 62 related to the selection, screening, orientation, placement or monitoring of exchange participants or the administrative oversight of organizations facilitating these activities. OMB has granted emergency approval to these requirements under OMB Control Number 1405–0147, expiration date: 5/31/2003.

The Department is preparing to request a three-year approval for these collections. As part of that process, the Department requests comments on these information collections for 60 days. Comments are encouraged and will be accepted until February 10, 2003. The Department requests written comments and suggestions from the public and affected agencies concerning this collection of information. Your comments are being solicited to permit the agency to:

- 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, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Copies of the Department request to OMB are available at: *http://exchanges.state.gov/education/jexchanges.* The Department will, at its earliest opportunity, make also available a more complete description of all of the information collections included in this request, including a burden estimate for each. Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Stanley Colvin, Acting Director, SA–44, 301 4th Street, SW., Room 734, U.S. Department of State, Washington, DC 20547, who may be reached by fax on (202) 401–9809.

In addition, the following related information collections currently approved under the following OMB Control Numbers:

Certificate of Eligibility for Exchange Visitor (J–1) Status (non-SEVIS Form DS–2019) is approved under OMB Control Number 1405–0119, expiration date: 2/28/2005. Exchange Visitor Program Application (non-SEVIS Form DS–3036) and Update (non-SEVIS Form DS–3037) are approved under OMB Control Number 1405–0120, expiration date: 9/30/2005.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. A new Subpart F is added to read as follows:

Subpart F—Student and Exchange Visitor Information System (SEVIS)

Sec.

62.70 SEVIS reporting requirements.
62.71 Control and production of the electronic Form DS–2019.
62.72 Staffing and support services.
62.73 Academic training.
62.74 Student employment.
62.75 Extension of program participation.
62.76 Transfer procedures.
62.77 Reinstatement.
62.78 Termination.
62.79 Sanctions.

Subpart F—Student and Exchange Visitor Information System (SEVIS)

§ 62.70 SEVIS reporting requirements.

(a) *Enrollment and initial use of SEVIS.* Sponsors shall apply for enrollment in SEVIS no later than December 16, 2002. Upon notification that they have been successfully enrolled in SEVIS, sponsors shall:

(1) Create a SEVIS record for any program participant seeking visa issuance or for whom an extension, transfer, change of category, or reinstatement request is sought;

(2) Create a SEVIS record to replace a previously issued but lost or stolen copy of a participant's Form IAP–66 or Form DS–2019;

(3) Create a SEVIS record if an amendment or change is made in the start or end date of a program participant's program;

(4) Create a SEVIS record for a program participant's accompanying spouse and all accompanying dependent children if a SEVIS record has been created for the participant;

(5) Utilize SEVIS to up-date information on any participant, spouse, or dependent child for whom a SEVIS record has been created; and

(6) No later than August 1, 2003, create a separate SEVIS record for each participant, accompanying spouse and dependent child that will continue to have Exchange Visitor Program participant status after August 1, 2003.

(b) *Current U.S. address.* Sponsors shall ensure that the actual and current U.S. address of all sponsored participants is reported to SEVIS. Sponsors shall update the actual and current U.S. address information for participants within 21 days of being notified by a participant of a change in his or her address. A sponsor's failure to update the actual and current U.S. address information within 21 days of receipt may be grounds for revocation of their Exchange Visitor Program status. Sponsors shall report a U.S. mailing address, *i.e.*, P.O. box address, in those limited circumstances where mail cannot be delivered to the current and actual U.S. address. If a U.S. mailing address is reported to SEVIS, sponsors shall also maintain a record of the actual and current U.S. address, *e.g.*, dorm, building and room number, for that exchange visitor.

(c) *Notification to program participants.* Sponsors shall notify all participants in their exchange visitor program and accompanying spouse and dependent children that any change in the U.S. address must be reported to the sponsor within 10 days of such change. Sponsors may direct the participant to provide the notification of change in address in a format acceptable to the sponsor.

(d) *Validation of program participation.* Sponsors shall within 30 calendar days of a program participant's start date verify that the participant has in fact begun their program participation. Sponsors shall update the participant's SEVIS record and current U.S. address.

§ 62.71 Control and production of the electronic Form DS–2019.

(a) SEVIS generated Forms DS–2019 shall only be completed, printed and signed by a responsible officer and/or alternate responsible officer(s) who are physically present in the United States or a U.S. territory at the time of the Form's production.

(b) Responsible officers and alternate responsible officers shall secure their SEVIS logon IDs and passwords at all times.

(1) At no time and under no circumstances are SEVIS logon IDs and passwords to be shared with anyone, either on a transitory or permanent basis.

(2) Sponsors for whom the responsible officer or alternate responsible officers have been found to have willfully or negligently violated the requirements of this section will be subject to sanctions as set forth in § 62.50(a)(2).

§ 62.72 Staffing and support services.

(a) Sponsors shall appoint a responsible officer and may appoint up to ten (10) alternate responsible officers to adequately administer their exchange visitor program to fulfill the duties set forth in § 62.11.

(1) The Department may limit the number of alternate responsible officers appointed by the sponsor at its discretion.

(2) The Department reserves the right to withdraw the appointment of a responsible or alternate responsible officer at its discretion.

(b) [Reserved]

§ 62.73 Academic training.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may, if approved by the academic dean or

advisor and approved by the responsible officer or alternate responsible officer, engage in academic training pursuant to § 62.23(f).

(b) The responsible officer or alternate responsible shall update the exchange visitor's SEVIS record to reflect the details of any academic training pursuant to § 62.23(f)(5)(i). An update of the SEVIS record constitutes compliance with § 62.23(f)(5)(ii).

§ 62.74 Student employment.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may engage in student employment pursuant to § 62.23(g).

(b) The responsible officer or alternate responsible officer shall update the exchange visitor's SEVIS record to reflect the details of such employment pursuant to § 62.23(g)(1). An update of the SEVIS record constitutes compliance with § 62.23(g)(2)(iv).

§ 62.75 Extension of program participation.

(a) A sponsor may extend an exchange visitor's participation in the Exchange Visitor Program up to the limit of the permissible period of participation authorized for the specified program category by entering a new end program date and an optional comment—all other information collected on a DS–2019 will be automatically completed by SEVIS.

(1) A sponsor extending the program of an exchange visitor who is not currently listed in the SEVIS database is required to create a record for the exchange participant (and the accompanying spouse and any dependents as a ''continuing exchange visitor''. In creating the exchange visitor's SEVIS record, the sponsor shall issue the exchange visitor (and the accompanying spouse and any dependent children) a duly executed Form DS–2019 reflecting such extension.

(2) When creating a SEVIS record for a ''continuing exchange visitor,'' the initial program start date and Form number taken from the non-SEVIS Form IAP–66 or DS–2019 issued to begin new program must be entered in the exchange visitor's SEVIS record.

(b) A responsible officer or alternate responsible officer seeking an extension of program status on behalf of an exchange visitor in excess of the duration of program participation authorized for the specific category shall:

(1) Submit an electronic request to the Department through the real-time interactive mode in SEVIS.

(2) Create a record for the exchange participant (and the accompanying spouse and any dependent children) as a ''continuing exchange visitor'' listing the initial program start date and Form number taken from the non-SEVIS Form IAP–66 or DS–2019 issued to begin new program.

(3) Submit written supporting documentation and the required non-reimbursable fee to the Department within 30 calendar days of the SEVIS submission date.

§ 62.76 Transfer procedures.

(a) Program sponsors may, pursuant to the provisions set forth in § 62.42, permit an exchange visitor to transfer from one designated program to another designated program. Transfers will not extend the maximum duration of participation for the category in which the exchange visitor is currently participating.

(b) Current sponsor and transfer sponsor shall communicate appropriately to ensure an uninterrupted transfer, continuous status of the exchange visitor and proper change of address reporting and shall utilize the provisions of this section to effect such transfer.

(1) SEVIS-to-SEVIS transfer. When both the transfer and current sponsors are enrolled in SEVIS, a transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of the current status and eligibility to transfer by the transfer sponsor, the current sponsor shall update the exchange visitor's record by processing a ''transfer out'' in SEVIS. The current sponsor must enter the name and program number of the transfer sponsor and the effective date of transfer. The ''transfer out'' process gives the transfer sponsor access to the SEVIS record of the exchange visitor (and accompanying spouse and any dependent children).

(iii) The transfer sponsor shall initiate a ''transfer in,'' issue a Form DS–2019 for the exchange visitor (an accompanying spouse and any dependent children), and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor, and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(2) Non-SEVIS to SEVIS transfer: When the transfer sponsor is enrolled in SEVIS but the current sponsor is not, the transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a Form DS–2019 to enact a transfer and will send the Form to the current sponsor to acquire the written release of the exchange visitor by obtaining a signature in Section 8.

(iii) Upon receipt of the Form DS–2019 with signature, the transfer sponsor shall record the effective date of transfer; the date, name and title of person who signed the release; the name and program number of the current sponsor. The transfer sponsor shall print a Form DS–2019 for the exchange visitor, and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(3) SEVIS to Non-SEVIS transfer. When the transfer sponsor is not enrolled in SEVIS and the current sponsor is a SEVIS-enrolled sponsor, a transfer is enacted as follows:

(i) The exchange visitor shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a non-SEVIS Form DS–2019 and submit it to the transfer sponsor for the release of the exchange visitor by acquiring a signature in Section 8 of the Form.

(iii) The transfer is required to update the exchange visitor's SEVIS record by recording the effective date of transfer; name and program number of the transfer sponsor; and, name of the responsible officer/alternate responsible officer of the transfer (non-SEVIS) sponsor requesting the transfer as noted on the four-color, four-page paper Form DS–2019.

(4) The transfer sponsor will provide the exchange visitor with the pink copy of the Form DS–2019 and submit the yellow copy of the form to the Department.

§ 62.77 Reinstatement.

(a) Reinstatements will continue to be handled in accordance with the

procedures established in § 62.45. A SEVIS reinstatement is processed as follows:

(1) The responsible officer must submit an electronic request for reinstatement to the Department through SEVIS.

(2) The responsible officer must print a copy of the reinstatement request (draft copy of the Form DS–2019) from the SEVIS system.

(3) The responsible officer must submit the official request along with the required supporting documentation justifying the reinstatement and the required, non-reimbursable fee (refer to § 62.90-Fee) to the Department within 30 calendar days of the SEVIS submission date.

(4) The Department will review the request. If approved, the Department will enter the approval in SEVIS, thereby opening the file so that the responsible officer may print a Form DS–2019. How is the sponsor going to know they received an answer to their request? The Department's approval is required before a Form DS–2019 can be printed. What happens if the request is denied?

(b) An exchange visitor (and the accompanying spouse and any dependent children) who failed to submit a change of current U.S. address as required under § 62.63 is in violation of the Exchange Visitor Program regulations and is not eligible for reinstatement. The Department will deny any such application for reinstatement.

(c) An exchange visitor (and accompanying spouse and any dependent children) who is ineligible for reinstatement or whose request for reinstatement has been denied is no longer an Exchange Visitor Program participant. He or she cannot remain in the United States unless another lawful immigration status is obtained.

§ 62.78 Termination.

An exchange visitor who willfully or negligently fails to comply with the requirements established in Public Law 104–208, as amended, shall be terminated from the Exchange Visitor Program by the sponsor.

§ 62.79 Sanctions.

(a) The Department of State shall impose sanctions against a sponsor that has:

(1) Willfully or negligently failed to comply with the reporting requirements established in Public Law 104–208, as amended; or,

(2) Produced SEVIS Forms DS–2019 outside the United States or a United States territory; or,

(3) Whose authorized representatives fail to secure their SEVIS logon ID and password.

(b) [Reserved]

Dated: December 6, 2002.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–31367 Filed 12–11–02; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–059–200306(a); FRL–7419–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's nitrogen oxides budget and allowance trading program submitted on September 13, 2002, by the State of Alabama. These revisions are designed to provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline by allowing sources to request credit for early reductions obtained during the 2001 control period.

DATES: This direct final rule is effective February 10, 2003 without further notice, unless EPA receives adverse comment by January 13, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On September 13, 2002, the State of Alabama through Alabama Department of Environmental Management submitted revisions to Chapter 335–3–8 regarding early reduction credits. The revisions to Chapter 335–3–8–.10—NO_X Allowance Tracking System would provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline May 1, 2004, by allowing sources to qualify for early reduction credit in the form of nitrogen oxides allowances from a compliance supplement pool for the 2001 control period. This is being accomplished by expanding the early reduction credit program from 2002 through 2003 to 2001 through 2003.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because it is consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 10, 2003 without further notice unless the Agency receives adverse comments by January 13, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 10, 2003 and no further action will be taken on the proposed rule.

III. Administrative 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.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B–Alabama

2. Section 52.50(c) is amended by revising the entry for ''Section 335–3–8.10'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
*	*	*	*	*
Section 335–3–8.10	NO_X Allowance Tracking System.	August 27, 2002	December 12, 2002	[Insert FR page citation from publication date]
*	*	*	*	*

* * * * *

[FR Doc. 02–31235 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1776, MM Docket No. 00–121, RM–9674]

Digital Television Broadcast Service; Kingston, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, denies a Petition for Reconsideration and Motion for Stay filed by WKOB Communications, Inc. of the Report and Order, which substituted DTV channel 48 for station WRNN–DT's assigned DTV channel 21 at Kingston, New York. *See* 67 FR 5070, February 4, 2002. With is action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00–121, adopted July 23, 2002, and released July 29, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–31384 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 120602A]

Summer Flounder Fishery

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

ACTION: Commercial quota transfer; commercial fishery reopening.

SUMMARY: NMFS announces that the State of North Carolina is transferring 20,000 lb (9,072 kg) of commercial summer flounder quota to Connecticut from its 2002 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved. NMFS also announces that the summer flounder commercial fishery in the exclusive economic zone for Connecticut is reopened, effective December 6, 2002. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in Connecticut for the remainder of calendar year 2002, unless Connecticut harvests its commercial quota before the end of the calendar year. Regulations governing the summer flounder fishery require the publication of this notification to advise Connecticut that the fishery has reopened and to advise vessel permit holders and dealer permit holders that commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective December 6, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

After taking into account any overages of state quotas that occurred in 2001, the total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,456,636 lb (6,557,420 kg), with a quota of 329,044 lb (149,252 kg) for Connecticut and a quota of 4,001,133 lb (1,814,883 kg) for North Carolina (66 FR 66350; December 26, 2001).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided the mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS, (Regional Administrator) can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 20,000 lb (9,072 kg) of its 2002 commercial quota to Connecticut. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2002 are: Connecticut, 349,044 lb (158,324 kg); and North Carolina, 3,981,133 lb (1,805,812 kg).

NMFS issued a notification in the **Federal Register** on November 25, 2002 (67 FR 70556), announcing that the summer flounder commercial quota available to Connecticut had been harvested. The Regional Administrator has determined, based upon dealer reports and upon other available information, that North Carolina will not attain its quota for 2002 and, based on the 20,000–lb (9,072–kg) transfer of commercial summer flounder quota to Connecticut, that the Connecticut commercial summer flounder fishery in the exclusive economic zone will reopen effective 0001 hours, December 6, 2002 through December 31, 2002. Therefore, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in Connecticut for the remainder of calendar year 2002, unless closed due to Connecticut harvesting its commercial quota before the end of the calendar year. Such closure would be announced through notification in the **Federal Register**. Effective December 6, 2002 through December 31, 2002, federally permitted dealers are also advised that they may purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 6, 2002.

John H. Dunnigan,

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

[FR Doc. 02–31252 Filed 12–6–02; 4:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 239

Thursday, December 12, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. FAA–2002–13971; Airspace Docket No. 02–AAL–8]

Proposed Establishment of Class E Airspace; Marshall, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Marshall, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Marshall Airport. In addition, a new departure procedure has been developed. There is no existing Class E airspace at Marshall. Class E airspace sufficient to contain aircraft executing the new and revised instrument procedures needs to be established. Adoption of this proposal would result in the addition of 700 ft. Class E airspace at Marshall, AK.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13971/ Airspace Docket No. 02–AAL–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2202–13971/Airspace Docket No. 02–AAL–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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

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

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Marshall, AK. The intended effect of this proposal is to establish new Class E controlled airspace upward from 700 feet above the surface to enable IFR operations at Marshall, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Marshall Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS)–A, original; and (2) RNAV (GPS) Runway 7, original. Coincident with the new SIAPs, a departure procedure is being established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Marshall Airport would be created by this action. This airspace is sufficient to contain aircraft executing the new instrument procedures for the Marshall Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document

would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Marshall, AK [New]

Marshall Airport, AK
(Lat. 61°51′53″ N., long. 162°01′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Marshall Airport.

* * * * *

Issued in Anchorage, AK, on November 29, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–31347 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

December 4, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference agenda.

SUMMARY: Commission staff convened a technical conference on December 6, 2002, to discuss the cyber-security provisions described in section M and Appendix G of the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. *See* 67 FR 55452 (August 29, 2002). This notice provides further organizational details and the conference agenda.

DATES: The conference took place on December 6, 2002.

ADDRESSES: The conference took place at: Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference Agenda

1. As announced in the Notice of Technical Conference issued on November 20, 2002, Commission staff will convene a technical conference on December 6, 2002 to discuss and analyze proposed rules for cyber-security. This notice provides further organizational details and the conference agenda.

2. The conference will begin at 9:30 a.m. and will adjourn at about 3 p.m. It is scheduled to take place the Commission's offices, 888 First Street, NE., Washington, DC, in the Commission Meeting Room on the second floor. The agenda is appended to this notice as Attachment A.

3. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an 3-mail message to *conference@ferc.gov*.

4. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reninger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

5. Questions about the conference program should be directed to: Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

Appendix A

Schedule

9:30 a.m.
Introduction.
Review of FERC's SMD Cyber-Security Proposed Standard, Alison Silverstein.

10 a.m.
Presentation of the North American Electric Reliability Council's (NERC's) Recommended Cyber-Security Standard, Chuck Noble, ISO New England, NERC Critical Infrastructure Protection Advisory Group.

10:30 a.m.
Comments from Public and Panel Discussion.

- Scope of Proposal
- Specific Measures
- Compliance and Timing
- Other

Federal Cyber-Security Panel:
Tom Cable, Critical Infrastructure Protection Board.
Lawrence C. Hale, Office of Information Assurance and Critical Infrastructure Protection, Federal Technology Service, General Services Administration.
Tom Harper, Office of Counter Intelligence, Department of Energy.
Landis D. Kannberg, Pacific Northwest National Laboratory, Department of Energy.

Marianne Swanson, Computer Security Division, National Institute of Standards and Technology.

12 p.m.

Lunch.

1 p.m.

Continuing Discussion and Review of NERC's Recommended Standard.

3 p.m.

Adjourn.

[FR Doc. 02–31144 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK77

Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, Training and Rehabilitation Services, or Compensated Work Therapy Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program.

The proposed amendment provides that benefits will be payable for additional disability or death caused by VA hospital care, medical or surgical treatment, or examination only if VA fault or ''an event not reasonably foreseeable'' proximately caused the disability or death. It further provides that benefits will be payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services or CWT program. This amendment reflects amendments to 38 U.S.C. 1151, the statutory authority for such benefits.

DATES: Comments must be received on or before February 10, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK77.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron St., Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: Section 1151 of 38 U.S.C. previously authorized the award of compensation or dependency and indemnity compensation for any additional disability or death of a veteran which did not result from the veteran's own willful misconduct but which did result from an injury or aggravation of an injury suffered as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation awarded under any of the laws administered by VA or as a result of having submitted to an examination under any such law. 38 CFR 3.358 and 3.800 contain the regulatory provisions implementing those statutory provisions.

Effective for claims filed on or after October 1, 1997, section 422(a) of Public Law 104–204, 110 Stat. 2874, 2926 (1996), amended 38 U.S.C. 1151 to authorize an award of compensation or dependency and indemnity compensation for a veteran's ''qualifying additional disability'' or ''qualifying death.'' Under 38 U.S.C. 1151, as amended, an additional disability or death qualifies for compensation or dependency and indemnity compensation if it (1) was not the result of the veteran's willful misconduct; (2) was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by VA, either by a VA employee or in a VA facility; and (3) was proximately caused by carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing the care, treatment, or examination, or by an event not reasonably foreseeable. An additional disability or death also qualifies for benefits if it was not the result of the veteran's willful misconduct and was proximately caused by VA's provision of training and rehabilitation services as part of an approved rehabilitation program under 38 U.S.C. chapter 31.

Section 303 of Public Law 106–419, 114 Stat. 1853, effective November 1, 2000, amended 38 U.S.C. 1151(a)(2) to further expand the circumstances under which benefits are payable. For claims received on or after November 1, 2000, additional disability or death qualifies for entitlement to compensation and DIC if it was not the result of the veteran's willful misconduct and was proximately caused by participation in a compensated work therapy (CWT) program under 38 U.S.C. 1718.

We propose to revise § 3.358(b)(2) to provide that compensation may be paid under § 3.358 for the continuance or natural progress of a preexisting disease or injury if VA failed to exercise reasonable skill and care in the diagnosis or treatment of the condition and VA's failure to do so resulted in additional disability or death that probably would have been prevented by proper diagnosis and treatment. This provision would apply only where VA renders medical services, such as hospitalization, examination, or medical and surgical treatment. It would not apply in the context of vocational rehabilitation training, which does not involve medical services provided by VA. Currently, § 3.358(b)(2) prohibits compensation for the continuance or natural progress of a preexisting disease or injury under all circumstances. This change implements the conclusion of the VA General Counsel in VAOPGCPREC 5–2001. In that opinion, the General Counsel noted that a showing of VA fault or failure to exercise reasonable skill and care is ordinarily not an element of entitlement to benefits under § 3.358. However, the General Counsel further noted that the continuance or natural progress of a preexisting disease or injury could not have been caused by VA hospitalization, treatment, or examination, unless it is shown that the continuance or natural progress probably would have been prevented by proper diagnosis and treatment.

We propose new 38 CFR 3.361 to implement 38 U.S.C. 1151 as amended, new 38 CFR 3.362 to codify rules concerning the offset of benefits awarded under 38 U.S.C. 1151 if the beneficiary has also recovered damages under the Federal Tort Claims Act, and new 38 CFR 3.363 to consolidate regulatory provisions now contained in §§ 3.358 and 3.800.

In accordance with section 422(b)(2) of Public Law 104–204, 110 Stat. 2874, 2927, we propose to apply new §§ 3.361 through 3.363 only to claims received by VA on or after October 1, 1997, and to continue to apply §§ 3.358 and 3.800 to claims received by VA before October 1, 1997. These applicability rules are reflected in proposed §§ 3.358(a), 3.361(a), 3.362(a), 3.363(a), and 3.800(a). The controlling factor is the date VA receives the claim. If a decision pursuant to §§ 3.358 and 3.800 becomes final on a claim received before October

1, 1997, and the claimant later reopens the claim on or after October 1, 1997, then the stricter standards of §§ 3.361 through 3.363 will apply to the reopened claim.

Proposed § 3.361(b), concerning additional disability, is derived from current § 3.358(b)(1) with appropriate changes made to reflect the amendments made by section 422 of Public Law 104–204, section 303 of Public Law 106–419, and editorial changes made to improve clarity. Similarly, proposed § 3.361(c), concerning cause, is derived from current § 3.358(b)(2) and (c)(1).

As amended by section 422 of Public Law 104–204, 38 U.S.C. 1151(a)(1) requires for entitlement that a veteran's additional disability or death be proximately caused either by ''an event not reasonably foreseeable'' or by ''carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault'' on VA's part in furnishing the hospital care, medical or surgical treatment, or examination that caused the additional disability or death. We believe that Congress, by listing several synonymous terms relating to negligence, intended not to provide alternative standards of liability, but rather to establish a single standard which would trigger entitlement to 38 U.S.C. 1151 benefits if not met in VA's furnishing of hospital care, medical or surgical treatment, or examination. We further believe that the single standard Congress intended to establish is tort-variety negligence. We recognize that there is not a single standard of liability governing tort claims under the Federal Tort Claims Act, but rather that the standard applied may vary from state to state. However, we also believe that Congress did not intend entitlement to a veterans' benefit to depend on a claimant's state of residence. Accordingly, we intend to apply a uniform standard in the adjudication of claims under 38 U.S.C. 1151.

In tort cases, the phrase ''error in judgment'' is sometimes used to refer to non-negligent mistakes, such as a diagnosis which was reasonable and was based on the exercise of due skill and care, but which later proves to be incorrect. At other times, however, the phrase ''error in judgment'' is used to refer to negligent mistakes involving the failure to use due skill and care in making decisions regarding diagnosis and treatment. Because the legislative history of Public Law 104–204 reflects that Congress intended to authorize benefits only where disability or death is due to VA negligence, we conclude that the phrase ''error in judgment'', as used in 38 U.S.C. 1151, refers to errors involving negligence and does not encompass reasonable decisions regarding diagnosis and treatment merely because they later prove to have been incorrect. The remaining terms in 38 U.S.C. 1151, *i.e.*, ''carelessness'', ''negligence'', ''lack of proper skill'', and ''similar instances of fault'', all unambiguously refer to circumstances where VA medical providers have failed to exercise due care in providing medical services. Therefore, in proposed § 3.361(d)(1)(i), we interpret 38 U.S.C. 1151 as providing entitlement to benefits if VA, in furnishing hospital care, medical or surgical treatment, or examination, fails to exercise the degree of care that would be expected of a reasonable health care provider in furnishing hospital care, medical or surgical treatment, or examination.

Proposed § 3.361(d)(1)(ii), concerning consent to care, treatment, or examination, is derived from current § 3.358(c)(3). However, we propose to include a requirement that consent be informed, in accordance with 38 CFR 17.32. As reflected in proposed § 3.361(d)(2), we propose to leave to the factfinder in each claim the determination as to whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable, and for the factfinder, in making that determination, to apply the standard of what a reasonable health care provider would have foreseen. Proposed § 3.361(d)(3), concerning proximate cause by the provision of rehabilitation and training services and, for claims received on or after November 1, 2000, by participation in a CWT program, is derived from current § 3.358(c)(5) with appropriate changes made to reflect the amendments made by section 422 of Public Law 104–204, section 303 of Public Law 106–419, and editorial changes made to improve clarity.

The definition of ''Department employee'' in proposed § 3.361(e)(1) is derived from 5 U.S.C. 2105(a), which defines ''employee'' for title 5 (Government Organization and Employees) purposes, modified to refer only to VA employees who are engaged in the furnishing of health care services. The definition of ''Department facility'' in proposed § 3.361(e)(2) reflects a provision of 38 U.S.C. 1151(a) as amended by section 422 of Public Law 104–204. 38 U.S.C. 1151(a)(1) refers to ''a Department facility as defined in section 1701(3)(A)'' of title 38, United States Code. Section 1701(3)(A) defines ''facilities of the Department'' as facilities over which the Secretary has direct jurisdiction. We therefore propose to define ''Department facility'' in the same way.

Proposed § 3.361(f)(1) excludes hospital care or medical services furnished pursuant to a contract made under 38 U.S.C. 1703 because, under section 1703's terms, such care or services are furnished in a non-Department facility, and the day-to-day operations of such a facility's employees are not subject to the Secretary's supervision. The exclusion in proposed § 3.361(f)(2) of nursing home care furnished under 38 U.S.C. 1720 is derived from current § 3.358(c)(6). Proposed § 3.361(f)(3) excludes hospital care or medical services provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction because care or services under section 8153 are not provided by VA employees but may or may not be furnished in a VA facility. Proposed § 3.361(f)(3) would exclude only such care and services in fact not provided in a VA facility. Proposed § 3.361(g) is derived from current § 3.800(b).

Proposed § 3.362(b), concerning the amount of a tort recovery to be offset from a veteran's compensation awarded under 38 U.S.C. 1151(a), is derived from current § 3.800(a)(2). Proposed § 3.362(c), concerning the amount of a tort recovery to be offset from a survivor's dependency and indemnity compensation (DIC) awarded under 38 U.S.C. 1151(a), is derived from § 3.800(a)(2) and the Office of the General Counsel precedent opinion (VAOPGCPREC) 79–90. That opinion held that the amount to be offset from a DIC award under 38 U.S.C. 1151 depends on the nature of the damages recovered by the claimant under the Federal Tort Claims Act. Amounts recovered by a claimant as damages under a typical ''wrongful-death statute'' may be offset from a DIC award under 38 U.S.C. 1151, even if the damages are paid to a nominal party as trustee for the veteran's survivors. Each survivor receiving such damages is subject to offset of DIC under 38 U.S.C. 1151 to the extent of sums included in the tort claim's judgment, settlement, or compromise to compensate for harm suffered by that survivor. On the other hand, amounts recovered by a claimant, acting as personal representative of a decedent veteran's estate, as damages under a ''survival statute'' may not be offset from a DIC award under 38 U.S.C. 1151.

Proposed § 3.362(d), concerning offset of structured settlements, is derived from the principles espoused in VAOPGCPREC 79–90. Structured settlements are settlements or compromises in which the Government,

rather than simply paying to a plaintiff a sum, in settlement or compromise of a claim under the Federal Tort Claims Act, buys an annuity or otherwise funds payments, which may differ in total amount from the amount expended by the Government, to be made to the plaintiff at some future time. We propose to offset from a DIC award only the veteran's or survivor's proportional share of the Government's cost of such a settlement, including the veteran's or survivor's proportional share of attorney fees. Furthermore, the offset is to begin as soon as compensation or DIC payments would be made after the settlement becomes final, not when the settlement payments are actually made to the beneficiary.

The requirement in paragraphs (b), (c), and (d)(1) of proposed § 3.362 that offset of benefits under section 1151 include the claimant's proportional share of attorney fees is derived from the Office of General Counsel precedent opinion 7–94. That opinion held that, when an individual is awarded a judgment or enters into a compromise of a tort claim for a disability or death covered by section 1151, future benefits under section 1151 must be offset by the entire amount of the judgment or settlement proceeds, including the amount of attorney fees paid out of such proceeds.

Proposed § 3.363, concerning a bar to benefits due to alternative recoveries before December 1, 1962, is derived from current § 3.800(a)(3).

We propose to revise 38 CFR 3.154, which identifies the types of communications that may be accepted as a claim for benefits under 38 U.S.C. 1151. The revised § 3.154 would clarify that the requirements of that rule apply to claims under either 38 CFR 3.358 or proposed 38 CFR 3.361. The revised § 3.154 would also more clearly state the requirements under current § 3.154 and 38 CFR 3.1(p) that a communication must be in writing and must indicate an intent to claim benefits under 38 U.S.C. 1151 in order to be accepted as a claim for such benefits. Additionally in § 3.154, we propose to clarify that the format or the way in which a claimant files for benefits under §§ 3.358 or 3.361 is not critical; rather, the controlling factor is some showing that the claimant is seeking disability or death benefits from the Veterans Benefits Administration.

We are also proposing to revise several cross references to 38 U.S.C. 1151, § 3.358 and/or § 3.800 to be consistent with the proposed changes. These cross references are paragraph (i) of § 3.400, paragraph (a)(4) of § 3.708, and paragraph (c) of § 3.807.

Executive Order 12866

This proposed regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 7, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A–Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.154 and the Cross References at the end of the section are revised to read as follows:

§ 3.154 Injury due to hospital treatment, etc.

VA may accept as a claim any communication in writing indicating an intent to file a claim with the Veterans Benefits Administration for disability or for death benefits under § 3.358 (due to hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training) or under § 3.361 (due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program) whether such communication is contained in a formal claim for pension, compensation, dependency and indemnity compensation or in any other document.

(Authority: 38 U.S.C. 1151)

Cross References: Effective dates. See § 3.400(i). Disability or death due to hospitalization *etc.* See §§ 3.358, 3.361 and 3.800.

3. In § 3.358, the authority citation at the end of the paragraph (a) is removed and paragraphs (a) and (b)(2) are revised to read as follows:

§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training (§ 3.800).

(a) *General.* This section applies to claims received by VA before October 1, 1997. If it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training, compensation will be payable for such additional disability. For claims received by VA on or after October 1, 1997, see § 3.361.

(b) * * *

(2) Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which the hospitalization, medical or surgical treatment or examination was furnished, unless VA's failure to exercise reasonable skill and care in the diagnosis or treatment of the disease or injury caused additional disability or death that probably would have been prevented by proper diagnosis or treatment. Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which vocational rehabilitation training was provided.

* * * * *

4. Section 3.361 is added to read as follows:

§ 3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors. The effective date of benefits is subject to the provisions of § 3.400(i). For claims received by VA before October 1, 1997, see § 3.358.

(b) *Determining whether a veteran has an additional disability.* To determine whether a veteran has an additional disability, VA compares the veteran's condition immediately before the beginning of the hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program upon which the claim is based to the veteran's condition after such care, treatment, examination, services, or program has stopped. VA considers each involved body part or system separately.

(c) *Establishing the cause of additional disability or death.* Claims based on additional disability or death due to hospital care, medical or surgical treatment, or examination must meet the causation requirements of this paragraph and paragraph (d)(1) or (d)(2) of this section. Claims based on additional disability or death due to training and rehabilitation services or compensated work therapy program must meet the causation requirements of paragraph (d)(3) of this section.

(1) *Actual causation required.* To establish causation, the evidence must show that the hospital care, medical or surgical treatment, or examination resulted in the veteran's additional disability or death. Merely showing that a veteran received care, treatment, or examination and that the veteran has an additional disability or died does not establish cause.

(2) *Continuance or natural progress of a disease or injury.* Hospital care, medical or surgical treatment, or examination cannot cause the continuance or natural progress of a disease or injury for which the care, treatment, or examination was furnished unless VA's failure to timely diagnose and properly treat the disease or injury proximately caused the continuance or natural progress. The provision of training and rehabilitation services or CWT program cannot cause the continuance or natural progress of a disease or injury for which the services were provided.

(3) *Veteran's failure to follow medical instructions.* Additional disability or death caused by a veteran's failure to follow properly given medical instructions is not caused by hospital care, medical or surgical treatment, or examination.

(d) *Establishing the proximate cause of additional disability or death.* The proximate cause of disability or death is the action or event that directly caused the disability or death, as distinguished from a remote contributing cause.

(1) *Care, treatment, or examination.* To establish that carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing hospital care, medical or surgical treatment, or examination proximately caused a veteran's additional disability or death, it must be shown that the hospital care, medical or surgical treatment, or examination caused the veteran's additional disability or death (as explained in paragraph (c) of this section); and

(i) VA failed to exercise the degree of care that would be expected of a reasonable health care provider; or

(ii) VA furnished the hospital care, medical or surgical treatment, or examination without the veteran's or, in appropriate cases, the veteran's representative's informed consent. To determine whether there was informed consent, VA will consider whether the health care providers substantially complied with the requirements of § 17.32 of this chapter. Minor deviations from the requirements of § 17.32 of this chapter that are immaterial under the circumstances of a case will not defeat a finding of informed consent. Consent may be expressed (*i.e.*, given orally or in writing) or implied under the circumstances specified in § 17.32(b), as in emergency situations.

(2) *Events not reasonably foreseeable.* Whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable is in each claim to be determined based on what a reasonable health care provider would have foreseen.

(3) *Training and rehabilitation services or compensated work therapy program.* To establish that the provision of training and rehabilitation services or a CWT program proximately caused a veteran's additional disability or death, it must be shown that the veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the disability or death. The veteran must have been participating in such training, services, or CWT program provided or authorized by VA as part of an approved rehabilitation program under 38 U.S.C. chapter 31 or, for claims received on or after November 1, 2000, as part of a CWT program under 38 U.S.C. 1718. It need not be shown that VA approved that specific activity or function, as long as the activity or function is generally accepted as being a necessary component of the training, services, or CWT program that VA provided or authorized.

(e) *Department employees and facilities.* (1) A *Department employee* is an individual—

(i) Who is appointed by the Department in the civil service under title 38, United States Code, or title 5, United States Code, as an employee as defined in 5 U.S.C. 2105;

(ii) Who is engaged in furnishing hospital care, medical or surgical treatment, or examinations under authority of law; and

(iii) Whose day-to-day activities are subject to supervision by the Secretary of Veterans Affairs.

(2) A *Department facility* is a facility over which the Secretary of Veterans Affairs has direct jurisdiction.

(f) *Activities that are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility.* The following are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility within the meaning of 38 U.S.C. 1151(a):

(1) Hospital care or medical services furnished under a contract made under 38 U.S.C. 1703.

(2) Nursing home care furnished under 38 U.S.C. 1720.

(3) Hospital care or medical services, including examination, provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction.

(g) *Benefits payable under 38 U.S.C. 1151 for a veteran's death*—(1) *Death before January 1, 1957.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring before January 1, 1957, is death compensation. See §§ 3.5(b)(2) and 3.702 for the right to elect dependency and indemnity compensation.

(2) *Death after December 31, 1956.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring after December 31, 1956, is dependency and indemnity compensation.

(Authority: 38 U.S.C. 1151)

5. Section 3.362 is added to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Offset of veterans' awards of compensation.* If a veteran's disability is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any compensation awarded under 38 U.S.C. 1151(a) is the entire amount of the veteran's share of the judgment, settlement, or compromise, including the veteran's proportional share of attorney fees.

(c) *Offset of survivors' awards of dependency and indemnity compensation.* If a veteran's death is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any dependency and indemnity compensation awarded under 38 U.S.C. 1151(a) to a survivor is only the amount of the judgment, settlement, or compromise representing damages for the veteran's death the survivor receives in an individual capacity or as distribution from the decedent veteran's estate of sums included in the judgment, settlement, or compromise to compensate for harm suffered by the survivor, plus the survivor's proportional share of attorney fees.

(d) *Offset of structured settlements.* This paragraph applies if a veteran's disability or death is the basis of a structured settlement or structured compromise under 28 U.S.C. 2672 or 2677 entered on or after December 1, 1962.

(1) *The amount to be offset.* The amount to be offset under 38 U.S.C. 1151(b) from benefits awarded under 38 U.S.C. 1151(a) is the veteran's or survivor's proportional share of the cost to the United States of the settlement or compromise, including the veteran's or survivor's proportional share of attorney fees.

(2) *When the offset begins.* The offset of benefits awarded under 38 U.S.C. 1151(a) begins the first month after the structured settlement or structured compromise has become final that such benefits would otherwise be paid.

(Authority: 38 U.S.C. 1151)

6. Section 3.363 is added to read as follows:

§ 3.363 Bar to benefits under 38 U.S.C. 1151.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Administrative award, compromises, or settlements, or judgments that bar benefits under 38 U.S.C. 1151.* If a veteran's disability or death was the basis of an administrative award under 28 U.S.C. 1346(b) made, or a settlement or compromise under 28 U.S.C. 2672 or 2677 finalized, before December 1, 1962, VA may not award benefits under 38 U.S.C. 1151 for any period after such award, settlement, or compromise was made or became final. If a veteran's disability or death was the basis of a judgment that became final before December 1, 1962, VA may award benefits under 38 U.S.C. 1151 for the disability or death unless the terms of the judgment provide otherwise.

(Authority: 38 U.S.C. 1151)

7. In § 3.400, the section heading of paragraph (i) is revised to read as follows:

§ 3.400 General.

* * * * *

(i) *Disability or death due to hospitalization, etc.* (38 U.S.C. 5110(c), (d); Public Law 87–825; §§ 3.358, 3.361, and 3.800).* * *

§ 3.708 [Amended]

8. Section 3.708, paragraph (a)(4) is amended by removing ''or training.'' and adding, in its place, ''or hospital care, training, or compensated work therapy program. See §§ 3.358 and 3.361.''

9. Section 3.800 is amended by adding introductory text to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

* * * * *

10. In § 3.807, the last sentence of paragraph (c) is amended by removing ''§ 3.800'' and adding, in its place, ''§§ 3.358, 3.361''.

* * * * *

[FR Doc. 02–31250 Filed 12–11–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–059–200206(b); FRL–7420–1]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve revisions to the Alabama Department of Environmental Management's nitrogen oxides budget and allowance trading program submitted on September 13, 2002, by the State of Alabama. These revisions are designed to provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline by allowing sources to request credit for early reductions obtained during the 2001 control period.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 13, 2003.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development

Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: November 26, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–31236 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–2002–13977; Notice No. 1]

RIN 2105–AD21

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Currently, the size standard for most types of businesses seeking to participate as disadvantaged business enterprises (DBEs) in airport concessions is $30 million in annual gross receipts. This NPRM seeks comment on a suggestion that the Department has received to adjust this size standard to take into account the varying amounts of concession fees that different types of businesses typically pay to airports.

DATES: Comments should be received by January 27, 2003. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–2002–13977, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/.* The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/.*

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), *bob.ashby@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The small business size standard for businesses seeking to participate as DBE airport concessionaires is generally $30 million in annual gross receipts, averaged over three years ($40 million for car rental companies).[1] The Department has received correspondence from an airport advertising firm and its legal representative requesting a change in this size standard. The Department is treating this correspondence as a petition for rulemaking under 49 CFR § 5.11. We are granting the petition by presenting for public comment a proposal based on the petitioners' submissions.

The case petitioners make for adjusting the size standard is essentially that different types of concession businesses typically pay widely different concession fees to airports. For example, according to data selected from a 2000–2001 survey by the American Association of Airport Executives (AAAE) of charges made by large U.S. airports, food and beverage concessionaires paid an average of 15.2 percent of their gross revenues in fees, compared to 20.4 percent for retail stores, 10 percent for on-airport car rental companies, 7.6 percent for off-airport car rental companies, and 56.3 percent for airport advertising companies.

As a result, the submission suggests, airport advertisers are hampered in their ability to grow, or to retain DBE status, compared to other types of businesses. That is, applying the $30 million size standard across the board results in an airport advertiser that wants to retain DBE status being confined to considerably lower revenues, net of airport concession fees, than a restaurant or retail store. This disparity raises some concerns about the equity of an across-the-board gross receipts-based standard.

Another way of stating the issue is that the submission from the advertising firm and its legal representative raises the question about whether a gross receipts-based size standard is a fair approach to determining a size standard for concessionaires at all. Arguably, it might be fairer to base all size standards in the concessions area on receipts net of airport concession fees paid to airports.

The Department has authority to set its own DBE size standards in the airport concessions area. In this respect, the concessions DBE program differs from the DBE program for Federally-assisted contracting, which by statute is tied to the Small Business Administration's gross receipts-based standards. All airport concessionaires pay some variety of lease or concession fee to airports, which suggests that it could be reasonable to establish a size standard that takes the variation in these fees into account.

Consequently, the Department is seeking comment on a proposal to change the basis for its concessionaire size standards. Under this proposal, the Department would establish a baseline that would be the same for all types of concession businesses. The size standard would then be set at a level of gross receipts that would permit each type of concession to retain that baseline amount, after lease or concession fees typical for its type of business had been deducted.

For example, suppose the baseline amount were $30 million ($40 million in the case of car rental companies), paralleling the current gross receipts size standards. To retain $30 million or $40 million, as applicable, after deducting average concession fees, certain types of concession businesses would have to have the following gross receipt size standards:

[1] There are also two size standards that are not based on gross receipts at all: banks ($100 million in total assets), and pay telephone providers (1500 employees). This NPRM does not propose or seek comments on these two size standards.

Option 1	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	$35,377,358
Retail Stores	20.4	37,688,442
Car Rental (on-airport)	10	44,444,444
Car rental (off-airport)	7.6	43,290,043
Advertising	56.3	68,649,885

Using $30 or $40 million as the baseline amount has the effect of increasing the size standards in all categories. The Department seeks comment on whether doing so is advisable.

A second way of establishing the baseline, based in part on ideas in the petitioners' submissions, would use the average percentage of receipts paid by all categories of concessions to reduce the baseline amount. The average percentage of gross receipts paid to airports as concession fees across the five business categories fees is 21.9 percent. If we reduced the existing baselines by 21.9 percent, the baseline figure would be $232.43 million for most concessions and $31.24 million for car rental companies. An average type of concession business with gross receipts of $30 million or $40 million, respectively, would retain this amount after concession fees were deducted.

We would then calculate the amount of gross receipts each type of business would need in order to retain $23.43 million or $31.24 million after paying the concession fees typical for its category. The following table displays the adjusted size standards that result from this calculation:

Option 2	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	$27,629,716
Retail Stores	20.4	29,434,673
Car Rental (on-airport)	10	34,911,111
Car rental (off-airport)	7.6	41,105,263
Advertising	56.3	53,615,560

This approach, while equalizing the position of the five categories of businesses with respect to receipts net of concession fees, reduces the size standards in three of the five categories. The Department seeks comment on whether, if this approach is taken, there should be a ''grandfather'' provision that would result in no reduction in the actual size standard for any business category (*e.g.,* the standard for food and beverage and retail concessions would remain at $30 million).

Of the types of concessions currently listed in Appendix A to Part 23, four appear to fit in the food and beverage category and nine in the retail store category. Advertising and car rental companies each have their own category. Thirteen appear to fit into a category that might be called ''services'' (*e.g.*, insurance, shoe shine and barber/beauty shops, parking, hotels, vending machines). The data from the AAAE survey provided by the petitioner do not appear to include data on businesses of this type, and the Department seeks information, from AAAE or other sources, about the concession fees that these types of concessions typically pay. The Department also seeks information on the number of airports that have advertising concessions and the relative sizes of these concessionaires.

While the Department is willing to consider changing its DBE concession size standards, the Department has not yet decided whether to proceed with a final rule along these lines. The Department seeks comment on whether we should alter the size standards and, if so, whether the data and reasoning underlying the proposal are sound. The Department also seeks comments suggesting other alternatives.

We would also point out that the Department is working to finalize a pending Supplemental Notice of Proposed Rulemaking (SNPRM) to revise the entire DOT regulation (49 CFR part 23) concerning the airport concessions DBE program (65 FR 54454, September 8, 2000). In the context of considering this SNPRM and comments to it, the Department is reviewing the issue of whether a company in the business of placing advertising in an airport terminal on behalf of others, without offices on the airport, should be considered a concession for purposes of the DBE program. The decision on this issue will be made as part of the final rule resulting from the SNPRM. In seeking comments on the size standards issue in today's notice, the Department is not presupposing an answer to the question of whether advertising businesses of this kind ultimately will be included in the DBE concessions program. The Department anticipates responding to comments on today's NPRM in the final rule document for overall revision to part 23.

Regulatory Analyses and Notices

Executive Order 12866

This rule is not a significant rule under Executive Order 12866. Nor is it significant under the Department's Rulemaking Policies and Procedures, because it proposes relatively modest adjustments to the size standards for firms participating in an existing program.

Regulatory Flexibility Act

The DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in airport concessions. Virtually all the businesses it affects are small entities. There is no doubt that a DBE rule always affects a substantial number of small entities.

Nevertheless, the Department certifies that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of these entities. By making the size standards for concessionaires more equitable, from the perspective of receipts net of

concession fees, it is intended to make eligibility standards fairer. To the extent that it increases or decreases size standards for certain firms, it may affect the potential eligibility of certain individual firms. However, we do not believe that these changes will affect a large number of firms or overall DBE participation in airport concessions.

Paperwork Reduction Act

This NPRM does not contain information collection requirements subject to the Paperwork Reduction Act.

Federalism

The rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT financial assistance programs, the rule does not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights, Concessions, Government Contracts, Grant programs—transportation, Minority business, Reporting and recordkeeping requirements.

Issued this 26th day of November 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–31338 Filed 12–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01, I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes regulations for a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan. This proposed rule would establish a program to reduce excess capacity and promote economic efficiency in the crab fishery. It is put forth under both special legislation and existing NMFS regulations governing fishing capacity reduction programs. The program's objectives include: increasing harvesting productivity for post-reduction fishermen (i.e., those harvesters remaining in the fishery after capacity is reduced), helping conserve and manage fishery resources, and encouraging rationalization of harvesting effort. Participation in the program would be voluntary; and payments would be made for withdrawing vessels from fishing, revoking fishing licenses, and surrendering fishing histories. NMFS would finance the program's $100 million cost with a 30–year loan to be repaid by post-reduction fishermen.

DATES: NMFS must receive comments by January 27, 2003.

ADDRESSES: Mail or fax written comments about this proposed rule to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the proposed rule's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone may obtain, from Michael L. Grable, the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule.

Anyone wishing to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau Alaska 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable,(301)713–2390.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Consolidated Appropriations Act 2001 (Pub. L. 106–554, section 144) directed the Secretary of Commerce to establish a $100 million fishing capacity reduction program (crab program) in the Bering Sea/Aleutian Islands king and Tanner crab fishery. Subsequently, that law was amended twice (Pub. L. 107–20, section 2201; and Pub. L. 107–117, section 205) to further clarify the pool of vessels eligible to participate in the crab fishery, and change the crab program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan (reduction loan). NMFS authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(Title XI).

The Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP) was developed by the North Pacific Fishery Management Council and approved and implemented by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)(MSA). The Council also developed Amendment 10 to the crab FMP which further defined the eligibility criteria for crab license limitation program (LLP) licenses. Regulations implementing the crab FMP govern management of this fishery.

Fishing capacity reduction programs, generally, are governed by subpart L to 50 CFR part 600, a framework rule promulgated pursuant to section 312 of the MSA (16 U.S.C. 1861a(b)-(e)). NMFS proposes this rule as a new § 600.1018 appearing immediately after the framework rule's last existing section.

Primary Statutory Objective

Section 144 established the crab program's primary objective as reducing ''the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses . . . .''

Key Steps

The proposed crab program is complicated and the following listing of key steps is intended to facilitate understanding by the public. NMFS would:

(a) Propose the regulations;

(b) Publish final regulations;

(c) Invite crab program bids;

(d) Receive and tally the bids;

(e) Accept the bids;

(f) Conduct a referendum on the results of the bidding;

(g) Notify referendum voters and accepted bidders of the referendum results;

(h) Make reduction payments under reduction contracts; and

(i) Collect reduction loan repayment fees.

Note: Any time the word ''we'' is used in this document, it refers to NMFS.

I. Crab Program Overview

$100 million would be available to pay crab license holders to relinquish their crab fishing capacity. NMFS would issue an invitation to bid for reduction payments totaling up to $100 million. Qualifying crab license holders who wanted to relinquish their crab fishing capacity would choose the dollar amounts for which they were willing to do so. They would then bid in a reverse auction by offering to relinquish their crab fishing capacity in return for reduction payments equal to their bid amounts.

NMFS would express each bid amount as a percentage of the value of each bidder's crab harvests during a certain period. NMFS would use this percentage to determine which bids to accept. NMFS would first accept the bid with the lowest percentage, and then successively accept each bid with the next lowest percentage until the entire $100 million had been paid out or there were no further bids to accept. Bid acceptances would create irrevocable reduction contracts between the United States and the accepted bidders, subject only to a referendum approving a post-reduction crab landing fee for repaying the reduction loan.

After determining how much of the prospective reduction loan each of the crab area/species endorsement fisheries would have to repay, NMFS would hold a referendum in which qualifying crab license holders vote to approve or disapprove the landing fee. If at least two thirds of the votes cast were in favor of the fee, the referendum would be successful, and the fee would be approved.

After a successful referendum, NMFS would make the reduction payments to the accepted bidders and finalize the relinquishment of their crab fishing capacity. Post-reduction harvesters would pay a fee up to 5% of the value of their future crab landings. Persons who must, under the State of Alaska's reporting requirements, complete and file fish tickets for harvested crab would collect the fee and forward all fee revenue to NMFS. The fee revenue is applied to repaying the 30–year reduction loan.

The reduction loan's original principal amount would be the total of all reduction payments. The reduction loan's interest rate would be 2 percent higher than the rate at which NMFS would pay interest on the money it borrowed from the U.S. Treasury to make reduction payments. The reduction loan's interest rate would be fixed, and its term would be 30 years. There would be no prepayment penalty.

II. Program Specifics

A. Reduction Component Requirements

Each crab program bidder would offer to relinquish these reduction components:

1. A non-interim crab LLP license issued under 50 CFR 679.4(k)(5) (crab reduction permit);
2. The fishing history that gave rise to the crab license (crab reduction history);
3. Any non-crab fishing license or permit derived from the reduction vessel's fishing history (non-crab reduction permit);
4. The fishing history that gave rise to the non-crab reduction permit (non-crab reduction history);
5. Every other worldwide fishing privilege (reduction vessel privilege) of the crab fishing vessel whose fishing history gave rise to the crab reduction permit (reduction vessel); and
6. Every other claim associated with the reduction components that could qualify anyone for any present or future limited access system fishing license or permit in any U.S. fishery (reduction claim). The reduction claim would include any harvesting privilege or quota allocation under any present or future individual fishing quota system.

Crab Reduction Permit Requirements

The crab reduction permit that each bid offers would have to be a crab license that is non-interim at the time of bidding. The crab reduction permit would have to be endorsed for one or more of the six crab area/species endorsements other than the area/species endorsement for Norton Sound red king and blue king crab (Norton Sound fishery). A permit endorsement allows fishing for a specific species of king or Tanner crab in specific geographical areas in the crab fishery. Although the reduction permit may be endorsed for the Norton Sound fishery, reduction permits endorsed solely for the Norton Sound fishery may not be included in a bid because only the six reduction endorsement fisheries constitute the reduction fishery.

With two exceptions, the crab reduction permit must have been derived from the fishing history accrued on the reduction vessel during the general qualification period (GQP), endorsement qualification period (EQP), and recent participation period (RPP). The GQP, EQP, and RPP are the time periods used under the license limitation program to determine license eligibility on the basis of catch history. The existing NMFS regulations implementing Amendment 10 to the crab FMP require that the crab fishing history giving rise to a crab license be earned on a single crab fishing vessel.

The first exception provided in (50 CFR 679.4(k)(5)(iii)(B)(*3*)) applies to persons whose vessel was used to meet the GQP and EQP crab harvest requirement but could not be used to meet the RPP crab harvest requirement because the vessel had been lost or destroyed and was unavailable during the RPP. In this case, persons may meet the RPP requirement by making a documented harvest of crab at any time during the period after a vessel was lost or destroyed through January 1, 2000.

Anyone making such a documented crab harvest could have used either a vessel salvaged and returned to service after the RPP, or a different vessel. If the documented harvest was made from a salvaged vessel, (1) the salvaged vessel would be the reduction vessel and (2) the crab reduction history would be the salvaged vessel's documented harvest of crab. If made from a different vessel, however, (1) the reduction vessel would be the different vessel and (2) the crab reduction history would be the total of the lost or destroyed vessel's documented harvest of crab through the date of the vessel's loss or destruction plus the different vessel's documented harvest of crab after that date.

The second exception provided for in (50 CFR 679.4(k)(5)(iv)) applies to persons (1) whose vessel made a documented harvest of crab during the RPP period (January 1, 1996, through February 7, 1998), and (2) who obtained a different vessel's crab fishing history which met the GQP and EQP documented crab harvest requirements or—by 8:36 A.M., Pacific standard time, on October 10, 1998—entered into a contract to do so.

In this case, (1) the reduction vessel would be the vessel from which the documented crab harvest was made during the RPP and (2) the crab reduction history would be the total of that vessel's documented harvest of crab after December 31, 1994 (i.e., the date on which the EQP ended), plus the acquired documented harvest of crab through December 31, 1994.

Crab Reduction History Requirements

The crab reduction history would have to be the complete crab fishing history of the reduction vessel, including the crab fishing history during the GQP, EQP, and RPP that gave rise to the crab reduction permit.

Non-Crab Reduction Permit Requirements

The non-crab reduction permit offered would be any fishing license or permit for any species other than crab (1) that

was derived from the fishing history of the bidder's reduction vessel, and (2) held on the date that this rule is effective.

Non-crab Reduction History Requirements

The non-crab reduction history offered would be the complete fishing history of the reduction vessel that gave rise to any non-crab reduction permit.

Reduction Vessel Privilege Requirements

The reduction vessel privilege offered would have to include:

1. The reduction vessel's fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108);
2. The reduction vessel's qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country; and
3. Any other privilege to ever use the reduction vessel to fish anywhere in the world.

The reduction vessel in each bid would have to be in existence at the time of bidding.

B. Qualifying Bidders and Co-Bidders

The persons qualified to bid for reduction payments (qualifying bidders) would be the holders of record of the crab reduction permits.

NMFS regulations do not, however, require crab license holders either to own the crab fishing vessels used with their crab licenses or to retain the vessels' crab fishing histories. Theoretically the licenses, vessels, and histories can be conveyed independently of each other; and different persons may own, hold, or retain them. Consequently, it is possible that some bidders may not own the reduction vessels, hold the non-crab reduction permits, or retain either the crab or non-crab reduction histories that this proposed action would require bids to offer. By making provision for co-bidders who own or hold some of the required reduction components, this proposed rule would accommodate these circumstances.

If the qualifying bidder owned, held, or retained at the time of bidding each of the reduction components, the qualifying bidder would bid alone (i.e., there would be no co-bidder).

If, however, a person other than the qualifying bidder owned or held at the time of bidding either the required reduction vessel or the required non-crab reduction permit, that person could be a co-bidder. In this case, the qualifying bidder and the co-bidder would bid together.

The proposed rule would not, however, allow a co-bidder for the crab reduction permit or for the crab or non-crab reduction histories.

In summary:

1. A qualifying bidder bidding alone would have to own, hold, or retain all of the bid's reduction components;
2. A co-bidder bidding together with a qualifying bidder could own or hold only the bid's reduction vessel or non-crab reduction permit; and
3. A qualifying bidder bidding together with a co-bidder would still have to hold or retain the bid's crab reduction permit and the bid's crab and non-crab reduction histories.

C. Qualifying Referendum Voters

The persons qualified to vote in the crab program fee referendum (qualifying voters) would be the holders of record at the time of voting of either interim or non-interim crab licenses endorsed for one or more of the reduction endorsement fisheries. The crab licenses could also be endorsed for the Norton Sound fishery, but no person whose license was endorsed solely for the Norton Sound fishery could be a qualifying voter.

D. Summary of How Crab Licenses Qualify Bidders and Voters

Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries would be both a qualifying bidder and a qualifying voter. Each such person could bid and vote. For bidding purposes, however, the person's crab license would also have to meet the reduction crab permit requirements.

Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries would be a qualifying voter but not a qualifying bidder. Each such person could vote but not bid.

Each person who is the record holder of a crab license endorsed solely for the Norton Sound fishery would be neither a qualifying bidder nor a qualifying voter and could neither bid nor vote.

Qualifying bidders must be the record holder of their crab reduction permits at the time of bidding, and qualifying voters must be the record holders of their crab licenses at the time of voting.

III. Reduction Process Overview

If NMFS adopted this proposed rule, we would begin the reduction process by publishing a notification in the **Federal Register** listing the crab license holders who, on the notification's date, appear to be qualifying bidders, qualifying voters, or both.

By publishing in the **Federal Register** an invitation to bid and mailing the invitation to bid to each qualifying bidder, we would next invite the qualifying bidders to submit bids. Qualifying bidders could then bid by irrevocably offering to the United States their reduction components, in the manner that this proposed rule would require, in return for reduction payments from the United States in amounts that the bidders would have determined. We would score the bid offers, rank them in a reverse auction, and accept the bid offers with the lowest scores until either the maximum reduction cost ($100 million) were committed or there were no additional acceptable bids. Our acceptance of bid offers would create binding reduction contracts between the accepted bidders and the United States.

Bid acceptance would establish the amount of capacity that the accepted bids would reduce, the cost of reducing that capacity, and the reduction loan sub-amounts that each reduction endorsement fishery would have to repay. Based on these data, NMFS would next hold a referendum to determine whether qualifying voters would approve the post-reduction landing fee necessary to repay the reduction loan.

An unsuccessful referendum would excuse the performance of all reduction contracts, and the crab program would cease, unless NMFS decided to later issue another invitation to bid and hold another referendum. A successful referendum, however, would be followed by publishing a notification in the **Federal Register**, after which NMFS would tender reduction payments, effect relinquishment of the reduction components, and disburse the reduction payments. With the exception of post-reduction license holders subsequently repaying the reduction loan, reduction payment tender and disbursement would conclude the crab program.

Upon reduction payment tender, NMFS would permanently revoke the surrendered crab reduction permits and non-crab reduction permits. The Secretary of Transportation would permanently revoke the reduction vessels' fisheries endorsements and make the reduction vessels ineligible to transfer to foreign flags. The reduction vessels would be permanently ineligible to participate in any fishery worldwide, and the bidders would have contractually agreed to permanently operate the reduction vessels only under the U.S. flag. NMFS would ensure that the bidders and the reduction vessels

forever relinquish any claim based on the reduction components that might otherwise qualify any person or the reduction vessels for any future limited access system fishing permits in U.S. fisheries. This would include any fishing privilege or quota allocation under any present or future quota allocation system.

IV. Process Specifics

A. Notification to Crab License Holders

If any person held multiple crab licenses, we would list that person once for each crab license. NMFS would also list the name and business mailing address of record of each of these crab license holders. NMFS would not list persons who then held crab licenses that were endorsed solely for the Norton Sound fishery. We would use the crab license database of our Restricted Access Management (RAM) Program as the basis of these notification lists.

In addition to the **Federal Register** notification, NMFS would also mail the notification to each crab license holder of record at the holder's business mailing address of record, as well as post the notification at NMFS' headquarters and Alaska Region web sites.

The public would have 30 days to comment about any notification aspect, including: persons we listed, but should not have listed, as license holders (and vice-versa); licenses we listed as non-interim but should have listed as interim (and vice-versa); and incorrect license holder names and/or business mailing addresses.

Any person on this list who is not prospectively a qualifying bidder because the person's crab license is then interim may, nevertheless, subsequently become a prospectively qualifying bidder by changing the person's crab license status from interim to non-interim before submitting a bid. Although NMFS would appropriately update the qualifying bidder list, we would not republish the notification. NMFS would update the list of prospectively qualifying bidders immediately before mailing the invitation to bid and update the list of prospectively qualifying voters immediately before mailing the referendum ballots.

Inclusion on the notification list as a prospectively qualifying bidder would not mean that a bid from that bidder would be one that we could accept. NMFS could not at the time we publish the notification determine whether a later bid from a prospectively qualifying bidder would meet all the crab program's bidding requirements. NMFS could make this determination only after we receive and analyze bids.

B. Correcting the RAM Program's License Records

NMFS would use the RAM Program's license records for all notification and other crab program purposes, including business mailing addresses for all crab program communications. Accordingly, we recommend that any person needing to correct or update the RAM Program's license records consider doing so as soon as possible.

C. Invitation to Bid and Bids

The crab program invitation to bid would specify the exact contractual terms and conditions under which qualifying bidders may make, and NMFS may accept, bid offers. Each bid would have to specify the dollar amount of the reduction payment in return for which the bidder would offer the reduction components in the manner that this proposed rule would require and otherwise fully comply with all the crab program's bidding requirements.

NMFS would publish the bid invitation in the **Federal Register**. We would concurrently mail the bid invitation and a bidding package (including a bidding form) to the address of record of each person on the prospectively qualifying bidder list.

The bid invitation would, among other things, specify:

1. The first date on which bidders could submit bids;
2. The exact manner in which they would have to do so;
3. The last date by which NMFS would have to receive bids; and
4. The bid expiration date upon which each bid would automatically expire if NMFS had not accepted the bid before that date.

The bid invitation would contain the reduction contract's entire terms and conditions. Each qualifying bidder who responded by submitting a bid would make an irrevocable reduction offer under the bid invitation's terms and conditions. These terms and conditions would be neither negotiable nor subject to modification.

Although bidders could not revoke their bid offers, any bid offers that NMFS did not accept before the bid expiration date would automatically expire on that date.

All potential bidders should note that NMFS would, among other things, require each bid to include a copy of each reduction vessel's official document (which the National Vessel Documentation Center issues for Federally documented vessels) and a copy of each crab and non-crab reduction permit (which, with the exception of reduction permits issued for non-Alaskan fisheries, the RAM Program issues). NMFS recommends that all potential bidders arrange to have on hand, well before NMFS would issue the invitation to bid, an exact copy of these documents and otherwise be fully prepared to provide all other required bidding information.

Each bidder responding to the bid invitation would have to offer the reduction components in the manner that this proposed rule would require. This would include permanently:

1. Surrendering and revoking the crab reduction permit;
2. Relinquishing the crab reduction history;
3. Surrendering and revoking the non-crab reduction permit;
4. Relinquishing the non-crab reduction history;
5. Revoking the reduction vessel privilege;
6. Agreeing, in the reduction contract, that the owner of the reduction vessel would operate it under U.S. flag or else scrap it; and
7. Relinquishing the reduction claim.

This proposed rule would not require the surrender and revocation of any non-crab licenses or permits (or the fishing histories upon which they were based) that accepted bidders did not hold on the effective date of a final crab program rule. Similarly, accepted bidders would not have to surrender any licenses or permits they might hold that were based on the fishing histories of vessels other than the reduction vessels.

Regardless of its ownership, no reduction vessel could ever again fish for any species anywhere in the world under any conditions. As long as the owner of any Federally-documented reduction vessel abided by the crab program restrictions, NMFS would not require scrapping the reduction vessel. Each post-reduction vessel owner could continue using its reduction vessel for any legal purpose except fishing and could transfer the vessel, subject to all the crab program restrictions, to a new owner. These restrictions would run with the reduction vessel's title and apply to whomever might own the reduction vessel. Any reduction vessel that was not Federally documented would, however, have to be scrapped.

D. Non-crab Reduction Permits Limited

Section 144(d)(1)(B) is ambiguous about which non-crab licenses or permits the crab program must revoke. One interpretation is that the crab program must revoke each non-crab license or permit that may ever have

been issued based on a reduction vessel's fishing history even though a bidder may no longer hold the license or permit. An alternative interpretation is that the crab program need revoke only those non-crab licenses and permits that a bidder still holds at the time we implement the crab program.

This proposed rule adheres to the latter interpretation. Consequently, the reduction components would include only those non-crab reduction permits that were based on reduction vessels' fishing histories and which the bidders still held on the effective date that NMFS adopts a final rule implementing the crab program. This would be equally true for all non-crab reduction histories.

E. Reverse Auction

To obtain the maximum capacity reduction at the least cost, NMFS would use a reverse auction to determine which bid offers we would accept. NMFS would calculate a bid score for each bid and then accept the bid offer with the lowest bid score, followed by each successive bid offer with the next lowest bid score until either there were no more acceptable bids or acceptance of the bid with the next lowest bid score would cause the reduction cost to exceed $100 million.

F. Bid Scoring

NMFS would calculate each bid score by dividing the value of each reduction vessel's documented crab harvest for crab program purposes (bid crab) by each bid amount.

The bid amount for each bid would be the dollar amount for which each bidder offers the reduction components under the bid invitation's contractual terms and conditions.

The bid crab for each bid would be each reduction vessel's documented harvest of crab during the most recent 5 years of a 10–year period beginning on January 1, 1990, and ending on December 31, 1999, during which each of the reduction endorsement fisheries and the Norton Sound fishery were open, for any length of time, for directed crab fishing. If, for example, a reduction vessel did not fish for crab in one of the reduction endorsement fisheries during one of the most recent 5 years of this period in which that fishery was open for directed crab fishing, the reduction vessel's documented crab harvest value for that year in that reduction endorsement fishery would be zero.

NMFS would determine bid crab value by multiplying each pound of each reduction vessel's bid crab by the average annual price per pound for each crab species from each of the reduction endorsement fisheries and from the Norton Sound fishery during each year applicable to the reduction vessel's bid crab. We would use the fish ticket poundage data that the State of Alaska maintains and the average ex-vessel crab prices that the State of Alaska annually publishes.

NMFS would exclude several categories of crab from bid crab, for example:

1. Triangle tanner crab, grooved tanner crab, and other commercially insignificant crab species not named in the various crab license area/species endorsement categories;
2. Discarded crab;
3. Crab caught for personal use;
4. Unspecified crab; and
5. Any other crab to which, for whatever reason, NMFS could not assign a poundage or dollar value.

Here is a bid scoring example. If a bid amount were $0.75 million and the bid crab value were $4.5 million, the bid score would be 0.1667 (i.e., $0.75 million divided by $4.5 million). This means that the bid amount would be 16.67 percent of the reduction vessel's bid crab value.

NMFS would accept bid offers with bid scores lower than the 0.1667 in this example before we accepted a bid offer with the 0.1667 bid score. NMFS would accept bid offers with bid scores higher than the 0.1667 in this example after we accepted a bid offer with the 0.1667 bid score.

Bid crab value and bid amount are the only two variables in each bid score. If two or more bid amounts were identical, NMFS would accept the bid with the higher bid crab value because the bid amount would in that bid be a lower percentage of the bid crab value. Persons whose reduction vessels have lower bid crab values should recognize that a combination of higher bid amounts and lower bid crab values could make their bids noncompetitive.

For example, a reduction vessel with a $2.5 million bid crab value would require a bid amount no higher than $499,999.99 (i.e., a bid score of 0.19999) in order to have a better chance of bid acceptance than a reduction vessel with a $5 million bid crab value and a bid amount of $1 million (i.e., a bid score of 0.2).

If two or more bid scores were identical, NMFS would first accept the bid that we first received.

G. Confidentiality of Fish Ticket Data

The State of Alaska's fish ticket data are confidential. Our data-sharing agreement with Alaska requires NMFS to maintain Alaska's data confidentiality requirements. With certain exceptions, Alaska law allows divulging these data only to, or upon the authority of, the harvesting individuals who signed the fish tickets.

Those who sign fish tickets on behalf of the harvesters are sometimes neither crab license holders nor crab vessel owners. Consequently, NMFS could not divulge bid crab poundage to any bidders who did not sign the fish tickets on which those data were based. Instead, NMFS could only divulge the bid crab values and the bid scores. Potential bidders who wish to confirm their bid crab poundage during the bid scoring period would have to make their own arrangements with the State of Alaska (or with the persons who signed the fish tickets on behalf of the harvesting parties).

H. Bid Rejection

NMFS would reject any bid that:

1. Attempted to negotiate or modify any of the bid invitation's terms and conditions or otherwise did not conform to those conditions;
2. Included any crab or non-crab reduction permit holder or reduction vessel owner that was an entity legally different from the permit's holder of record or the vessel's owner of record at the time of bidding;
3. Included any crab or non-crab reduction history that NMFS would have reason to believe a person other than the bidder retained;
4. Included any reduction component that NMFS would have reason to believe was different from those that the crab program would require; or
5. Did not otherwise meet all of the crab program's bidding and other requirements.

NMFS would use the RAM Program's crab license records to determine crab license holders of record (except for permits or licenses that any of our other Regional Offices may have issued) and to determine whether crab licenses qualify as crab reduction permits. NMFS would use the records of the U.S. Coast Guard's National Vessel Documentation Center to determine reduction vessel owners of record. Anyone with a potential crab program interest who needs to correct any of these records in any of these respects should consider doing so as soon as possible.

NMFS would mail a bid rejection notification to each bidder whose bid we rejected but not to any bidder whose bid offer we neither rejected nor accepted. NMFS bid rejection determinations would constitute final agency action.

I. Bid Acceptance

NMFS bid acceptances would, like bid offers, be subject to the bid

invitation's exact contractual terms and conditions.

After accepting bid offers with the lowest bid scores, NMFS would mail acceptance notifications to the accepted bidders and conduct the post-bidding fee referendum.

NMFS bid acceptance determinations would constitute final agency action.

All bid offers that NMFS had neither accepted nor rejected would automatically expire on the bid expiration date.

The RAM Program would not process the transfer of any crab or non-crab reduction permits included in the bids that NMFS had accepted unless and until the Chief of our Financial Services Division advised the RAM Program that the resulting reduction contracts were no longer in effect because a referendum failed to approve the reduction loan repayment fee.

J. Reduction Contracts

NMFS acceptance of bid offers would create binding reduction contracts between the United States and the accepted bidders. Nevertheless, reduction contract performance would be conditioned on a post-bidding referendum approving the reduction loan repayment fee. Each reduction contract would, otherwise, be unconditional at the time NMFS accepted each bid offer.

A post-bidding referendum's approval or disapproval of the reduction loan repayment fee would be an event that neither the accepted bidders nor NMFS could control. A referendum's disapproval of the fee would fully excuse the United States and all accepted bidders from reduction contract performance and would fully discharge all reduction contract rights, privileges, duties, and obligations. This excuse from performance would not apply to any new reduction contracts that might subsequently result from issuing another invitation to bid and accepting other bids.

The period between inviting bids and conducting a referendum would be as short as possible. Accepted bidders could, however, continue fishing as they normally would have fished until NMFS tendered the reduction payments to the accepted bidders. All fishing would have to cease when NMFS tendered the reduction payments, except that accepted bidders could continue fishing in any crab area/species endorsement fishery that was open when NMFS tendered the reduction payments until that fishery first closed after NMFS tendered the reduction payments.

Money damages not being an adequate substitute for actual reduction contract performance, NMFS would pursue any remedy, including the specific performance of reduction contracts, available to us for any attempt to breach a reduction contract. If an accepted bidder breached or attempted to breach a reduction contract, NMFS would nevertheless abide by the reduction contract's terms by making reduction payment and permanently:

1. Revoking the crab and non-crab reduction permits;
2. Effecting relinquishment of the crab and non-crab reduction histories;
3. Revoking the reduction vessel's fisheries trade endorsement;
4. Making the reduction vessel ineligible for placement under foreign registry or operation under a foreign country's authority;
5. Otherwise restricting the reduction vessel in accordance with the crab program's requirements; and
6. Effecting relinquishment of the reduction claim.

NMFS might also seize the reduction vessel and scrap it at the accepted bidder's expense.

K. Referendum

Each referendum voter would have one vote for each qualifying crab license that the voter held. NMFS would mail a referendum ballot and full referendum instructions to each person on our prospectively qualifying voter list. Each voter would get a separate ballot in a separate mailing for each qualifying crab license the voter held. The referendum instructions would include, among other things, the required manner of voting and the last date by which NMFS must receive responsive ballots for them to qualify as referendum votes.

NMFS would also include with each referendum ballot:

1. The total gross revenue during the bid scoring period of the crab reduction permits and reduction vessels that the crab program would prospectively remove from each reduction endorsement fishery;
2. The reduction loan sub-amounts for each reduction endorsement fishery's prospective repayment; and
3. The number of the reduction vessel privileges and the crab and non-crab reduction permits that the crab program would prospectively restrict or revoke.

Because of the need to keep the period between bidding and referendum as short as possible, NMFS would not issue any form of referendum notification other than mailing ballots and voting instructions to persons on the prospectively qualifying voter list. NMFS would, however, post bid acceptance and referendum ballot mailing advices on our headquarters and Alaska Region web sites.

NMFS would neither accept nor count ballots completed or submitted in a manner inconsistent with the referendum instructions. NMFS would be the sole referendum judge, and our referendum determinations would constitute final agency action.

After tallying referendum votes, NMFS would mail the referendum results to all persons who received ballots. The results would include:

1. The number of prospectively qualifying voters;
2. The number of qualifying voters who returned ballots;
3. The number of returned ballots that qualified to be counted as referendum votes;
4. The number of qualified votes for and against the reduction loan repayment fee; and
5. Whether the referendum was successful and approved the reduction loan repayment fee or was unsuccessful and disapproved the fee.

If the referendum were successful, this mailing would also notify accepted bidders that the binding reduction contracts between them and the United States would then be final, unconditional, and subject to full and specific performance.

If the referendum were unsuccessful, NMFS would decide whether to issue a new invitation to bid, whose bidding results would require another referendum. The objective of any new invitation to bid would be bidding results that reduce more capacity for less cost than the previous bidding results, thus increasing the likelihood of a subsequent referendum approving the necessary loan repayment fee. If NMFS decided to issue another invitation to bid, we would repeat the previous bid invitation and referendum process.

Referendum approval of the fee would require at least two-thirds of the votes actually cast in the referendum to have been cast in favor of the fee. If, for example, only three qualifying voters actually cast referendum votes and two of them cast their votes in favor of the fee, the referendum would have been successful and the fee would have been approved.

L. Reduction Payment Tender

NMFS would not tender reduction payments following a successful referendum until at least 30 days after we had published a reduction payment tender notification in the **Federal Register**. This notification's purpose would be to allow the public to identify, for our subsequent resolution, any issue about: any aspect of any accepted

bidder's eligibility to bid, any accepted bidder's legal authority to have offered any of the reduction components in its bid, or any other aspect of any reduction contract.

Registries exist for reduction vessels, and the holders of crab and non-crab reduction permits are known to NMFS. There are, however, no registries for crab and non-crab reduction histories, and the persons who retain these histories are not known to NMFS. No one records the conveyance of these histories. Disputes could, consequently, exist about the ownership of these histories. Moreover, creditors may have secured or other interests in reduction vessels or reduction permits.

This notification would, consequently, inform the public about:

1. The ownership, holding, or retaining representations upon which accepted bidders based their bid offers; and

2. NMFS' intention to tender reduction payments in return for the surrender and revocation of the crab and non-crab reduction permits, the restriction of the reduction vessel privileges, and the relinquishment of the crab and non-crab reduction histories.

If NMFS received any notice of a claim or other dispute about any ownership, holding, or retention claims that conflict with any accepted bidder's representations, we might not tender reduction payment under that reduction contract until the claim or dispute was successfully resolved.

Creditors or other parties with secured or other interests in reduction vessels or in the crab or non-crab reduction permits are responsible for making their own arrangements with accepted bidders. NMFS would disburse reduction payments to accepted bidders without regard to creditors or other interested parties, unless accepted bidders, in their responses to NMFS reduction payment tenders, choose to provide us with explicit written payment instructions that accommodated creditors' or other persons' interests and authorized NMFS to disburse reduction payments in accordance with those instructions.

As soon as practicable after the 30–day reduction payment tender notice, NMFS would tender reduction payments to accepted bidders by requesting from them specific, written payment instructions. As soon as NMFS receives these payment instructions, we would immediately disburse reduction payments in accordance with the reduction contracts and the payment instructions.

Upon NMFS' tender of each reduction payment, we would:

1. Revoke the crab and non-crab reduction permits (subject to the one previously noted exception about continuing to fish in any reduction endorsement fishery that was open at the time of reduction payment tender);

2. Effect the relinquishment of the crab and non-crab reduction histories by noting in the RAM Program's records (or such other records as may be appropriate for reduction permits issued elsewhere) that these histories have been relinquished and would never again be available to anyone for any fisheries purpose;

3. Notify the U.S. Coast Guard's National Vessel Documentation Center so that it could revoke reduction vessels' fisheries trade endorsements;

4. Notify the U.S. Maritime Administration so that it could make reduction vessels ineligible for the approval of requests to place them under foreign registry or operate them under a foreign country's authority; and

5. Effect all other crab program requirements.

The U.S. Maritime Administration has already issued a final rule (66 FR 55595, December 3, 2001) that makes reduction vessels ineligible for the approval of requests to place them under foreign registry or operate them under a foreign country's authority. That rule amends 46 CFR 221.15.

With the one previously noted exception, each reduction vessel would, concurrently with reduction payment tender, have to permanently cease all further fishing anywhere in the world for any species. Each reduction vessel would, however, have to immediately retrieve all its fixed fishing gear that might remain deployed in any fishery other than the excepted one.

For each accepted bid that involves a co-bidder, NMFS would tender reduction payment jointly to the qualifying bidder and each co-bidder. NMFS would not specify a reduction payment sub-amount for either the qualifying bidder or any co-bidder. This would be a matter of private contract between each qualifying bidder and any co-bidder; and these parties should, before bidding, have written contracts between them that specify the amount of the reduction payment to which each of them would be entitled.

M. Reduction Loan Terms

The reduction loan's original principal amount could not exceed $100 million, but would be less if the reduction cost were less.

The loan's repayment term would be 30 years.

The loan's interest rate would be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. We would determine the loan's initial interest rate when we borrowed from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate would change to a final interest rate at the end of the Federal fiscal year in which NMFS borrowed the funds from the U.S. Treasury. The final interest rate would be two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate would be fixed, and would not vary over the rest of the loan's 30–year term. There would be no pre-payment penalty.

N. Apportioning Reduction Loan Sub-Amounts to Each Reduction Endorsement Fishery

The reduction endorsement fisheries are these six crab area/species endorsements, each of which is further specified in § 679.4(k)(5)(ii)(A)-(F) of this chapter:

1. Aleutian Islands brown king crab;
2. Aleutian Islands red king crab;
3. Bristol Bay red king crab;
4. Bering Sea and Aleutian Islands Area *Chionocetes opilio* and *C. bairdi* crab;
5. Pribilof red king and blue king crab; and
6. St. Matthew blue king crab.

The Norton Sound fishery is not a reduction endorsement fishery.

The formula for determining the reduction loan sub-amount for each reduction endorsement fishery's repayment would be:

1. The bid crab value for all reduction vessels in each reduction endorsement fishery;

2. Divided by the bid crab value for all reduction vessels in all reduction endorsement fisheries;

3. Equals the total bid crab value in each reduction endorsement fishery as a percentage of the total dollar value of bid crab in all reduction endorsement fisheries; and

4. Each of these percentages applied to the total reduction loan amount equals the reduction loan subamount apportioned to each reduction endorsement fishery to which each percentage relates.We would not apportion any of the reduction loan amount to the Norton Sound fishery because that fishery would not be part of the reduction fishery.

O. Reduction Loan Repayment Fee

Revenues from the post-reduction crab landings fee in each reduction

endorsement fishery would repay the reduction loan sub-amount apportioned to each reduction endorsement fishery. Post-reduction crab landings in the Norton Sound fishery would not be subject to the fee.

Although the fee would be up to 5 percent of the ex-vessel value of all post-reduction crab landings in each reduction endorsement fishery, the fee in any reduction endorsement fishery would be less than 5 percent if we projected that a lesser rate could amortize that fishery's reduction loan sub-amount over the reduction loan's 30–year term.

Some reduction endorsement fisheries may not open during some years. Consequently, those reduction endorsement fisheries would not during those years produce fee revenue with which to service the reduction loan sub-amounts apportioned to those reduction endorsement fisheries. However, interest would continue to accrue on the sub-amount principal balances. When this happens, if these reduction endorsement fisheries' fee rates are not already at the maximum 5 percent, NMFS generally would increase the fisheries' fee rates to the maximum 5 percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments were current. Once all principal and interest payments were current, NMFS would generally make a determination about adjusting these fee rates.

P. Fee Payment, Collection, and Reporting

There would be three categories of fish sellers and fish buyers who would have to pay the fee, collect the fee, or both pay and collect the fee.

The first category is fish sellers who would have to pay the fee. Any person who harvests any post-reduction crab in any reduction endorsement fishery, but whom the State of Alaska's fisheries reporting requirements do not require to record and submit an Alaska Department of Fish and Game fish ticket for that crab, would be a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

The second category is fish buyers who would have to collect the fee. Any person whom the State of Alaska's fisheries reporting requirements require to record and submit an Alaska Department of Fish and Game fish ticket for any crab that another person harvested would be a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

The third category is persons who would be both fish sellers and fish buyers and who would both have to pay and collect the fee. Any person who harvests any crab, and whom the State of Alaska's fisheries reporting requirements require to also record and submit an Alaska Department of Fish and Game fish ticket for that crab, would be both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

Fish buyers would have to collect the fee by deducting it from the gross ex-vessel proceeds of all post-reduction crab landings before the fish buyers pay the proceeds' remainder to fish sellers.

No less frequently than at the end of each business week, fish buyers would have to deposit collected fee receipts in a segregated account at a Federally insured financial institution. On the last business day of each month, fish buyers would have to disburse all deposited fee receipts to a depository that NMFS would have specified.

Fish buyers could retain all interest, if any, earned on deposited fee collections during the time between depositing collected fees and disbursing them to our depository.

In addition to the collected fee deposit and disbursement requirements (further specified in this subpart's § 600.1014), fish buyers would also be subject to certain records maintenance and annual reporting requirements (also specified in this subpart's § 600.1014). All activities associated with fee collection would be subject to our audit.

We would notify all fish sellers and fish buyers, of whom we have knowledge, in each reduction endorsement fishery:

1. When fee payment and collection commence and at what rate;
2. When fee rates change, either up or down; and
3. When fee payment and collection cease.

Fee rates could vary from time-to-time and from one reduction endorsement fishery to another. NMFS would set the fee rate for each reduction endorsement fishery at the level, not to exceed 5 percent of the gross ex-vessel value of post-reduction crab landings, that we from time-to-time projected was required to repay the principal and interest of each reduction loan sub-amount within 30 years.

If any reduction loan sub-amount were not fully repaid at the end of 30 years, the fee would continue in the fishery for as many additional years as were required to fully repay that reduction loan sub-amount.

Q. Penalties for Prohibited Activities

There would be substantial penalties for (among other things):

1. Any bidder whose bid offered a reduction component that the bidder was not legally entitled to offer in the manner that the bid invitation and this proposed rule would require. These penalties would be in addition to bid rejection, and might also apply to other actions that interfered with or hindered the bidding process;
2. Any bidder who submitted a non-performable bid offer or took any post-bid action (including, but not limited to, any post-bidding conveyance of any reduction component) that prevented or otherwise hindered the specific performance of any reduction contract;
3. Any referendum voter who submitted a false or unauthorized referendum ballot or any person who otherwise interfered with, hindered, or otherwise unduly or unlawfully influenced the referendum process; and
4. Any fish seller who failed properly to pay the fee and any fish buyer who failed properly to collect, deposit, and disburse the fee as well as to maintain the records and submit the reports that this proposed rule would require.

All persons who might be subject to any of these penalties if NMFS adopted this proposed rule should inform themselves fully about the penalties. For further details about the penalties, see this subpart's § 600.1017 and this proposed § 600.1018(u).

R. Administering Offices

The Financial Services Division in our Silver Spring, MD, central office (see **ADDRESSES**) would be responsible for implementing and administering the crab program. The Financial Services Division would:

1. Issue all notifications and mailings that the proposed rule requires;
2. Prepare and issue the invitation to bid;
3. Receive bids;
4. Reject bids;
5. Score bids;
6. Accept bids;
7. Prepare and issue referendum ballots;
8. Receive referendum ballots;
9. Tally referendum ballots;
10. Determine referendum success or failure;
11. Tender and disburse reduction payments;
12. Administer reduction contracts;
13. Administer fees and reduction loan repayment; and

14. Discharge all other crab program management and administration functions.

Upon the Financial Services Division's advice, the RAM Program in our Alaska Regional Office (see **ADDRESSES**) would, for fishing licenses under the jurisdiction of the Alaska Regional Office (and such other of our offices as may be appropriate for other fishing licenses or permits), revoke the crab and non-crab reduction permits and effect the relinquishment of the crab and non-crab reduction histories.

The Financial Services Division would advise the U.S. Coast Guard's National Vessel Documentation Center, the U.S. Maritime Administration, such other agency or agencies as may be involved, or all of them to revoke reduction vessels' fisheries trade endorsements and otherwise restrict reduction vessels in accordance with this proposed rule. Those agencies would be responsible for acting on this advice.

V. Guidance

A. Reading the Proposed Rule in Conjunction with the Framework Rule

This proposed rule would establish which framework rule provisions (this subpart's § 600.1000 through § 600.6017) would not apply to the crab program. Consequently, a comprehensive understanding requires reading the proposed rule in conjunction with the remaining framework rule provisions that would continue to apply to the crab program. NMFS recommends that all interested persons carefully read the former in close conjunction with the latter.

B. Summary of Crab Program Notices and Mailings

This table summarizes, in chronological order, key crab program actions that would involve our providing notice to affected persons:

Action	Method		
	FEDERAL REGISTER	Mailing	Website
Final rule	X		X
Bidder and voter notice	X	X	X
Invitation to bid	X	X	X
Bid rejection and acceptance		X	
Referendum ballots		X	X
Referendum results		X	X
Reduction contracts unconditional		X	
Reduction payment tender notice	X		
Reduction payment tender		X	
Fee payment and collection		X	X

This is what we would mail in each notice and to whom we would mail it:

Action	NMFS would mail:
Bidder and voter notice	A notice to each crab license holder who is prospectively a qualifying bidder, voter, or both.
Invitation to bid	An invitation to bid to each crab license holder who is on our prospectively qualifying bidder list.
Bid rejection and acceptance	Our rejection to each bidder whose bid we reject and our acceptance to each bidder whose bid we accept.
Referendum ballots	A referendum ballot and instructions to each crab license holder who is on our prospectively qualifying voter list.
Referendum results	The results of the referendum to each crab license holder.
Reduction Contracts Unconditional	Advice, to each accepted bidder, that a successful referendum has fulfilled the one condition to performance of the reduction contracts.
Reduction payment tender	After a successful referendum and a reduction payment tender notice, a tender of reduction payment to each accepted bidder.
Fee payment and collection notice	A notice to each fish seller and each fish buyer of the initial fee payment and collection requirement and each subsequent change in this requirement.

All website postings would be solely for the public's convenience and our failure or inability to post anything on a website would not affect the rights, privileges, duties, or obligations of any person involved.

Classification

The Assistant Administrator for Fisheries, National Marine Fisheries Service, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, we prepared an environmental assessment for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and integrates a Regulatory Impact Review and an Initial Regulatory Flexibility Analysis. NMFS will send the assessment, the review and analysis to anyone who requests us to do so (see **ADDRESSES**).

We determined that this proposed rule is significant for purposes of Executive Order 12866.

In compliance with the Regulatory Flexibility Act, NMFS prepared an analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. In this proposed rule's preamble, we described

the proposed rule, why we are proposing it, and its legal basis. NMFS intends the analysis to aid us in considering all reasonable regulatory alternatives that could minimize the economic impact on affected small entities.

This proposed rule's effect on post-reduction crab harvesters would depend on the crab program's nature and size. Our assessment, review, and analysis considered:

1. The effect of three alternatives:

a. The status quo,

b. Uniform reduction loan repayment fees, and

c. Weighted reduction loan repayment fees; and

2. Based on five potential magnitudes of revoked crab licenses and vessels:

a. 30,

b. 45,

c. 60,

d. 75, and

e. 90.

The preferred alternative, weighted reduction loan repayment fees, provides the most equitable method for allocating reduction loan repayment, and this is the reduction loan repayment method that section 144 requires.

The proposed rule's impact would be positive for both bidders whose bid offers NMFS accepts and post-reduction harvesters whose landing fees repay the reduction loan because the bidders and harvesters would have voluntarily assumed the impact:

1. Bidders would have volunteered to make bid offers at bid amounts of their own choice. Presumably, no bidder would volunteer to make a bid offer with a bid amount that is inconsistent with the bidder's interest; and

2. Reduction loan repayment landing fees would be authorized, and we could complete the crab program, only if at least two-thirds of crab license holders voting in a post-bidding fee referendum voted in favor of the fee. Presumably, crab license holders who are not accepted bidders would not vote in favor of the fee unless they concluded that the crab program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

NMFS believes that this proposed action would affect neither authorized crab harvest levels nor crab harvesting practices.

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) approved this information collection under OMB control number 0648–0376. NMFS estimates that the public reporting burden for this information collection would average 4 hours for bidding and 4 hours for voting in a referendum. Persons affected by this proposed rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB control number 0648–0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

This proposed rule also contains a new collection-of-information requirement that NMFS has submitted to OMB for approval (under the same OMB control number). The provision allows the public 30 days to advise us of any license or permit holder or vessel owner claims that conflict with accepted bidders' representations about holding, owning, or retaining any of the crab or non-crab reduction permits, the reduction vessels, or the crab or non-crab reduction histories. Responses are voluntary, but we estimate the public reporting burden for this collection of information would be 1 hour per response.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

This action would not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs—business, Reporting and recordkeeping requirements.

Dated: December 4, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117.

2. Section 600.1018 is added to subpart L to read as follows:

§ 600.1018 Crab species program.

(a) *Purpose.* This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for crab species.

(b) *Terms.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bidder's bid.

Bid crab means the crab that NMFS determines each bidder's reduction vessel harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction specified in this section.

Co-bidder means a person who is not a qualifying bidder but who at the time of bidding owns the reduction vessel, holds the non-crab reduction permit, or both owns the reduction vessel and holds the non-crab reduction permit that this section requires to be included in a bid and who is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Norton Sound fishery means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction fishing interest means, for each bid, the bidder's:

(1) Reduction vessel fishing privilege;

(2) Crab reduction permit;

(3) Non-crab reduction permit;

(4) Reduction vessel fishing history; and

(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction loan sub-amount means the portion of the original principal amount of this program's reduction loan that each reduction endorsement fishery must repay with interest.

Reduction vessel fishing history means, for each bid, the reduction vessel's complete history of documented harvest upon any part of which NMFS based issuance of the bidder's crab reduction permit and non-crab reduction permit.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

(c) *Relationship to this subpart*—(1) *Provisions that apply.* The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) Provisions that do not apply. The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

(A) Section 600.1001,

(B) Section 600.1002,

(C) Section 600.1003,

(D) Section 600.1004,

(E) Section 600.1005,

(F) Section 600.1006, and

(G) Section 600.1007,

(ii) The portions of § 600.1008:

(A) Pertaining to an implementation plan,

(B) Pertaining to a 60–day comment period for a proposed implementation regulation,

(C) Pertaining to public hearings in each State that the this program affects,

(D) Pertaining to basing the implementation regulation on a business plan,

(E) Within paragraphs (d)(1)(ii) through (viii),

(F) Within paragraph (d)(2)(ii),

(G) Within paragraph (e), and

(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of § 600.1009:

(A) Pertaining to fishing capacity reduction specifications,

(B) Within paragraph (a)(4),

(C) Pertaining to a reduction amendment,

(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,

(E) Within paragraph (b)(i), and

(F) Pertaining to an implementation plan,

(iv) The portions of § 600.1010:

(A) Within paragraph (b),

(B) Pertaining to fishing capacity reduction specifications,

(C) Within paragraph (d)(1), and

(D) Within paragraphs (d)(4))(iv) through (vii),

(v) The portions of § 600.1011:

(A) That comprise the last sentence of paragraph (a),

(B) Within paragraph (d), and

(C) Within paragraph (e)(2),

(vi) The portions of § 600.1012:

(A) Within paragraph (b)(3) following the word ''subpart'', and

(B) Within paragraph (b)(3), and

(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing.* NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed $100 million.

(e) *Who constitutes a bidder.* A person or persons who hold all of the following three reduction components constitutes a bidder:

(1) License or permit holder of record and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's reduction vessel fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's reduction vessel fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—(1) *Non-interim crab licenses.* Each person who is the record holder of

a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses.* Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery.* Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses.* A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone.* There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders.* When a qualifying bidder does not own the reduction vessel or does not hold the non-crab reduction permit, the person who does own the reduction vessel or does hold the non-crab reduction permit may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders.* At a minimum, a qualifying bidder must hold the crab reduction permit and retain the reduction vessel fishing history. The reduction vessel may be owned and the non-crab reduction permit may be held, however, by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements.* Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction vessel requirements.* Except as otherwise provided in paragraph (h) of this section, the reduction vessel in each bid must:

(i) Be the same vessel upon whose documented harvest of crab during the GQP, EQP, and RPP NMFS issued the crab reduction permit that the bidder includes in its bid, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction vessel fishing privilege requirements.* The reduction vessel fishing privilege in each bid must be the reduction vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to fish anywhere in the world;

(4) *Crab reduction permit requirements.* (i) Except as otherwise provided in paragraph (h) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the documented harvest of crab during the GQP, EQP, and RPP of the same reduction vessel that the bidder includes in its bid,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit; and

(5) *Non-crab reduction permit requirements.* The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the reduction vessel fishing history of the same reduction vessel that the bidder includes in its bid, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction vessel fishing history requirements.* Except as otherwise provided in paragraph (h) of this section, the reduction vessel fishing history in each bid must be the whole of the reduction vessel fishing history upon any part of which NMFS based issuance of the crab reduction permit and the non-crab reduction permit that the bidder includes in its bid.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab that § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires:

(i) The reduction vessel is the salvaged vessel, and

(ii) The crab portion of the reduction vessel fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from an alternative vessel the documented harvest of crab that § 679.4(k)(5)(iii)(B)(3) of this chapter requires:

(i) The reduction vessel is the alternative vessel,

(ii) The crab portion of the reduction vessel fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the alternative vessel's documented harvest of crab after such date, and

(iii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the alternative vessel's documented harvest of crab; and

(3) *Acquired crab fishing history.* When a bidder, in the manner that § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired another vessel's documented harvest of crab:

(i) The reduction vessel is the vessel from which the bidder made the documented harvest of crab that § 679.4(k)(5)(iv) of this chapter requires,

(ii) The crab portion of the reduction vessel fishing history is the total of the acquired documented harvest of crab

through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest that § 679.4(k)(5)(iv) of this chapter requires, and

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction vessels' bid crab*—(1) *In each fishery.* NMFS will determine the dollar value of each reduction vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries.* NMFS will determine the dollar value of each reduction vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (i)(1) of this section; and

(3) *Crab excluded from bid crab.* A reduction vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab whose dollar value NMFS cannot, for whatever reason, determine.

(k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (i)(2) of this section.

(l) *Determining reduction loan sub-amount*—(1) *Value of all bid crab in each fishery.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (k)(1) of this section by the sum in paragraph (k)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (k)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (k)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification*—(1)*General.* At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the **Federal Register** listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list.* The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) *Qualifying voter list.* The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists.* NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;

(5) *Purpose.* The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders from whom NMFS, by mailing to them the invitation to bid, will invite bids if the bidders otherwise meet this section's requirements, and

(ii) The prospectively qualifying voters to whom NMFS will mail referendum ballots if the voters otherwise meet this section's requirements; and

(6) *Public comment.* Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.

(n) *Invitation to bid*—(1) *Notification.* At the appropriate point after issuing the notification in paragraph (l) of this section, NMFS will publish the invitation to bid in the **Federal Register** notification further specified in § 600.1009(c) of this subpart. No person may, however, bid at this stage;

(2) Notification contents. The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will, among other things:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bidder's bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, containing the entire terms and conditions of the reduction contract under which each bidder who bids must bid and under which NMFS must accept each bid that NMFS accepts; and

(3) *Mailing.* On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form and full bidding instructions, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids*—(1) *Content.* Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form that requires each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction vessel fishing history,

(B) The dates that each portion of this reduction vessel fishing history encompasses, and

(C) If the qualifying bidder acquired any reduction vessel fishing history from another person, the name of the person from which the qualifying bidder acquired this reduction vessel fishing history and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction vessel fishing history, and is fully and legally entitled to offer both in the manner that this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection.* NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction.* NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed $100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification.* NMFS will, in the manner that § 600.1009(e)(3) of this subpart requires, notify bidders whose bids NMFS accepted; and

(3) *Post-acceptance reduction permit transfer.* After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the accepted bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition.* Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose.* NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting.* NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license.* Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab License Numbers on Ballots.* Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated.* Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Whatever other useful information (if any) NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (p) of this section.

(s) *Reduction method.* In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction vessel fishing privilege (which revocation will run with the reduction vessel's title in the manner that § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction vessel fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction vessel fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender.* Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public.* Immediately after a successful referendum and before tendering reduction payment, NMFS will publish a notification in the **Federal Register** listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction vessels, the reduction vessel fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (r) of this section;

(3) *Public response.* The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties.* NMFS will tender reduction payments only to accepted bidders. Unless accepted bidders responding to NMFS' reduction payment tenders provide NMFS with explicit written payment instructions and authorizations to the contrary, NMFS will also disburse reduction payments only to accepted bidders (including, in the instance of co-bidders, joint disbursement to qualifying bidders and their co-bidders). Creditors or other parties with secured or other interests in reduction vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender.* At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement.* NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender.* Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must forever cease--with the sole exception that each reduction vessel may continue fishing in any reduction endorsement fishery, for which the accepted bidder's crab reduction permit is endorsed, that is still open for directed crab fishing at the time of reduction payment tender until such fishery thereafter first closes,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (r) of this section.

(u) *Fee payment and collection*—(1) *Fish sellers who pay the fee.* Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee.* Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties*—(1) *General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term ''fishing'' in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (s)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction vessel anywhere in the world for any species under any conditions and regardless of the reduction vessel's ownership or registry for so long as the reduction vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction vessel under the authority of a foreign country,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction vessel fishing privilege with respect to any reduction vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction vessel owner's expense, seize and scrap the reduction vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration*—(1) *FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,
(iii) Receive bids,
(iv) Reject bids,
(v) Score bids,
(vi) Make acceptances,
(vii) Prepare and issue referendum ballots,
(viii) Receive referendum ballots,
(ix) Tally referendum ballots,
(x) Determine referendum success or failure,
(xi) Tender and disburse reduction payments,
(xii) Administer reduction contracts,
(xiii) Administer fees and reduction loan repayment, and
(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and U.S. Maritime Administration responsibilities.* FSD will advise NVDC, the U.S. Maritime Administration, such other agency or agencies as may be involved, or all of them to revoke reduction vessels' fisheries trade endorsements and otherwise restrict reduction vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–2286–01; I.D. 110602B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2003 Harvest Specifications for Groundfish

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

ACTION: Proposed 2003 initial harvest specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 2003 initial harvest specifications for groundfish, reserves and apportionment thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to provide an opportunity for public participation in the annual specification process.

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the final 2001 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2001, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510 or from its homepage at *http://www.fakr.noaa.gov/npfmc*. Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for the Groundfish Fishery of the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 to 9 of this document satisfy these requirements. For 2003, the sum of the proposed TAC amounts is 233,166 mt. Under § 679.20(c)(3), NMFS will publish the final specifications for 2003 after (1) considering comments received within the comment period (see DATES), (2) consulting with the Council at its December 2002 meeting, and (3) considering new information presented in the EA, the final 2002 SAFE reports, and in the section 7 consultation prepared for the 2003 groundfish fisheries.

Regulations that will be effective with the final rule to implement major provisions of the American Fisheries Act (AFA) at § 679.20(c)(2)(i) provide that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowances of pollock and Pacific cod), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowances of pollock and Pacific cod will become effective 0001 hours, Alaska local time (A.l.t.) January 1, 2003, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishery industry.

By separate rulemaking, NMFS intends to publish in the **Federal Register** prior to January 1, 2003, the interim TAC specifications and apportionments thereof for the 2003 fishing year. These interim specifications would become effective 0001 hours, A.l.t., January 1, 2003, and would remain in effect until superseded by the final 2003 harvest specifications.

NMFS also intends to publish a final rule implementing regulatory provisions of the AFA in the **Federal Register** that would be effective for 2003. In order to minimize confusion, the proposed specifications also identify sideboard amounts for the AFA fisheries that will be available under the final rule. Also, NMFS has initiated rulemaking to permanently implement the Steller sea

lion protection measures for 2003 and beyond. To minimize confusion and provide clarity to the 2003 specification process, we have included in the proposed 2003 harvest specifications pollock and Pacific cod seasonal allowances that are consistent with the existing protection measures.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed the most current biological information about the condition of GOA groundfish stocks at their meetings in October 2002. This information was initially compiled by the Council's GOA Plan Team and was presented in the final 2001 SAFE report for the GOA groundfish fisheries, dated November 2001. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2001 SAFE report will be updated to include new information collected during 2002. Revised stock assessments will be made available by the Plan Team in November 2002 and will be included in the final 2002 SAFE report, which will be available the end of November 2002.

Until updated information becomes available at its December 2002 meeting and based on the recommendations from the SSC for overfishing levels (OFLs) and from the SSC and AP for ABCs, the Council recommended that the OFLs and ABCs for stocks in tiers 3 and above, except for pollock, be based upon biomass projections as set forth in the 2001 SAFE report and estimates of groundfish harvests through the 2002 fishing year. The Council recommended that OFL and ABC levels for those stocks in tiers 4 and below, for which projections cannot be made, be unchanged from 2002 levels (Table 1).

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species categories except pollock. In the 2001 SAFE report, the ABC projection for 2003 is 75,995 mt for the combined Western, Central, and West Yakutat (W/C/WYK) GOA stock of pollock. The Plan Team did not endorse the ABC projection due to the low spawning biomass observed during the 2002 Shelikof survey and because it represents a substantial increase from the 2002 ABC. The Plan Team recommended an ABC of 43,390 mt for the W/C/WYK pollock stock based on the ratio of the 2002 hydroacoustic survey estimate of spawning biomass to the 2003 forecast Shelikof spawning biomass. Because of the results of the Shelikof Survey, the SSC did not support the use of the 2001 SAFE report projection for ABC. However, the SSC concurred with the pollock assessment recommendation that OFL and ABC levels be unchanged from 2002 levels until a formal stock assessment can be completed. The SSC determined that the Plan Team did not provide adequate written justification for the Plan Team's recommended ABC and that the uncertainties in the preliminary pollock data were so large that using the current method for recommending proposed ABC (either rollovers or 2001 SAFE report projections) is required.

As in 2002, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery catch data as well as survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2003 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fishery in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

For 2003, the Council recommended and NMFS proposed the ABCs listed in Table 1. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2003 ABCs for all assessed groundfish is 382,790 mt, which is lower than the 2002 ABC total of 394,780 mt.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2003 GOA TAC amounts. The Council recommended TACs that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, Pacific Ocean perch, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs are less than the recommended ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of the annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA will be apportioned among Statistical Areas 610, 620, and 630 to each season: the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1)(§ 679.23(d)(3)(i) through (iv) and § 679.20(a)(5)(ii)(C)).

The 2003 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in State waters in the Central and Western Regulatory Areas of the GOA, as well as Prince William Sound. The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that the Pacific cod TACs be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA so that the TAC for (1) the Eastern GOA be lower than the ABC by 758 mt, (2) the Central GOA be lower than the ABC by 6,043 mt, and (3) the Western GOA be lower than the ABC by 4,926 mt. These amounts reflect the sum of

the State's 2003 GHLs in these areas which are 25 percent, 21.75 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. These percentages are unchanged from 2002.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig gear from September 1 through December 31 and for trawl gear from September 1 through November 1 (§§ 679.23(d)(4) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The proposed 2003 GOA-wide ''other species'' TAC is 11,103 mt, which is 5 percent of the sum of the combined proposed TAC amounts (226,322 mt) of the other groundfish species for which the TAC is specified. The sum of the proposed TACs for all GOA groundfish is 233,166 mt, which is within the OY range specified by the FMP. The sum of the 2003 proposed TACs is lower than the 2002 TAC sum of 237,890 mt.

NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2003 ABCs, TACs, and OFLs are shown in Table 1.

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Table 1 - Proposed 2003 ABCs, TACs, and Overfishing Levels of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulf-Wide (GW) Districts of the Gulf of Alaska. [Values are in metric tons]

Species	Area[1]	ABC	TAC	Overfishing
Pollock[2]				
Shumagin	(610)	17,730	17,730	
Chirikof	(620)	23,045	23,045	
Kodiak	(630)	9,850	9,850	
WYK	(640)	1,165	1,165	
Subtotal	W/C/WYK	51,790	51,790	75,480
SEO	(650)	6,460	6,460	8,610
Total		58,250	58,250	84,090
Pacific cod[3]				
	W	19,703	14,777	
	C	27,786	21,743	
	E	3,031	2,273	
Total		50,520	38,793	67,820
Flatfish[4] (deep-water)	W	180	180	
	C	2,220	2,220	
	WYK	1,330	1,330	
	SEO	1,150	1,150	
Total		4,880	4,880	6,430
Rex sole	W	1,280	1,280	
	C	5,540	5,540	
	WYK	1,600	1,600	
	SEO	1,050	1,050	
Total		9,470	9,470	12,320
Flathead sole	W	9,000	2,000	
	C	11,410	5,000	
	WYK	1,590	1,590	
	SEO	690	690	
Total		22,690	9,280	29,530
Flatfish[5] (shallow-water)	W	23,550	4,500	
	C	23,080	13,000	
	WYK	1,180	1,180	
	SEO	1,740	1,740	
Total		49,550	20,420	61,810

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Table 1. (continued)

Species	Area[1]	ABC	TAC	Overfishing
Arrowtooth flounder	W	16,300	8,000	
	C	102,390	25,000	
	WYK	16,470	2,500	
	SEO	5,250	2,500	
Total		140,410	38,000	164,360
Sablefish[6]	W	2,430	2,430	
	C	5,900	5,900	
	WYK	2,110	2,110	
	SEO	3,490	3,490	
Subtotal	E	5,600	5,600	
Total		13,930	13,930	21,060
Pacific[7] ocean perch	W	2,630	2,630	3,140
	C	8,290	8,290	9,840
	WYK	780	780	
	SEO	1,600	1,600	
Subtotal	E			2,820
Total		13,300	13,300	15,800
Short raker/ rougheye[8]	W	220	220	
	C	840	840	
	E	560	560	
Total		1,620	1,620	2,340
Other rockfish[9,10]	W	90	90	
	C	550	550	
	WYK	260	150	
	SEO	4,140	200	
Total		5,040	990	6,610
Northern Rockfish[10,12,15]	W	760	760	
	C	3,940	3,940	
	E	N/A	N/A	
Total		4,700	4,700	5,580
Pelagic shelf rockfish[13]	W	510	510	
	C	3,480	3,480	
	WYK	640	640	
	SEO	860	860	
Total		5,490	5,490	8,220
Thornyhead rockfish	W	360	360	
	C	840	840	
	E	790	790	
Total		1,990	1,990	2,330

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Table 1. (continued)

Species	Area[1]	ABC	TAC	Overfishing
Demersal shelf rockfish[11]	SEO	350	350	480
Atka mackerel	GW	600	600	6,200
Other[14] species	GW	N/A	11,103	N/A
TOTAL[16]		382,790	233,166	494,980

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A and B seasons, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 68 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, pollock is apportioned based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.
[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.
[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, and arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means Sebastes alutus.
[8] "Shortraker/rougheye rockfish" means Sebastes borealis (shortraker) and S. aleutianus (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.
[10] "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), and S. reedi (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, S. polyspinous.
[11] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).
[12] "Northern rockfish" means Sebastes polyspinis.
[13] "Pelagic shelf rockfish" means Sebastes ciliatus (dusky), S. entomelas (widow), and S. flavidus (yellowtail).
[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for assessed target species.

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Proposed Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). In 2002, NMFS reapportioned all of the reserves in the final harvest specifications. Between 1997 and 2000, NMFS retained the Pacific cod reserve to provide for a management buffer to account for excessive fishing effort and incomplete or late catch reporting. NMFS believes that the retention of reserve amounts no longer is necessary because estimates of catch and incidental catch needs in other directed fisheries have improved in recent years. For 2003, NMFS proposes reapportionment of all of the reserve for pollock, Pacific cod, flatfish, and ''other species''. Specifications of TAC shown in Table 1 reflect proposed reapportionment of reserve amounts for these species and species groups.

Proposed Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts of the GOA are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS proposes that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. This recommendation results in a proposed allocation of 280 mt to trawl gear and 1,830 mt to hook-and-line gear in the WYK District and 3,490 mt to hook-and-line gear in the SEO District. Table 2 shows the allocations of the proposed 2003 sablefish TACs between hook-and-line gear and trawl gear.

Table 2 - Proposed 2003 Sablefish TAC Specifications in the Gulf of Alaska and Allocations Thereof to Hook-and-Line and Trawl Gear. (Values are in metric tons)

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,430	1,944	486
Central	5,900	4,720	1,180
West Yakutat	2,110	1,830	280
Southeast Outside	3,490	3,490	0
TOTAL	13,930	11,984	1,946

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(ii)(C), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(3), the A, B, C, and D season allowances are available from January 20 through February 25, from March 10 through May 31, from August 25 through September 15, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys, and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(B)). For 2003, 30 percent of the proposed annual TAC for the Central and Western Regulatory Areas would be 15,187 mt. The WYK and SEO District pollock TACs of 1,165 mt and 6,460 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(ii) require that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed seasonal biomass distribution of pollock in the Western

and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 3, except that amounts of pollock for processing by the inshore and offshore component are not shown.

Table 3. Proposed Distribution of Pollock in the Central and Western Regulatory Areas of the Gulf of Alaska; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC in 2003. (Values are in metric tons)

	Area			
Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
B	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
C	5,949 (47%)	2,905 (23%)	3,803 (30%)	12,657 (100%)
D	5,949 (47%)	2,904 (23%)	3,803 (30%)	12,656 (100%)
Annual Total	17,730	23,045	9,850	50,625

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1, (§ 679.23(d)(4)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in 50 CFR 679.20(a)(6)(iii). Between the A and the B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the A season and the B season Pacific cod fishery dates differ from those of the A, B, C, and D seasons for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season shall be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed Pacific cod TAC for 2003 are shown in Table 4.

Table 4 - Proposed 2003 Seasonal Apportionments and Allocation of Pacific cod TAC Amounts in the Gulf of Alaska; Allocations for Processing by the Inshore and Offshore Components. (Values are in mt)

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	14,777	13,299	1,478
A Season (60%)	8,866	7,979	887
B Season (40%)	5,911	5,320	591
Central	21,743	19,569	2,174
A Season (60%)	13,046	11,741	1,305
B Season (40%)	8,697	7,828	869
Eastern	2,273	2,046	227
TOTAL:	38,793	34,914	3,879

Proposed Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In October 2002, the Council recommended, and NMFS proposes, to re-establish the 2002 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts given most vessels are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and the short duration of the DSR fishery. Also, the DSR fishery occurs in the winter when there is less of an overlap in the distribution of DSR and halibut.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended and NMFS proposes that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2003. The Council recommended and NMFS proposes these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001 and 2 mt in 2002) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program, which regulates the retention of legal-sized halibut in the sablefish fishery by persons holding IFQ permits for halibut. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by jig gear (336 mt in 2001 and 277 mt in 2002) and the assumed high survival rate of any halibut that are incidentally taken by jig gear and released.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The emergency rule establishing the final 2002 groundfish and PSC specifications (66 FR 956, January 8, 2002) summarizes Council and NMFS findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2002. Proposed Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2003 fishing year.

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Table 5 Proposed 2003 Pacific halibut PSC limits, allowances, and apportionments. The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Values are in metric tons)

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1-Apr 1	550 (27.5%)	Jan 1- June 10	250 (86%)	Jan 1- Dec 31	10 (100%)
Apr 1- Jul 1	400 (20%)				
Jul 1- Sept 1	600 (30%)	June 10- Sept 1	5 (2%)		
Sept 1- Oct 1	150 (7.5%)	Sept 1- Dec 31	35 (12%)		
Oct 1- Dec 31	300 (15%)				
Total:	2,000 (100%)		290 (100%)		10 (100%)

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Regulations at § 679.21(d)(3)(ii), authorize the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" (§ 679.21(d)(3)(iii)). The proposed apportionment for these two fishery complexes is presented in Table 6.

Table 6 - Proposed 2003 apportionment of Pacific halibut PSC trawl limits between the trawl gear deep-water species complex and the shallow-water species complex. (Values are in metric tons)

Season	Shallow-water	Deep-water	Total
Jan. 20-Apr. 1	450	100	550
Apr. 1-June 30	100	300	400
June 30-Sept. 1	200	400	600
Sept. 1-Oct. 1	150	Any Remainder	150
Subtotal			
Jan. 20-Oct. 1	900	800	1,700
Oct. 1-Dec. 31	---	---	300
Total	---	---	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (Oct. 1 - Dec. 31)

Based on public comment and information contained in the final 2002 SAFE report, which will be available in December 2002, the Council may recommend, or NMFS may make, some changes in the seasonal, gear-type, and fishing-complex apportionments of halibut PSC limits for the final 2003 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2002. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 5, 2002, is 1,810 mt, 206 mt, and 2 mt, respectively, for a total halibut mortality of 2,018 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2002 fishing year. Trawling during the second season closed for the shallow-water complex on May 15 (67 FR 35448, May 20, 2002) and for the deep-water fishery complex on May 24 (67 FR 37726, May 30, 2002). Trawling during the third season closed for the shallow-water complex on August 5 (67 FR 51499, August 8, 2002) and for the deep-water fishery complex on August 2 (67 FR 51129, August 7, 2002). Trawling during the fourth season closed for both the shallow-water complex and the deep-water fishery complex on September 1 (67 FR 55730, August 30, 2002, and 67 FR 56320, September 3, 2002). All trawling in the GOA closed (with the exception of pelagic trawl gear targeting pollock) for the remainder of the year on October 13 (67 FR 64066, October 17, 2002).

(B) Expected Changes in Groundfish Stocks

Proposed 2003 ABCs for sablefish and Pacific ocean perch are higher than those established for 2002. Proposed 2003 ABCs for Pacific cod, arrowtooth flounder, and northern rockfish are lower than those established for 2002. Proposed 2003 ABC levels for the remaining target species are unchanged from 2002. More information on these changes is included in the 2001 SAFE report (November 2001) and in the Council and SSC October 2002 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the proposed 2003 TACs for the GOA is 233,166 mt, a decrease of 2 percent from the 2002 TAC total of 237,638 mt. Those fisheries for which the 2003 TACs are lower than in 2002 are Pacific cod (decreased to 38,793 mt from 44,230 mt), northern rockfish (decreased to 4,700 mt from 4,980 mt), and other species (decreased to 11,103 mt from 11,330 mt). Those species for which the 2003 TACs are higher than in 2002 are sablefish (increased to 13,930 mt from 12,820 mt) and Pacific ocean perch (increased to 13,300 mt from 13,190 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2001.

The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass for 2002 is estimated to be 273,950 mt. This is an increase from the estimate of 249,007 mt in 2001.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource is estimated at 118,000 mt. Long-term average yield is estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch is 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2002 the IPHC recommended commercial catch limits totaling 36,812 mt (round weight equivalents) for Alaska in 2002, down slightly from 37,120 mt in 2001. Through October 11, 2002, commercial hook-and-line harvests of halibut in Alaska total 33,312 mt (round weight equivalents).

The major changes in the 2001 assessment results were: a separate treatment of Areas 2A and 2B in the assessment, whereas they had been previously combined; the incorporation of additional survey information in Areas 2C and 3A; and a revision in the estimate of halibut habitat in all areas. The separation of Areas 2A and 2B and some computational changes resulted in increased estimates of exploitable biomass in both areas. Exploitable biomass was estimated to be slightly lower in Area 2C and slightly higher in Area 3A as a result of these changes. Revisions of halibut habitat based on bottom areas were completed for all regulatory areas but the effect was minor, except in Area 4B, where the change resulted in an approximate 30 percent decrease in habitat.

The outlook for the stock biomass over the near future is for a slow decline from the record high levels of recent years due to lower recruitment associated with unfavorable environmental conditions for halibut recruitment. However, the halibut biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment may be found in the final 2001 SAFE report (November 2001) and in the IPHC's 2001 Pacific halibut stock assessment (December 2001). The 2002 Pacific halibut stock assessment for 2003 will be considered by the IPHC at its January 2003 annual meeting in setting the 2003 commercial halibut fishery quotas.

(E) Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for the groundfish fisheries. The 2003 GOA groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

Methods available for reducing halibut bycatch include:

(1) reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (§ 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (under § 679.2, Definitions, Authorized fishing gear number (12)) specify requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized fishing gear number (11)) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby possibly lowering overall halibut bycatch mortality in groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

Consistent with the goals and objectives of the FMP to reduce halibut bycatch while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group as these PSCs establish an upper limit on the impact of the groundfish fisheries on the commercial halibut fishery in the GOA. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut/sablefish IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery. NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommended, and NMFS proposes, that the halibut discard mortality rates (DMRs) recommended by the staff of the IPHC for the 2002 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2003 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the ''other species'' fishery, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery

for that gear type was recommended as a default rate. The DMRs proposed for 2003 are unchanged from those used in 2002 in the GOA. The proposed DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The proposed DMRs for trawl targeted fisheries range from 58 to 72 percent. The proposed DMRs for all pot targeted fisheries is 14 percent. The proposed 2003 DMRs are listed in Table 7.

Table 7 - Proposed 2003 Pacific Halibut Discard Mortality Rates for Vessels Fishing in the Gulf of Alaska (Listed values are percent of halibut bycatch assumed to be dead)

Gear and Target	Discard Mortality Rate
HOOK-AND-LINE	
Pacific cod	14
Rockfish	8
Other species	14
Sablefish	24
TRAWL	
Midwater pollock	72
Rockfish	69
Shallow-water flatfish	69
Pacific cod	61
Deep-water flatfish	60
Flathead sole	58
Rex sole	61
Bottom pollock	61
Arrowtooth Flounder	62
Atka mackerel	70
Sablefish	66
Other species	61
POT	
Pacific cod	14
Other species	14

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Non-exempt AFA Catcher Vessel Groundfish Harvest and PSC Limitations

Regulations that will be effective with the final rule to implement major provisions of the AFA in the GOA would place groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are necessary to protect the interests of fishermen and processors who have not directly benefitted from the AFA from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Under the AFA regulations, unrestricted AFA catcher/processors (§ 679.4(l)(2)(i)) are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. The AFA regulations would exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (§ 679.63(b)(1)(i)(B)).

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The AFA regulations would base the groundfish harvest limits in the GOA on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.63(b)(1)(ii)(C)). These amounts are listed in Table 8. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, would be deducted from the sideboard limits in Table 8.

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Table 8 - Proposed 2003 GOA Non-Exempt AFA Catcher Vessel (CV) Groundfish Harvest Limitations (Sideboards). (Values are in mt)

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995-1997 Non-Exempt AFA CV Catch to 1995-1997 TAC	2003 TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25	0.6112	2,916	1,782
	Shumagin (610)	0.1427		1,230
	Chirikof (620)	0.2438	8,618	274
	Kodiak (630)		1,122	
	B Season (W/C areas only)	0.6112		1,782
	March 10 - June 1	0.1427		1,230
	Shumagin (610)	0.2438	2,916	274
	Chirikof (620)		8,618	
	Kodiak (630)		1,122	
	C Season (W/C areas only)	0.6112		3,636
	August 25 - September 15	0.1427		414
	Shumagin (610)	0.2438	5,949	927
	Chirikof (620)		2,905	
	Kodiak (630)		3,803	
	D Season (W/C areas only)	0.6112		3,636
	October 1 - November 1	0.1427		414
	Shumagin (610)	0.2438		927
	Chirikof (620)		5,949	
	Kodiak (630)		2,904	
	Annual	0.3499	3,803	408
	WYK (640)	0.3499		2,260
	SEO (650)		1,165	
			6,460	

Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	7,979	1,135
	offshore	0.1026		91
	C inshore	0.0722	887	848
	offshore	0.0721	11,741	94
			1,305	
	B Season[2]			
	September 1 - December 31	0.1423		757
	W inshore	0.1026	5,320	61
	offshore	0.0722	591	565
	C inshore	0.0721	7,828	63
	offshore		869	
	Annual	0.0079		16
	E inshore	0.0078		2
	offshore		2,046	
			227	
Flatfish deep-water	W	0.0000	180	0
	C	0.0670	2,220	149
	E	0.0171	2,480	42
Rex sole	W	0.0010	1,280	1
	C	0.0402	5,540	223
	E	0.0153	2,650	41
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	130
	E	0.0048	2,280	11
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	2,920	37
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	772
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	446	0
	C trawl gear	0.0720	1,180	85
	WYK trawl gear	0.0488	280	14
Pacific Ocean perch	W	0.0623	2,630	164
	C	0.0866	8,290	718
	E	0.0466	2,380	111

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Shortraker / Rougheye	W C E	0.0000 0.0237 0.0124	220 840 560	0 20 7
Other rockfish	W C E	0.0034 0.2065 0.0000	90 550 350	0 114 0
Northern rockfish	W C	0.0003 0.0336	760 3,940	0 132
Pelagic shelf rockfish	W C E	0.0001 0.0000 0.0067	510 3,480 1,500	0 0 10
Thornyhead rockfish	W C E	0.0308 0.0308 0.0308	360 840 790	11 26 24
Demersal shelf rockfish	SEO	0.0020	350	1
Atka mackerel	Gulf wide	0.0309	600	19
Other species	Gulf wide	0.0090	11,103	100

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

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Regulations that will be effective with the final rule to implement major provisions of the AFA provide that PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.63(b)(1)(iii)). These amounts are shown in Table 9.

Table 9 - Proposed 2003 Non-Exempt AFA Catcher Vessel Prohibited Species Catch Limits for the GOA. (Values are in mt)

PSC Species	Target Fishery and Season	Ratio of 1995-1997 Non-Exempt AFA CV Retained Catch to Total Retained Catch	2003 PSC Limit	2003 Non-Exempt AFA Catcher Vessel PSC Limit
Halibut (mortality in mt)	Trawl 1st Seasonal Allowance January 20 - April 1			
	shallow water targets	0.340	450	153
	deep water targets	0.070	100	7
	Trawl 2nd Seasonal Allowance April 1- June 30			
	shallow water targets	0.340	100	34
	deep water targets	0.070	300	21
	Trawl 3rd Seasonal Allowance June 30 - Sept 1			
	shallow water targets	0.340	200	68
	deep water targets	0.070	400	28
	Trawl 4th Seasonal Allowance Sept 1 - October 1			
	shallow water targets	0.340	150	51
	deep water targets	0.070	0	0
	Trawl 5th Seasonal Allowance October 1 - December 31 all targets	0.205	300	62

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Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has initiated consultation on the effects of the 2003 harvest specifications on listed species, including the Steller sea lion, and designated critical habitat. This consultation will be completed in December 2002 before the start of the 2003 groundfish fishery. This consultation cannot be completed until new fishery information is available in late November.

NMFS prepared a draft EA that describes the impacts on the human environment that would result from implementation of the proposed harvest specifications. A final EA that describes the impacts on the human environment that will result from implementation of the final 2003 harvest specifications will be prepared after the public comment period and after the December 2002 Council meeting. The final EA will also incorporate the findings of the section 7 consultations under the ESA on the 2003 harvest specifications.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). This IRFA evaluated the effects of the proposed specifications on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that harvest fish under the terms of the specifications in the GOA. The IRFA identified 1,264 small catcher vessels and 16 small catcher/processors. Data on operating costs for these entities does not exist, so it is impossible to make estimates of net returns or cash flow. Changes in

estimated first wholesale gross revenues between the proposed 2003 specifications and estimated 2002 gross revenues (used as a baseline) were used as an index of adverse impact on small entities. The preferred alternative was found to have estimated aggregate gross revenues very similar to those in 2002. Therefore, this alternative was not found to have an adverse impact.

No projected additional reporting, recordkeeping and other compliance requirements exist in the proposed rule. No relevant Federal rules exist that may duplicate, overlap or conflict with the proposed rule.

The preferred alternative was compared to the four other alternatives usually evaluated during the specifications process. These alternatives are defined by the use of different harvest rates (F values). The other alternatives are, (a) Set F equal to maxFABC , (b) Set F equal to 50 percent of maxFABC, (c) Set F equal to the most recent five year average actual F, and (d) Set F equal to zero. The preferred alternative was associated with gross revenues very similar to those of alternative (a). The model was unable to discern a meaningful difference. The preferred alternative was found to generate gross revenues larger than those for alternatives (b), (c), and (d). Three of the alternatives examined, therefore, were found to have an adverse impact. The fourth was found, like the proposed specifications, to have no adverse impact.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31368 Filed 12–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122285–2285–01; I.D. 110602C]

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands; Proposed 2003 Harvest Specifications for Groundfish

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

ACTION: Proposed 2003 initial specifications for groundfish and associated management measures; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2003 initial harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process as conducted by the North Pacific Fishery Management Council (Council).

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by December 20, 2002. Copies of the final 2001 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2001, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail at *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background for the 2003 Proposed Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs, apportionments thereof, and prohibited species catch (PSC) allowances, and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 13 of this action satisfy these requirements. For 2003, the proposed sum of TACs is 1,998,540 mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2003 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its next meeting beginning December 2, 2002, and (3) considering new information presented in the EA, the final 2002 SAFE reports, and in the section 7 consultation prepared for the 2003 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each Community Development Quota (CDQ) reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21, become available at 0001 hours Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations that will be effective with the final rule to implement the Steller sea lion protection measures provide that the proposed first seasonal allowance for pollock, Pacific cod and Atka mackerel becomes available at 0001 hours, A.l.t., January 1 on an interim basis and remains in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. Interim TAC specifications and apportionments thereof for the 2003 fishing year will be published in a separate **Federal Register** notice.

Other Rules Affecting the 2003 Specifications

At its October 2002 meeting, the Council recommended the extension of the closure of the Aleutian Islands pollock fishery through 2003 as a precautionary component of the Steller sea lion protection measures implemented under separate rulemaking. The Council also indicated that they may consider apportionment of the TAC of several rockfish species in the Aleutian Islands subarea among the Eastern, Central and Western Aleutian districts. A final rule implementing regulatory provisions of the American Fisheries Act (AFA) will be published in the **Federal Register** and effective for 2003. In order to minimize confusion, the proposed specifications also identify sideboard amounts for the AFA fisheries that will be available under the final rule. Also, NMFS has initiated rulemaking to permanently implement the Steller sea lion protection measures for 2003 and beyond. To minimize confusion and provide clarity to the 2003 specification process, we have included in the proposed 2003 harvest specifications pollock, Pacific cod and Atka mackerel seasonal allowances that are consistent with the existing protection measures.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists.

The best information currently available is set forth in appendix A of the final SAFE report for the 2001 BSAI groundfish fisheries dated November 2001 (see **ADDRESSES**). Information on the status of stocks will be updated with the 2002 survey results and reconsidered by the Plan Team at its November 2002 meeting.

At their October 2002 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to project 2003 biomass amounts as identified in the 2001 SAFE for the proposed 2003 ABC, OFL, and TAC amounts. The SSC concurred with the Plan Team's recommendations, which included a new approach for updating the ABCs and OFLs by using an estimate of 2002 catch with the November 2001 SAFE report model projections of 2003 ABCs for groundfish stocks managed at tiers 1–3. This procedure results in closer approximations to the final 2003 specifications and therefore provides the Council and the public with better information. The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council also adopted the AP's recommendations for the 2003 proposed TACs to be set equal to the 2002 TACs, except for yellowfin sole, northern rockfish and Atka mackerel. Recognizing anticipated changes in the ABCs for these species, the AP recommended and the Council adopted a decrease in the TACs for yellowfin sole and northern rockfish and an increase in the Atka mackerel TAC. The Council adopted the AP's recommendation to use the 2002 PSC allowances for 2003. They will reconsider these amounts at the December 2002 Council meeting after new status of stocks information is incorporated by the Plan Team into a final SAFE report for the 2003 BSAI groundfish fishery. None of the Council's TAC recommendations for 2003 exceed the recommended ABC for any species category. Therefore, NMFS finds that the Council's recommendations for proposed 2003 OFLs, ABCs, and TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 2003 OFLs, ABC amounts, and TAC amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—PROPOSED 2003 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]

[All amounts are in mt]

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock [4]	Bering Sea (BS)[2]	2,594,000	2,088,880	1,485,000	1,283,040	148,500
	Aleutian Islands (AI) [2]	31,700	23,800	1,000	900	100
	Bogoslof District	46,400	4,310	100	90	10
Pacific cod	BSAI	292,680	252,020	200,000	170,000	15,000
Sablefish [5]	BS	3,150	2,100	1,930	821	265
	AI	4,190	2,770	2,550	541	431
Atka mackerel	BSAI	100,115	59,600	59,600	50,660	4,470
	Western AI		23,960	23,960	20,366	1,797
	Central AI		28,950	28,950	24,607	2,171
	Eastern AI/BS		6,690	6,690	5,687	502
Yellowfin sole	BSAI	135,630	114,370	76,000	64,600	5,700
Rock sole	BSAI	242,585	203,870	54,000	45,900	4,050
Greenland turbot	BSAI	33,370	27,590	8,000	6,800	600
	BS		18,485	5,360	4,556	402
	AI		9,105	2,640	2,244	198
Arrowtooth flounder	BSAI	120,010	99,285	16,000	13,600	1,200
Flathead sole	BSAI	90,850	74,440	25,000	21,250	1,875
Other flatfish [6]	BSAI	21,800	18,100	3,000	2,550	225
Alaska plaice	BSAI	170,915	142,070	12,000	10,200	900

TABLE 1.—PROPOSED 2003 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]—Continued

[All amounts are in mt]

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pacific ocean perch	BSAI	17,850	15,060	14,800	12,580	1,110
	BS		2,666	2,620	2,227	197
	Western AI		5,759	5,660	4,811	425
	Central AI		3,114	3,060	2,601	230
	Eastern AI		3,521	3,460	2,941	260
Northern rockfish	BSAI	5,580	4,700			
	BS			13	11	1
	AI			4,687	3,984	352
Shortraker/rougheye	BSAI	1,369	1,028			
	BS			116	99	9
	AI			912	775	68
Other rockfish [7]	BS	482	361	361	307	27
	AI	901	676	676	575	51
Squid	BSAI	2,620	1,970	1,970	1,675	
Other species [8]	BSAI	78,900	39,100	30,825	26,201	2,312
TOTAL		3,995,097	3,176,100	1,998,540	1,770,618	187,225

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. The Aleutian Islands (AI) subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season, sector or put into a reserve.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The AFA requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. NMFS then subtracts 4 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of the TAC is further allocated by sector as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (*see* § 679.20(b)(1)(iii)).

[6] ''Other flatfish'' includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] ''Other species'' includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the ''other species'' category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the proposed 2003 TAC for this species be fully allocated among the CDQ program, the ICA, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a prohibited species quota (PSQ) reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under section 206(b) of the AFA, NMFS allocates a pollock ICA of 4 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1997 through 2001. During this 4-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998, to a high of about 6 percent in 1997, with a 4-year average of 4 percent. Because these incidental percentages are contingent on the relative amounts of other groundfish TACs, NMFS will be better able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December. Under regulations at § 679.24(b)(4), the use of nonpelagic trawl gear is prohibited in the directed fishery for non-CDQ pollock in the BSAI.

The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing.

Pollock Allocations Under the AFA

Section 206(a) of the AFA requires that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows; 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for

processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These amounts are listed in Table 2.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, paragraph 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest by offshore catcher vessels, listed in section 208(b), harvesting pollock for processing by offshore catcher/processors listed in section 208(e). Second, catcher/processors eligible to fish for pollock, as specified under paragraph 208(e)(21) of the AFA, are prohibited from harvesting in the aggregate a total of more than one-half of one percent (0.5 percent) of the pollock allocated to vessels for processing by offshore catcher/processors. Table 2 lists theproposed 2003 allocations of pollock TAC as described by the AFA. Other provisions of the AFA, including inshore pollock cooperative allocations and unrestricted catcher processor and catcher vessel harvest limitations, are found in Tables 8 through 13.

Table 2 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(11)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These proposed amounts, by sector, are listed in Table 2.

TABLE 2.—PROPOSED ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[All amounts are in mt]

Area and sector	2002 DFA	A/B Season [1]		C/D Season [1]
		A/B DFA (40% of annual DFA)	A SCA limit [2]	C/D DFA (60% of annual DFA)
Bering Sea subarea	1,485,000	.....	.....	.....
CDQ	148,500	59,400	41,580	89,100
ICA [3]	53,460	.....	.....	.....
AFA Inshore	641,520	256,608	179,626	384,912
AFA Catcher Processors [4]	513,216	205,286	143,700	307,930
Catch by C/Ps	469,593	187,837	.....	281,756
Catch by CVs [4]	43,623	17,449	.....	26,174
Restricted C/P cap [5]	2,566	1,026	.....	1,540
AFA Motherships	128,304	51,322	35,925	76,982
Excessive shares cap [6]	224,532	.....	.....	.....
Aleutian Islands: ICA [7]	900			
Bogoslof District: ICA [7]	90			

[1] After subtraction for the CDQ reserve and the ICA, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A/B season, January 20—June 10, is allocated 40 percent of the DFA and the C/D season, June 10—November 1 is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] The pollock ICA for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[4] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[6] Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[7] The Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 to April 15 ("A" season), and the second seasonal allowance is made available from September 1 to November 1 ("B" season)(Table 3). Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA in the Western and Central Aleutian Districts west of 178 degrees W long. is prohibited during the Atka mackerel HLA directed fisheries. Atka mackerel fishing is prohibited in critical habitat east of 178 degrees W. long. to provide maximum protection to Steller sea lions and because Atka mackerel is readily available in waters outside of critical habitat.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria,

including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea be allocated to the jig gear fleet in 2003. Based on an ITAC of 15,170 mt, the jig gear allocation would be 152 mt.

A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas (§ 679.20(a)(8)(iii)).

TABLE 3.—PROPOSED 2003 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1] [2]

Subarea & component	TAC	CDQ reserve	ITAC	Seasonal apportionment [3]			
				A Season [4]		B Season [5]	
				Total	HLA Limit [6]	Total	HLA Limit [6]
Western Aleutian District	23,960	1,797	20,366	10,183	6,110	10,183	6,110
Central Aleutian District	28,950	2,171	24,607	12,304	7,382	12,304	7,382
Eastern AI/BS subarea [7]	6,690	502	5,687	.....	.....	.....	.....
Jig (1%) [8]	.....	.....	57	.....	.....	.....	.....
Other gear (99%)	.....	.....	5,630	2,815	.....	2,815	.....
Total	59,600	4,470	50,660	25,302	.....	25,302	.....

[1] Amounts are in mt.
[2] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a)(8) establish temporal and spatial limitations for the Atka mackerel fishery.
[3] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.
[4] The A season is January 1 through April 15.
[5] The B season is September 1 through November 1.
[6] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.
[7] Eastern Aleutian District and the Bering Sea subarea.
[8] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AIeutian District and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The proposed amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, NMFS proposes an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following directed fishing allowances: 80 percent to hook-and-line catcher processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are temporally dispersed by the apportionment of the ITAC into two seasonal allowances (§§ 679.23(e)(6) and 679.20(a)(7)). For most non-trawl gear the first allowance, 60 percent of the ITAC, is made available for directed fishing from January 1 to June 10, and the second seasonal allowance, 40 percent of the ITAC, is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 4 lists the proposed 2003 allocations and seasonal apportionments of the Pacific cod ITAC. NMFS and the Council propose that any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 4.—2003 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of gear sector total (mnt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	86,700				
Incidental Catch Allowance ..				500		

TABLE 4.—2003 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC—Continued

Gear sector	Percent	Share of gear sector total (mnt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[1]	
					Date	Amount (mt)
Processor and Vessel subtotal.		86,200				
Hook-and-line Catcher Processors.			80	68,960	Jan 1–Jun 10	41,376
					Jun 10–Dec. 31	27,584
Hook-and-Line Catcher Vessels.			0.3	259	Jan 1–Jun 10	155
					Jun 10–Dec 31	104
Pot Gear Vessels			18.3	15,775	Jan 1–Jun 10	9,465
					Sept 1–Dec 31	6,310
Catcher Vessels <60 feet LOA using Hook-and-line or Pot gear.			1.4	1,207		
Trawl gear Total	47	79,900				
Trawl Catcher Vessel			50	39,950	Jan 20–Apr 1	27,965
					Apr 1–Jun 10	3,995
					Jun 10–Nov 1	7,990
Trawl Catcher Processor			50	39,950	Jan 20–Apr 1	19,975
					Apr 1–Jun 10	11,985
					Jun 10–Nov 1	7,990
Jig	2	3,400			Jan 1–Jun 10	2,040
					Jun 10–Dec 31	1,360
Total	100	170,000				

[1] For non-trawl gear the first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the TAC and the second and third seasons are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed 2003 ITAC of 775 mt, the trawl allocation would be 543 mt and the non-trawl allocation would be 232 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the BS and AI subareas be allocated between trawl and hook-and-line or pot gear types. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear, and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be reserved as sablefish CDQ. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be reserved as groundfish CDQ. Proposed 2003 gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—PROPOSED 2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea & Gear	Percent of TAC	Share of TAC (mt)	ITAC (mt)[1]	CDQ Reserve
Bering Sea:				
Trawl[2]	50	965	821	72
Hook-&-line/pot gear[3]	50	965	N/A	193
Total	100	1,930	821	265
Aleutian Islands:				
Trawl[2]	25	637	541	48
Hook-&-line/pot gear[3]	75	1,913	N/A	383
Total	100	2,550	541	431

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch Limits for Halibut, Crab, Salmon, and Herring

Due to the lack of new information concerning PSC limits and apportionments, the Council at its October 2002 meeting recommended using the halibut, crab and herring 2002 PSC amounts for the proposed 2003 amounts. The Council will reconsider these amounts in December based on recommendations by the Plan Team and the SSC. Regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of chinook salmon PSC limits until the final limit is reached in 2004. For 2003, the chinook salmon PSC limit for the pollock fishery is 33,000 fish.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of mortality of Pacific halibut and for non-trawl fisheries, the limit is 900 mt mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 2003, the proposed PSC limit of red king crab in Zone 1 for trawl vessels is 97,000 animals. Based on the criteria set out at § 679.21(e)(1)(ii), the number of mature female red king crab was estimated in 2002 to be above 8.4 million animals, and the effective spawning biomass is estimated to be 14.5 million pounds (6,577 mt), which is less than the 55 million pound (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/ ''other flatfish'' fishery category and must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended and NMFS proposes a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/ ''other flatfish'' fishery category within the RKCSS.

Based on 2001 survey data, *C. bairdi* abundance is estimated to be 624 million crab. Given the criteria set out at § 679.21(e)(1)(iii) and the 2001 survey data, the proposed 2003 *C. bairdi* PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* abundance estimate exceeding 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2001 survey estimate of 3.86 billion animals, the calculated limit would be 4,373,380 animals. Because this limit is less than 4.5 million animals, under § 679.21(e)(1)(iv)(B) the proposed 2003 *C. opilio* PSC limit is 4,350,000 animals.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS's best estimate of 2002 herring biomass is 152,574 mt. This amount was derived using 2001 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 2003 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS after consultation with the Council, is proposing to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 2002, total groundfish catch for the pot gear fishery in the BSAI was approximately 13,989 mt with an associated halibut bycatch mortality of about 7 mt. The 2002 groundfish jig gear fishery harvested about 172 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in less halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 2002 has not been calculated, but NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC allowances. At its October 2002 meeting, the Council proposed no seasonal apportionments, except for the trawl bycatch allowance for halibut bycatch specified for the rockfish trawl fishery. The intent of this proposal was to reduce halibut bycatch during the first quarter when it is the highest. NMFS anticipates that the Council will recommend additional seasonal apportionments during its December 2002 meeting.

TABLE 6.—PROPOSED 2003 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [2]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
Rock sole/other flat/flathead sole [3]	779	20	59,782	969,130	365,320	596,154
RKCSS [3]	.....	.....	20,924	.....	.....	.....

TABLE 6.—PROPOSED 2003 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

Trawl fisheries	Prohibited species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [2]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Turbot/arrowtooth/sablefish [4]	.....	9	.....	40,238	.....	.....
Rockfish: July 1—December 31	69	7	.....	40,237	.....	10,988
Pacific cod	1,434	20	11,664	124,736	183,112	324,176
Midwater trawl pollock	.....	1,184	.....	.....	.....	.....
Pollock/Atka mackerel/other [5]	232	46	1,615	72,428	17,224	27,473
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries						
Pacific cod—Total	775					
Other non-trawl—Total	58					
Groundfish pot & jig exempt	([7])					
Sablefish hook-&-line exempt	([7])					
Total Non-Trawl	833					
PSQ Reserve [6]	342	.....	7,275	326,250	73,500	222,750
Grand Total	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] The Council at its October 2002 meeting proposed that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)). ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[6] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.
[7] Exempt.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council recommended and NMFS proposes that the Preseason Assumed halibut discard mortality rates (DMRs) developed by staff of the International Pacific Halibut Commission (IPHC) for the 2002 BSAI groundfish fisheries be used for purposes of monitoring halibut bycatch allowances established for 2003 (Table 7). Results from analysis of halibut release condition data for 2000 showed continued stability in halibut DMRs for many fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. For 2002, Preseason Assumed DMRs were used, which included use of the long-term mean DMR for a 3-year period before revisions are proposed, except for the BSAI hook-and-line Pacific cod fishery and CDQ fisheries, for which annual DMRs were used. The IPHC will continue to conduct annual analyses of observer data and recommend changes to the DMRs where a fishery DMR shows large variation from the mean and for the CDQ fisheries. For 2002, the BSAI hook-and-line Pacific cod fishery DMR did not change; but the CDQ fishery DMRs were adjusted. The justification for these mortality rates is discussed in the final SAFE report dated November 2001. The proposed mortality rates listed in Table 7 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2002 meeting.

TABLE 7.—PROPOSED 2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	25
Pacific cod	12
Greenland turbot	18
Sablefish	22
Other Species	12
Trawl gear fisheries:	
Midwater pollock	84
Nonpelagic pollock	76
Yellowfin sole	81
Rock sole	76
Flathead sole	67
Other flatfish	71
Rockfish	69
Pacific cod	67
Atka mackerel	75
Greenland turbot	70
Sablefish	50
Other species	67
Pot gear fisheries:	
Pacific cod	8
Other species	8
CDQ Trawl fisheries:	
Atka mackerel	89
Flathead sole	83
Midwater pollock	88
Nonpelagic pollock	90

TABLE 7.—PROPOSED 2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Preseason assumed mortality (percent)
Rockfish	89
Yellowfin sole	77
CDQ Hook-and-line fisheries:	
Pacific cod	13
Greenland turbot	14
CDQ Pot fisheries:	
Pacific cod	7
Sablefish	38

Bering Sea Subarea Inshore Pollock Allocations

The final rule to implement major provisions of the AFA at § 679.4, will set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives. Table 8 lists the proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2002 cooperative allocations and NMFS' assumption, at this date, that the cooperatives membership will remain unchanged in 2003. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised pending adjustments to cooperatives' membership prior to 2003.

TABLE 8.—PROPOSED 2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (percent)	Annual co-op allocation
Akutan Catcher Vessel Association: Aldebaran, Arctic Explorer, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Exodus, Flying Cloud, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggy Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	245,527	28.085	180,169
Arctic Enterprise Association: Bristol Explorer, Ocean Explorer, Pacific Explorer	36,807	4.210	27,009
Northern Victor Fleet Cooperative: Anita J, Collier Brothers, Commodore, Excalibur II, Goldrush, Half Moon Bay, Miss Berdie, Nordic Fury, Pacific Fury, Poseidon, Royal Atlantic, Sunset Bay, Storm Petrel	73,656	8.425	54,049
Peter Pan Fleet Cooperative: Amber Dawn, American Beauty, Elizabeth F, Morning Star, Ocean Leader, Oceanic, Providian, Topaz, Walter N	18,693	2.138	13,717
Unalaska Cooperative: Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, Ms Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.209	78,324
UniSea Fleet Cooperative: Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite	201,566	23.056	147,910
Westward Fleet Cooperative: A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Dona Martita, Fierce Allegiance, Hickory Wind, Ocean Hope 3, Pacific Knight, Pacific Prince, Starward, Viking, Westward I	189,544	21.681	139,089
Open access AFA vessels	1,707	0.195	1,252
Total inshore allocation	874,238	100	641,520

[1] According to regulations that will be effective with the final rule to implement major provisions of the AFA at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

When the final rule to implement major provisions of the AFA at § 679.20(a)(5)(i)(A) is published, NMFS intends to subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (*i.e.,* the open access sector). In addition, under § 679.22(a)(11)(vii), NMFS intends to establish harvest limits inside the Steller sea lion conservation area (SCA) and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 9 lists the proposed apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 9. These proposed allocations may be revised pending final review and approval of 2003 cooperative agreements.

TABLE 9.—PROPOSED 2003 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY.

[Amounts are expressed in MT]

	A/B season TAC	A season SCA [1]	C/D season TAC
Cooperative sector:			
Vessels > 99 ft	n/a	154,025	n/a
Vessels < 99 ft	n/a	25,250	n/a
Total	256,107	179,275	384,161
Open access sector	501	[2] 351	751
Total inshore	256,608	179,626	384,912

[1] Steller sea lion conservation area established at § 679.22(a)(11)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(vii)(C)(2) which specifies that ''the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening.''

Unrestricted AFA Catcher/Processor Sideboards

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish will change from calculations made for sideboards in 2000 through 2002. The Council made a distinction between retained and total catch for the purpose of calculating sideboard limits and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. The catcher/processor sideboard limits for BSAI groundfish other than Atka mackerel will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which will be based on 1997 retained catch only and Pacific ocean perch in the Aleutian Islands subarea which will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians district's annual TAC, 11.5 percent of the Central Aleutian district's annual TAC, and 20 percent of the Western Aleutian district's annual TAC.

The basis for these sideboard limits is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). The proposed 2003 catcher/processor sideboard limits are set out in Table 10 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 10. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the proposed 2003 sideboard limits for the listed catcher/processors.

TABLE 10.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are Expressed in MT]

Target species	Area	1995–1997			Proposed 2003 ITAC available to trawl C/Ps	Proposed 2003 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	12,424	51,450	0.241	39,950	9,628
Sablefish trawl	BS	8	1,736	0.005	821	4
	AI	0	1,135	0.000	541	0
Atka mackerel	Western AI:					
	A season [1]	n/a	n/1	0.200	10,183	2,037
	HLA limit [1]					1,222
	B season	n/a	n/a	0.200	10,183	2,037
	HLA Limit[2]					1,222
	Central AI:					
	A season [1]	n/a	n/a	0.115	12,304	1,415
	HLA limit					849
	B season	n/a	n/a	0.115	12,304	1,415
	HLA limit					849
Yellowfin sole	BSAI	100,192	527,000	0.190	64,600	12,274
Rock sole	BSAI	6,317	202,107	0.031	45,900	1,423
Greenland turbot	BS	121	16,911	0.007	4,556	32
	AI	23	6,839	0.003	2,244	7
Arrowtooth flounder	BSAI	76	36,873	0.002	13,600	27
Flathead sole	BSAI	1,925	87,975	0.022	21,250	468
Alaska plaice	BSAI	3,243	0.035	10,200	357	
Other flatfish	BSAI	3,243	92,428	0.035	2,550	89
Pacific ocean perch	BS	12	5,760	0.002	2,227	4

TABLE 10.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

[Amounts are Expressed in MT]

Target species	Area	1995–1997			Proposed 2003 ITAC available to trawl C/Ps	Proposed 2003 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
	Western AI	54	12,440	0.004	4,811	19
	Central AI	3	6,195	0.000	2,601	0
	Eastern AI	125	6,265	0.020	2,941	59
Northern rockfish	BS	8	.....	0.008	11	0
	AI	83	13,254	0.006	3,984	24
Shortraker/rougheye	BS	8	.....	0.008	99	1
	AI	42	2,827	0.015	775	12
Other rockfish	BS	18	1,026	0.018	307	6
	AI	22	1,924	0.011	575	6
Squid	BSAI	73	3,670	0.020	1,675	34
Other species	BSAI	553	65,925	0.008	26,201	210

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian district and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian district, and 11.5 percent of the available TAC in the Central Aleutian district.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

The final rule to implement major provisions of the AFA at § 679.63(a)(2) will establish a formula for PSC sideboard limits for unrestricted AFA catcher/processors. These amounts are expected to be equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 11. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which were then used to determine the prohibited species sideboard limits for unrestricted AFA catcher/processors in the 2003 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 11 would accrue against the proposed 2003 PSC limits for the listed catcher/processors. Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.21(e)(3)(v) provide NMFS with the authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once a proposed 2003 PSC limitation listed in Table 11 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under the final rule to implement major provisions of the AFA at § 679.21(e).

TABLE 11.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS[1]

PSC species	1995–1997			Proposed 2003 PSC available to trawl vessels	Proposed 2003 C/P limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboards

The final rule to implement major provisions of the AFA at § 679.63(b) will establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). For 2002, NMFS revised the ratio 2001 of 1995 to 1997 AFA catcher vessel retained catch to the 1995 to 1997 TAC. These revisions are based on ADF&G editing of fish tickets and NMFS editing of observer catch data and weekly production reports. The proposed 2003 AFA catcher vessel sideboard limits are shown in Tables 12 and 13.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits listed in Table 12.

TABLE 12.—PROPOSED 2003 BSAI AFA CATCHER VESSEL SIDEBOARDS.

[Amounts Are Expressed in MT]

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2003 Initial TAC	Proposed 2003 catcher vessel sideboard limits
Pacific cod:			
BSAI:			
jig gear	0.0000	3,400	0
Hook-and-line CV:			
Jan 1–Jun 10	0.0006	155	0
Jun 10–Dec 31	0.0006	103	0
Pot gear:			
Jan 1—Jun 10	0.0006	9,465	6
Sept 1–Dec 31	0.0006	6,310	4
CV < 60 feet LOA	0.0006	1,207	0
Using hook-and-line or Pot gear			
Trawl gear			
Catcher vessel:			
Jan 20—Apr 1	0.8609	27,965	24,075
Apr 1–Jun 10	0.8609	3,995	3,439
Jun 10–Nov 1	0.8609	7,990	6,879
Sablefish:			
BS trawl gear	0.0906	821	74
AI trawl gear	0.0645	541	35
Atka mackerel:			
Eastern AI/BS: jig gear	0.0031	57	0
Other gear:			
Jan 1–Apr 15	0.0032	2,815	9
Sept 1–Nov 1	0.0032	2,815	9
Central AI:			
Jan–Apr 15	0.0001	12,304	1
HLA limit	0.0001	7,382	1
Sept 1–Nov 1	0.0001	12,304	1
HLA limit	0.0001	7,382	1
Western AI:			
Jan–Apr 15	0.0000	10,183	0
HLA limit	0.0000	6,110	0
Sept 1–Nov 1	0.0000	10,183	0
HLA limit	0.0000	6,110	0
Yellowfin sole:.			
BSAI	0.0647	64,600	4,180
Rock sole:.			
BSAI	0.0341	45,900	1,565
Greenland Turbot:			
BS	0.0645	4,556	294
AI	0.0205	2,244	46
Arrowtooth flounder:.			
BSAI	0.0690	13,600	938
Alaska plaice:.			
BSAI	0.0441	10,200	450
Other flatfish:.			
BSAI	0.0441	2,550	112
Pacific ocean perch:			
BS	0.1000	2,620	262
Eastern AI	0.0077	2,941	23
Central AI	0.0025	2,601	7
Western AI	0.0000	4,811	0
Northern rockfish:			
BS	0.0280	11	0
AI	0.0089	3,984	35
Shortraker/Rougheye:			
BS	0.0048	99	0
AI	0.0035	775	3
Other rockfish:			
BS	0.0048	307	1
AI	0.0095	575	5
Squid:.			
BSAI	0.3827	1,675	641
Other species:.			

TABLE 12.—PROPOSED 2003 BSAI AFA CATCHER VESSEL SIDEBOARDS.—Continued

[Amounts Are Expressed in MT]

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2003 Initial TAC	Proposed 2003 catcher vessel sideboard limits
BSAI	0.0541	26,201	1,417
Flathead Sole:.			
BS trawl gear	0.0505	21,250	1,073

The final rule to implement major provisions of the AFA at § 679.63(b) will establish a formula for PSC sideboard limits for AFA catcher vessels. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These proposed PSC sideboard limits are listed in Table 13.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 13 will accrue against the proposed 2003 PSC limits for the AFA catcher vessels. The final rule to implement major provisions of the AFA at § 679.21(d)(8) and (e)(3)(v) will provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a proposed 2003 PSC limitation listed in Table 13 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 13.—PROPOSED 2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI[1]

PSC species and target fishery category[2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Proposed 2003 PSC Limit	Proposed 2003 AFA catcher vessel PSC sideboard limit
Halibut:			
Pacific cod trawl	0.6183	1,434	887
Pacific cod hook-and-line or pot	0.0022	775	2
Yellowfin sole	0.1144	886	101
Rock sole/flat. sole/other flatfish[5]	0.2841	779	221
Turbot/Arrowtooth/Sablefish	0.2327	0	0
Rockfish	0.0245	69	2
Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab Zone 1:[4]			
Pacific cod	0.6183	11,664	7,212
Yellowfin sole	0.1144	16,664	1,906
Rock sole/flat. sole/other flatfish[5]	0.2841	59,782	16,984
Pollock/Atka mackerel/Other sp.	0.0227	1,615	37
C. opilio—COBLZ:[3]			
Pacific cod	0.6183	124,736	77,124
Yellowfin sole	0.1144	2,776,981	317,687
Rock sole/flat. sole/other flatfish[5]	0.2841	969,130	275,330
Pollock/Atka mackerel/Other sp.	0.0227	72,428	1,644
Rockfish	0.0245	40,237	986
Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
C. bairdi—Zone 1:			
Pacific cod	0.6183	183,112	113,218
Yellowfin sole	0.1144	340,844	38,993
Rock sole/flat. sole/other flatfish[5]	0.2841	365,320	103,787
Pollock/Atka mackerel/Other sp.	0.0227	17,224	391
C. bairdi—Zone 2:			
Pacific cod	0.6183	324,176	200,438
Yellowfin sole	0.1144	1,788,459	204,600
Rock sole/flat. sole/other flatfish[5]	0.2841	596,154	169,367
Pollock/Atka mackerel/Other sp.	0.0227	27,473	624
Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.

[4] The Council at its October 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/''other flatfish'' fishery category (§ 679.21(e)(3)(ii)(B)).

[5] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has initiated consultation on the effects of the 2003 harvest specifications on listed species, including the Steller sea lion, and designated critical habitat. This consultation will be completed in December 2002 before the start of the 2003 groundfish fishery. This consultation cannot be completed until new fishery information is available in late November.

NMFS prepared a draft EA that describes the impacts on the human environment that would result from implementation of the proposed harvest specifications. A final EA that describes the impacts on the human environment that will result from implementation of the final 2003 harvest specifications will be prepared after the public comment period and after the December 2002 Council meeting. The final EA will also incorporate the findings of the section 7 consultations under the ESA on the 2003 harvest specifications.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). This IRFA evaluated the effects of the proposed specifications on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that harvest fish under the terms of the specifications in the BSAI. The IRFA identified 193 small catcher vessels, 31 small catcher/processors, and six small CDQ groups.

Data on operating costs for these entities does not exist, so it is impossible to make estimates of net returns or cash flow. Changes in estimated first wholesale gross revenues between the proposed 2003 specifications and estimated 2002 gross revenues (used as a baseline) were used as an index of adverse impact on small entities. The preferred alternative was found to have estimated aggregate gross revenues very similar to those in 2002. Therefore, this alternative was not found to have an adverse impact.

No projected additional reporting, record keeping and other compliance requirements exist in the proposed rule. No relevant Federal rules exist that may duplicate, overlap or conflict with the proposed rule.

The preferred alternative was compared to the four other alternatives usually evaluated during the specifications process. These alternatives are defined by the use of different harvest rates (*F* values). The other alternatives are, (a) Set *F* equal to $maxF_{ABC}$, (b) Set *F* equal to 50% of $maxF_{ABC}$, (C) Set *F* equal to the most recent five year average actual *F*, and (d) Set *F* equal to zero. The preferred alternative was associated with gross revenues very similar to those of alternative (a). The model was unable to discern a meaningful difference. The preferred alternative was found to generate gross revenues larger than those for alternatives (b), (c), and (d). Three of the alternatives examined, therefore, were found to have an adverse impact. The fourth was found, like the proposed specifications, to have no adverse impact.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31369 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 67, No. 239

Thursday, December 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–060–2]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the control of rush skeletonweed (*Chondrilla juncea*). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous organism, Chondrilla root moth (*Bradyrrhoa gilveolella*), into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Robert V. Flanders, Branch Chief, Pest Permit Evaluation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5930.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from the University of Montana for a permit to release a nonindigenous organism, Chondrilla root moth (*Bradyrrhoa gilveolella*), to reduce the severity of rush skeletonweed (*Chondrilla juncea*) in the continental United States.

Native to Eurasia, rush skeletonweed has become established in the District of Columbia and several States including California, Delaware, Georgia, Idaho, Indiana, Maryland, Michigan, Montana, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. This invasive weed infests roadsides, railways, rangelands, pastures, grain fields, coastal sand dunes, and shaley hillsides in mountainous regions. Rush skeletonweed causes losses in infested grain fields, reduces rangeland forage production, and reduces plant and animal diversity.

On July 25, 2002, we published in the **Federal Register** (67 FR 48610–48611, Docket No. 02–060–1) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential effects of the release of the Chondrilla root moth into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. Chondrilla root moth larvae feed on the roots of rush skeletonweed, causing the plant to die or increasing its susceptibility to pathogenic fungi.

We solicited comments on the EA for 30 days ending on August 26, 2002. We received one comment by that date. The commenter supported the proposed action.

In this document, we are advising the public of APHIS' record of decision and finding of no significant impact (FONSI) regarding the proposed field release of the Chondrilla root moth into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. The decision, which is based on the analysis found in the EA, reflects our determination that release of the organism will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppq* by following the link for ''Documents/Forms Retrieval System'' then clicking on the triangle beside ''6—Permits—Environmental Assessments,'' and selecting document number 0037. You may request paper copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment and finding of no significant impact are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC this 6th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31308 Filed 12–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 10, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202)720–9550. FAX: (202)720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202)720–4120.

Title: RUS Specification for Quality Control and Inspection of Timber Products.

OMB Control Number: 0572–0076.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: 7 CFR 1728.202 and RUS Bulletin 1728H–702 describe the responsibilities and procedures pertaining to the quality control by producers and pertaining to inspection of timber products produced in accordance with RUS specifications. In order to ensure the security of loan funds, adequate quality control of timber products is vital to loan security on electric power systems where hundreds of thousands of wood poles and crossarms are used. Since RUS and its borrowers do not have the expertise or manpower to quickly determine imperfections in the wood products or their preservatives treatments, they must obtain services of an inspection agency to insure that the specifications for wood poles and crossarms are being met.

Estimate of Burden: This collection of information is estimated to average 1 hour per response.

Respondents: Not-for-profit institutions; business or other for profit.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 58.

Estimated Total Annual Burden on Respondents: 40,763 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202)690–1078. FAX: (202)720–4120

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 6, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–31363 Filed 12–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Postsecondary Internship Program Intern Evaluation Survey

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Carin Otero, Postsecondary Internship Program Officer, Room 6022, 1401 Constitution Avenue, NW., Washington, DC 20230, (202) 482–1445. In addition, written comments may be sent via the Internet at *COtero1@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Executive Assistance Management (OEBAM) manages the U.S. Department of Commerce (DOC) Postsecondary Internship Program. The program is competitively awarded and funded by cooperative agreements with the purpose of providing experiential training opportunities for postsecondary students at DOC and other Federal agencies. The program is administered through a partnership between DOC and non-profit and/or educational institutions. This information collection would allow DOC management to evaluate and analyze the performance of the Postsecondary Internship Program and our diversity efforts to reach out to under-represented ethnic and racial communities. The information will be used for program management, strategic planning, allocation of resources and performance measures. The survey is part of DOC's efforts to implement objectives of the National Performance Review, Government Performance and Results Act and the President's Management Agenda.

II. Method of collection

The survey is conducted in paper form.

III. Data

OMB Number: 0690–0021.

Form Numbers: CD 577.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 110.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Respondent Burden Hours: 55.

Estimated Total Annual Cost to the Public: None.

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 will have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) 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, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31263 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–BV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Survey of Occupants, First Responders, and Families of Victims of World Trade Center 1, 2, and 7.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 3,100.

Number of Respondents: 2,300.

Average Hours Per Response: 1 hour for the questionnaire; and 2 hours for interview participation.

Needs and Uses: NIST will be conducting the Investigation as requested under the WTC Report issued by Congress on February 8, 2002. The objectives of the NIST World Trade Center Investigation are to: (1) Determine technically, why and how the buildings, WTC 1, 2, and 7, collapsed following the initial impact of the aircraft; (2) determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response; (3) determine the procedures and practices that were used in the design, construction, operation, and maintenance of the World Trade Center Buildings; and (4) identify, as specifically as possible, building and fire codes, standards, and practices that warrant revision and are still in use. The proposed information collection will consist of questionnaire and interview segments. This information will be used to develop or refute investigatory hypotheses, support modeling results, and record events inside the buildings which cannot otherwise be determined. This information must be conducted in a timely manner in order to facilitate dissemination to other aspects of the Investigation, including structural analysis, emergency personnel response, thermal environment and interior tenability, and egress and human behavior analysis.

Affected Public: Individuals and households (present at the World Trade Center Complex on the morning of September 11, 2001).

Frequency: One-time.

Respondent Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 66625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by December 20, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31264 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(27F)–48–02]

Foreign-Trade Zone 15—Kansas City, MO Redesignation of Foreign-Trade Subzone 15D

Based on a request by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, for a minor modification of the grant of authority for FTZ Subzone 15D at the Bayer Corporation facilities (Board Order 440, 54 FR 38413, 9/18/89, as expanded by Board Order 1061, 64 FR 63786, 11/22/99), Subzone 15D, Sites 2 and 3, are designated as Subzone 17B. Subzone 15D, comprised of only Site 1, will be operated by Bayer Corporation's Bayer CropScience group. New Subzone 17B, comprised of Sites 2 and 3 from SZ 15D, will be operated by Bayer Corporation's Bayer Health Care group. The authority for the sites, now designated as Subzone 17B, will continue to be based on the FTZ Board's authorization in Board Order 440 and 1061.

Dated: December 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31377 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(27F)–50–02]

Foreign-Trade Zone 122—Corpus Christi, TX Redesignation of Foreign-Trade Subzone 122A

Based on a request by the Port of Corpus Christi Authority, grantee of FTZ 122, for a minor modification of the grant of authority for FTZ Subzone 122A, at the former Coastal refinery, in Nueces County, Texas, Subzone 122A is redesignated as Site 2 and Site 3 of Subzone 122J, Valero Refining Company (Valero). Valero has leased the refinery from Coastal and will operate the facilities under one subzone operating system. The authority for both subzones has most recently been amended by Board Order 1116 (65 FR 52696, 8/30/00), and the authority for Subzone 122J will continue to be based on the authority in Board Order 1116, including its conditions and restrictions.

Dated: December 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31378 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests by certain producers/exporters of subject

merchandise and by L.R. Enterprises, Inc., a domestic producer of subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile for the period of review July 1, 2001, through June 30, 2002. We are now rescinding this review with respect to 72 companies for which L.R. Enterprises, Inc., withdrew its request for an administrative review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Carol Henninger, at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2002).

Background

On July 1, 2002, the Department issued a notice of opportunity to request the fourth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 44172 (July 1, 2002). On July 31, 2002, in accordance with 19 CFR 351.213(b), L.R. Enterprises, Inc., requested a review of 90 producers/exporters of fresh Atlantic salmon. Also, on July 31, 2002, Cultivos Marinos Chiloe Ltda. (Cultivos Marinos), Pesquera Eicosal Ltda. (Eicosal), Cultivadora de Salmones Linao Ltda. (Linao), Salmones Tecmar S.A. (Tecmar), Fiordo Blanco S.A. (Fiordo Blanco), Salmones Friosur S.A. (Friosur), Salmones Mainstream S.A. (Mainstream), Marine Harvest Chile S.A. (Marine Harvest), Salmones Multiexport Ltda. (Multiexport), Salmones Pacifico Sur S.A. (Pacifico Sur), Pesca Chile S.A. (Pesca Chile), and Salmones Pacific Star Ltda. (Pacific Star) each requested its own review. L.R. Enterprises had requested a review of each of these companies.

On August 27, 2002, the Department published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

On September 5, 2002, L. R. Enterprises, Inc., withdrew its review request for all companies except: (1) Asesoria Acuicola S.A.; (2) Best Salmon/Skyring Salmon S.A.; (3) Cultivos Marinos; (4) Cultivos Yadran S.A.; (5) Eicosal; (6) Friosur/Pesquera Friosur; (7) Invertec Pesquera Mar de Chiloe Ltda. (Invertec); (8) Linao/Salmoamerica; (9) Mainstream; (10) Marine Harvest; (11) Multiexport; (12) Ocean Horizons; (13) Pacific Star; (14) Pacifico Sur/Aquachile S.A.; (15) Pesca Chile; (16) Pesquera Los Fiordos Ltda. (Los Fiordos); (17) Robinson Crusoe Y Cia. Ltda. (Robinson Crusoe); and (18) Tecmar/Fjord Seafood Chile.

Subsequently, on September 25, October 18, 22, and November 25, 2002, L.R. Enterprises, Inc., withdrew its request that the Department conduct an administrative review of Pacific Star, Robinson Crusoe, Asesoria Acuicola S.A., Marine Harvest, and Los Fiordos respectively. Fiordo Blanco, Pacific Star, and Marine Harvest, which had each requested its own review on July 31, 2002, subsequently withdrew their requests on September 6, 27, and October 24, 2002, respectively.

Partial Rescission of Antidumping Duty Administrative Review

By its letters of September 5, 25, October 18, 22, and November 25, 2002, L.R. Enterprises, Inc., withdrew its request for an administrative review of the following companies:

Acuicultura de Aquas Australes
Agromar Ltda.
Aguas Claras S.A.
Antarfish S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Australis S.A.
Cenculmavique
Centro de Cultivo de Moluscos
Cerro Farrellon Ltda.
Chile Cultivos S.A.
Chisal S.A.
Comercializadora Smoltech Ltda.
Complejo Piscicola Coyhaique
Cultivos San Juan
Empresa Nichiro Chile Ltda.
Fiordo Blanco S.A.
Fisher Farms
Fitz Roy S.A.
Friosur S.A.
Ganadera Del Mar
Gentec S.A.
Granja Maria Torna Galeones S.A.
Hiuto Salmones S.A.
Huitosal Mares Australes Salmo Pac.
Instituto Tecnologico Del Salmon S.A.
Inversiones Pacific Star Ltda.
Los Fiordos Ltda.
Manao Bay Fishery S.A.
Mardim Ltda.
Marine Harvest Chile S.A.
Pacific Mariculture
Patagonia Fish Farming S.A.
Patagonia Salmon Farming S.A.
Pesquera Antares S.A.
Pesquera Chiloe S.A.
Pesquera Los Fiordos Ltda.
Pesquera Mares de Chile S.A.
Pesquera Pacific Star
Pesquera Quellon Ltda.
Pesquera Y Comercial Rio Peulla S.A.
Piscicola Entre Rios S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscultura Santa Margarita
Productos Del Mar Ventisqueros S.A.
Prosmolt S.A.
Quetro S.A.
River Salmon S.A.
Robinson Crusoe Y Cia. Ltda.
Salmones Andes S.A.
Salmones Antarctica S.A.
Salmones Aucar Ltda.
Salmones Caicaen S.A.
Salmones Calbuco S.A.
Salmones Chiloe S.A.
Salmones Huillinco S.A.
Salmones Ice Val Ltda.
Salmones Llanquihue
Salmones Pacific Star Ltda.
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Tierra Del Fuego Ltda.
Salmones Unimarc S.A.
Salmosan
Seafine Salmon S.A.
Soc. Agricola Chillehue Ltda.
Soc. Alimentos Maritimos Avalon Ltda.
Soc. Aquacultivos Ltda.
Truchas Aguas Blancas Ltda.
Trusal S.A.
Ventisqueros S.A.

We note that L.R. Enterprises originally requested a review of Salmones Friosur, Pesquera Friosur and Friosur S.A. On September 5, 2002, when L.R. Enterprises withdrew its request for review of a number of companies, ''Salmones Friosur'' was on the list of companies which L.R. Enterprises wished to remain in the review. We are rescinding the review with respect to Friosur S.A. Salmones Friosur and its affiliate Pesquera Friosur continue to be covered by this review. Information on the record indicates that neither Salmones Friosur nor Pesquera Friosur produce subject merchandise under the name Friosur S.A.

Pursuant to 19 CFR 315.213(d)(1), we are rescinding the administrative review

with respect to each of the above listed companies. With the exception of Marine Harvest, which is currently involved in litigation,[1] the Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice is issued and published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 6, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–31376 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] See *Marine Harvest (Chile) S.A.* v. *United States,* Court No. 01–00808, November 21, 2002.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–812]

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand

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

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from Thailand. This review covers one producer/exporter of the subject merchandise, Indorama Chemicals (Thailand) Limited (Indorama). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on comments received, including the identification of certain ministerial errors, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Background

On August 7, 2002, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on furfuryl alcohol from Thailand. *See Furfuryl Alcohol from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51191 (Aug. 7, 2002). In response to the Department's invitation to comment on the preliminary results of this review, Indorama submitted comments on September 6, 2002. No other comments were submitted, nor was a hearing requested.

Scope of Review

The merchandise covered by this review is furfuryl alcohol (C4H3OCH2OH). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comment Received

The sole issue raised in Indorama's case brief is addressed in the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand, from Bernard T. Carreau, Deputy Assistant Secretary for Group II, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 5, 2002, (Decision Memorandum) which is hereby adopted by this notice. The issue raised pertains to alleged sales outside the ordinary course of trade and not sold in usual commercial quantities. Parties can find a complete discussion of this issue and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Indorama Chemicals (Thailand) Ltd. (Indorama)	0.43

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for Indorama, because the margin is *de minimis*, no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the

exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 7.82 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

December 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31375 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–810]

Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department of Commerce (the Department) published the antidumping duty order on oil country tubular goods from Argentina (60 FR 41055). On August 1, 2001, the Department published an opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 39729 (August 1, 2001). On August 31, 2001, North Star Steel Ohio, a division of North Star Steel Company, requested that the Department conduct an administrative review of sales of the subject merchandise made by Siderca S.A.I.C. Also on August 31, 2001, United States Steel LLC, requested that the Department conduct an administrative review of sales of the subject merchandise made by Acindar Industria de Aceros S.A. (United States Steel LLC changed its name to United States Steel Corporation effective January 1, 2002. *See* petitioner's submission of January 4, 2002.)

On October 1, 2001, the Department initiated the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). On February 13, 2002, the Department extended the due date for the preliminary results of this review. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina*, 67 FR 6681 (February 13, 2002). On September 9, 2002, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Oil Country Tubular Goods from Argentina*, 67 FR 57215 (September 9, 2002). On October 11, 2002 United States Steel Corporation requested an extension of the due date for the rebuttal briefs and the hearing date. On October 15, 2002 the Department extended the rebuttal brief deadline to October 17, 2002. The current deadline for the final results is January 7, 2003.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that it is not practicable to complete the final results of this review within the statutory time limit. During the course of this review, petitioners have submitted evidence that one of the parties who claims to be a no-shipper may have had shipments. Due to the need to investigate this issue thoroughly, it is not practicable to complete the final results within the time limit mandated by section 751(a)(3)(A) of the Tariff Act and section 19 CFR 351.213(h)(1) of the Department's regulations.

Therefore, the Department is extending the time limit for the final results by an additional 60 days (180 days from the date of publication of the preliminary results pursuant to section 19 CFR 351.213(h)(2)), until no later than March 10, 2003 (the calculated due date is March 8, 2003; however, since March 8, falls on a weekend, the due date will fall on the next business day, March 10).

This notice is published in accordance with section 751(1)(3)(A) of the Tariff Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: December 4, 2002.

Joseph Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31371 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–822]

Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy

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

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Italy.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

SCOPE OF REVIEW

For purposes of this administrative review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

AMENDMENT OF FINAL RESULTS

On October 15, 2002, the Department of Commerce (''the Department'') published its final results for the administrative review of the antidumping duty order on stainless steel plate in coils from Italy for the period May 1, 2000, through April 30, 2001. *See Notice of Final Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Italy*, 67 FR 63618 (October 15, 2002) (''*Final Results*'').

Interested parties did not file any ministerial error comments on these *Final Results*. However, the Department discovered that it unintentionally stated in the *Final Results* that the ''all others'' rate was 48.80 percent, rather than the correct all others rate of 39.69 percent as determined in the original less-than-fair value (''LTFV'') investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Italy*, 64 FR 15458 (March 31, 1999) (''*Final Determination LTFV*''). Thus, the correct all others rate is the ''all others'' rate established in the *Final Determination LTFV*.

The Department's regulations define a ministerial error as an ''error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial'' (19 CFR 351.224(f)). Therefore, the Department is now correcting this ministerial error. The correct ''all others'' rate is 39.69 percent, in accordance with the *Final Determination LTFV*.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel plate in coils from Italy to reflect the correction of this ministerial error.

No other changes have been made to the cash deposit requirements as provided in the *Final Results*.

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

Dated: December 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31374 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–814]

Stainless Steel Sheet and Strip in Coils from France: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from France. This review covers the period July 1, 2000, through June 30, 2001.

DATES: EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva at (202) 482–3208; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the final results of an antidumping duty investigation within 120 days of the date on which the preliminary results are published.

However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days.

Background

On October 1, 2001, the Department published a notice of initiation of the administrative review of stainless steel sheet and strip in coils from France, covering the period July 1, 2000 through June 30, 2001 (64 FR 49924). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 49924 (October 1, 2001). The preliminary results were published in the Federal Register on August 7, 2002. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France* (''*Preliminary*

Results''), 67 FR 51210 (August 7, 2002). The current due date for the final results is December 5, 2002.

Extension of Time Limits for the Final Results

Due to the complexity of issues, such as home-market affiliated downstream sales, U.S. further manufacturing sales and complicated cost accounting issues present in this administrative review, it is not practicable to complete this review within the original time limit. Therefore, the Department has postponed the deadline for issuing the final results until December 18, 2002, which is 133 days after publication of the *Preliminary Results*.

Dated: December 4, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31372 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–114–000, et al.]

Notice of Gas Research Institute Filings

December 6, 2002.

In the matter of: RP03–114–000, RP03–140–000, RP03–137–000, RP03–130–000, RP03–170–000, RP03–171–000, RP03–113–000, RP03–169–000, RP03–139–000, RP03–133–000, RP03–185–000, RP03–158–000, RP03–132–000, RP03–131–000, RP03–128–000, RP03–155–000, RP03–124–000, RP03–126–000, RP03–109–000, RP03–127–000.Algonquin Gas Transmission Company, ANR Pipeline Company, CenterPoint Energy—Mississippi River Transmission, CMS Trunkline Gas Company, LLC, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Corporation, East Tennessee Natural Gas Company, Granite State Gas Transmission, Great Lakes Gas Transmission Limited Partnership, Iroquois Gas Transmission System, Midwestern Gas Transmission Company, National Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Questar Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission, LP, Viking Gas Transmission Company.

Take notice that the above referenced pipelines have tendered for filing tariff sheets in compliance with the Gas Research Institute (GRI) requirement.

The pipelines state that the purpose of their filings is to revise the GRI surcharges to be effective January 1, 2003, in compliance with the January 21, 1998,

Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61, 331 (1998).

The pipelines state that their filings comply with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a demand/reservation surcharge of 5.0 cents per Dth per Month for ''high load factor customers'' (2) a demand/reservation surcharge of 3.1 cents per Dth per Month for ''low load factor customers'' (3) a volumetric commodity/usage surcharge of 0.4 cents; and (4) a special ''small customer'' surcharge of 0.6 cents per Dth.

Any person desiring to become a party in a proceeding, must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest any one of the above-captioned filings should file in the relevant individual docket 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 December 13, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31326 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–003]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 27, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14

Alliance states that it provides firm service under Rate Schedule FT–1 for its existing shippers, all of whom have agreed to pay negotiated rates. The negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time. Alliance states that the tariff sheets listed above set forth the essential elements of its Rate Schedule FT–1 negotiated rate transactions, including the rates thereunder, and that it is filing the listed tariff sheets to reflect changes made to the rates charged under its negotiated rate agreements as a result of changes in its costs. Alliance states that its filing is made pursuant to the authorization set forth in its negotiated rate agreements and Section 39 of the General Terms and Conditions of its FERC Gas Tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31319 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–568–001]

Black Marlin Pipeline Company; Notice of Filing

December 6, 2002.

Take notice that on November 14, 2002, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2002:

Substitute Original Sheet No. 223
Substitute Original Sheet No. 224

Black Marlin states that the filing is being made in compliance with the letter order issued by the Commission on October 30, 2002.

Black Marlin states that the purpose of the revised tariff filing is to : (1) adopt a high/low weekly average price index for calculating the cash-out prices for imbalances and (2) incorporate interest on any refund balances of cash-out revenues.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 12, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31325 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–161–000]

Chandeleur Pipe Line Company; Notice of Filing

December 4, 2002.

Take notice that on November 29, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, workpapers supporting the adjustment, effective January 1, 2003 of its currently effective Fuel and Line Loss Allowance to 0.03%.

Chandeleur asserts that this filing is tendered in order to comply with the annual calculation requirements of its tariff as referenced above.

Chandeleur states that the purpose of this filing is to account for changes in amounts retained for Fuel and Line Loss Allowance pursuant to the provisions of 18 CFR 154.403(d)(3) and in accordance with Section 21.0 of the General Terms and Conditions of Chandeleur Pipe Line Company's (Chandeleur) FERC Gas Tariff, Second Revised Volume No. 1.

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 December 11, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31274 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–325–007]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003:

Eighth Revised Sheet No. 279
Seventh Revised Sheet No. 279A

CIG states that it is also filing its one-year report of segmentation activity in accordance with the Commission's May 31, 2001 order issued in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31265 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–532–001 and RP02–534–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets as listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that the purpose of this filing is to comply with directives made by the Commission in its October 31, 2002 Order in the above-captioned dockets.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31324 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–178–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

December 6, 2002.

Take notice that on December 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet 3708, to become effective January 2, 2003.

Gulf South states that this filing is submitted to revise Gulf South's tariff by removing from the right of first refusal (ROFR) provisions the five-year matching cap.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31327 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–184–000]

Gulf South Pipeline Company, LP; Notice of Tariff Filing

December 6, 2002.

Take notice that on December 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing pursuant to the Commission's October 31, 2002, Order on Remand in Docket No. RM98–10–011, a letter addressing the implementation of the Commission's forwardhaul/backhaul policy on Gulf South's system.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31328 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–26–001]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 27, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of November 16, 2002:

Sub First Revised Sheet No. 190
Sub Original Sheet No. 190A

Gulfstream states that the purpose of this filing is to comply with the letter order issued by the Commission on November 15, 2002 in Docket No. RP03–26–000 (November 15 Order). Gulfstream states that on October 16, 2002, it filed revised tariff sheets with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Gulfstream states that the Commission's November 15 Order accepted the proposed changes subject to Gulfstream making certain further revisions to the tariff sheets within 15 days of the November 15 Order. Gulfstream states that the tariff sheets included herewith include the required revisions in compliance with the November 15 Order.

Gulfstream states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31329 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–411–004]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

December 6, 2002.

Take notice that on December 2, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2002:

Fifth Revised Sheet No. 41
Seventh Revised Sheet No. 46
Ninth Revised Sheet No. 47
Seventh Revised Sheet No. 92

Iroquois states that these sheets were submitted in compliance with the Commission's November 26, 2002 Letter Order issued in Docket No. RP00–411–002.

Iroquois states that copies of its filing and have been mailed to all firm customers, interruptible customers, state regulatory commissions and other interested parties.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31318 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–013]

Midwestern Gas Transmission Company; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 26, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 7 and Fourth Revised Sheet No. 273, effective December 1, 2002.

Midwestern states that it is also filing an unexecuted firm gas transportation service agreement pursuant to Midwestern's Rate Schedule FT–A. The filing also contains attachments of Contract No. FA0053, a letter agreement that reflects a non-conforming contract entered into between Midwestern and Dynegy Marketing and Trade (Dynegy) requiring a monthly prepayment, and a letter agreement reflecting a discounted transportation rate.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31332 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–157–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2002.

Take notice that on November 29, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty First Revised Sheet No. 8, with a proposed effective date of January 1, 2003.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31272 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–159–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing.

National Fuel states that this filing is being made in compliance with the Commission's Order on Remand issued on October 31, 2002, in Docket No. RM98–10–011. The Order directed pipelines that offer segmentation on their systems to file revised tariff sheets permitting segmented transactions consisting of forwardhauls and backhauls up to contract demand to the same point at the same time.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31273 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–000]

Natural Gas Pipeline Company of America; Notice of Extension of Time

December 6, 2002.

On December 4, 2002, Natural Gas Pipeline Company of America (Natural) filed a motion for an extension of time within which to submit its data responses as required by the request from Commission Staff issued November 21, 2002, in the above-docketed proceeding. The data request requires a response to be filed by December 4, 2002. In its motion, Natural states that due to the Thanksgiving holiday and the press of other business, a brief extension of time is necessary to complete and file its data responses.

Upon consideration, notice is hereby given that an extension of time for Natural to file its data responses, as directed by the Commission Staff's November 21, 2002 request, is granted to and including December 6, 2002, as requested by Natural.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31330 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–072]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 27, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet Nos. 26W.24 through 26W.26, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement two (2) new negotiated rate transactions entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31333 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–073]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 6, 2002.

Take notice that on December 2, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 26A and Second Revised Sheet No. 26A.05, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement a permanent release of a portion of firm transportation service capacity under an existing negotiated rate transaction with Aquila Merchant Services, Inc. (Aquila) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of this filing are being mailed to all parties set out on the official service list in Docket No. RP99–176.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31334 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–003]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 22, 2002, pursuant to the technical conference held in the above-referenced proceeding on November 12, 2002, Northern Natural Gas Company (Northern) filed additional information and made certain clarifications and/or modifications to its proposed tariff provisions regarding creditworthiness and capacity release.

Northern further states that copies of the filing have been mailed to the Service List in this docket.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31315 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–152–000]

Overthrust Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 2003:

Sixth Revised Sheet No. 54
Fifth Revised Sheet No. 55
First Revised Sheet No. 78K
Alternate First Revised Sheet No. 78K

Overthrust states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011.

Overthrust states that on October 31, 2002, the Commission issued an Order on Remand (October 31 Order) requiring all pipelines, that provide segmentation on their systems, to file revised tariff provisions to expressly permit segmented transactions consisting of forwardhauls, up to contract demand, and backhauls, up to contract demand, to the same point at the same time. In addition, Overthrust indicates that the October 31 Order also removed the five-year right of first refusal term matching cap when shippers exercise their right of first refusal. Overthrust notes that this filing is being tendered in compliance with the Commission's October 31 Order.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31268 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–033]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

December 6, 2002.

Take notice that on December 2, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Second Revised Sheet No. 15 and First Revised Sheet No. 19, with an effective date of December 1, 2002.

GTN states that these sheets are being filed to reflect the implementation of one negotiated rate agreement and the removal of one negotiated rate agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31335 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–243–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed on Appendix A to the filing, which tariff sheets are proposed to have an effective date of January 1, 2003.

Pine Needle states that the instant filing is submitted to implement its new internet based business system, 1Linesm and to comply with certain of the Commission's regulations for which it has sought and received extensions of time to comply.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31322 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–153–000]

Questar Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2003:

First Revised Volume No. 1
Twenty-Seventh Revised Sheet No. 5
Original Volume No. 3
Thirty Fifth Revised Sheet No. 8

Questar states that the tendered tariff sheets revise Questar's Fuel Gas Reimbursement Percentage (FGRP) from the currently effective 1.6% to 1.4%.

Questar states that the FGRP is filed pursuant to Section 12.15 of the General Terms and Conditions of part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31269 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–154–000]

Questar Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Seventh Revised Sheet No. 67
Seventh Revised Sheet No. 68
Third Revised Sheet No. 99J
First Revised Sheet No. 99K

Questar states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011, (October 31 Order).

Questar states that, by the Commission's October 31 Order, pipeline companies were directed to modify their FERC Gas Tariffs to (1) remove the five-year term matching cap when shippers exercise their right of first refusal (ROFR) and (2) allow backhaul and forwardhaul segmentation, up to a shipper's contract demand level, to the same point. This filing was tendered in compliance with the Commission's October 31 order.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31270 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–156–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 65; and First Revised Sheet No. 66, to be effective January 1, 2003.

Southern Trails states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011.

Southern Trails states that on October 31, 2002, the Commission issued an Order on Remand (October 31 Order) requiring all pipelines that provide segmentation on their systems to file revised tariff provisions to expressly permit segmented transactions consisting of forwardhauls, up to contract demand, and backhauls, up to contract demand, to the same point at the same time. At this time, Southern Trails has stated that it is not operationally feasible to provide segmentation on its system. Southern Trails indicates that the October 31 Order also removed the five-year right of first refusal term matching cap when shippers exercise their right of first refusal. Southern Trails notes that this filing is being tendered in compliance with the Commission's October 31 Order.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31271 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–151–000]

Sabine Pipe Line LLC; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 27, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective December 27, 2002:

Second Revised Sheet No. 101
First Revised Sheet No. 101A

Sabine asserts that the purpose of this filing is to comply with Commission's Order on Remand, issued October 31, 2002, in Docket No. RM98–10–011.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31267 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–432–002]

Southern LNG Inc.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

Substitute First Revised Sheet No. 62
Substitute Original Sheet No. 62A

SLNG states that the purpose of this filing is to implement certain modifications to its tariff sheets in compliance with the Commission's Order issued on November 15, 2002, in the captioned proceeding to include North American Energy Standards Board Wholesale Gas Quadrant (NAESB–WCQ) Standards 1.3.2(iii) and (iv) relating to intra-day nomination cycles to be effective October 1, 2002.

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 ''FERRIS'' link. Enter the docket number excluding

the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31323 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–003 and CP02–45–003]

Texas Eastern Transmission, LP; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 12, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002.

Sub Original Sheet No. 51B
Sub Original Sheet No. 297A
Sub Original Sheet No. 297B
Sub First Revised Original Sheet No. 503

Texas Eastern states that the purpose of this filing is to comply with the letter order issued by the Federal Energy Regulatory Commission (''Commission'') on October 31, 2002 in Docket Nos. CP02–17–002 and CP02–45–002 (''October 31 Order''). Specifically, Texas Eastern states that the October 31 Order directs Texas Eastern to revise Sheet No. 51B to (i) remove specific customer names and associated volumes for service under Rate Schedule MLS–1 and (ii) reflect the correct GRI surcharge. In addition, Texas Eastern notes that the October 312 Order requires that Texas Eastern remove the definition of the term ''Maximum Hourly Quantity'' from the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and instead include that definition in Rate Schedule MLS–1. Texas Eastern indicates that the October 31 Order also directs it to file the negotiated rate agreement with New Jersey Natural Gas Company for MLS–1 service on the Freehold Lateral. In sum, Texas Eastern states that the instant filing is being made to comply with these directives.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 12, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31314 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–000]

Trailblazer Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 27, 2002, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 2003.

Trailblazer states that the purpose of this filing is to fulfill its obligation under Article III of the Docket No. RP97–408 rate case settlement in which Trailblazer must file a general rate proceeding to be effective no later than January 1, 2003. In the case of a rate decrease, as proposed herein, the filing was to occur no later than December 1, 2002. In addition, the filing also includes proposed modifications to the terms and conditions of Trailblazer's services in the following areas: capacity award procedures and award evaluation procedures (including capacity release); credit; right of first refusal, balancing charges; and minor administrative changes.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31275 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–056]

TransColorado Gas Transmission Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 29, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for

filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Fifth Revised Sheet No. 21 and Twenty-Eighth Revised Sheet No. 22A , to be effective December 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect two amended negotiated-rate contracts with National Fuel Marketing Company and Williams Energy Marketing & Trading Company and the deletion of an expired contract with United Energy Trading, LLC.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31276 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–490–002]

Transwestern Pipeline Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 14, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Sheet No. 92D of Second Revised Volume No. 1, to become effective January 1, 2003.

Transwestern states that Fifth Revised Sheet No. 92D, while listed and described in its November 12, 2002 filing in Docket No. RP00–490–002, was inadvertently omitted from the tariff sheets and diskette included in the November 12 filing. Transwestern states that the instant filing is to correct this omission by filing Fifth Revised Sheet No. 92D herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 12, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31321 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–472–003 and RP01–31–003]

USG Pipeline Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute First Revised Sheet No. 51 and Second Substitute Original Sheet No. 51A, to be effective October 1, 2002.

USGPC states that the filing is being made pursuant to the Commission's November 21, 2002, letter order in the above-captioned proceeding the following tariff sheets, proposed to become effective as of October 1, 2002, revised in compliance with the November 21 letter order and Order Nos. 637, 587–G, and 587–L.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31320 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–005]

Viking Gas Transmission Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 27, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Fourth Revised Sheet No. 5
Second Revised Sheet No. 5A
Second Revised Sheet No. 5B
Second Revised Sheet No. 5C
Second Revised Sheet No. 5D
Second Revised Sheet No. 5E
Second Revised Sheet No. 5F
Second Revised Sheet No. 5G
Second Revised Sheet No. 5H
First Revised Sheet No. 5I

Viking states that the purpose of this filing is to comply with the Offer of Settlement and Stipulation and Agreement (Settlement) filed by Viking on September 13, 2002 in the above-referenced docket and approved by the Commission by order issued November 8, 2002. Specifically, Viking states that it is filing to place the Stage 1 Settlement Rates into effect in accordance with the terms and conditions of the Settlement.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all of Viking's jurisdictional customers and to affected state regulatory 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or 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. 02–31266 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–018]

Williams Gas Pipelines Central, Inc.; Notice of Refund Report

December 6, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing its interruptible excess refund report for the twelve-month period ended September 2002.

Pursuant to Article V, Section A of the November 27, 1996, Stipulation and Agreement in the above named docket, approved by order of the Commission dated March 7, 1997, Central is not required to refund any ITS revenue until Central has recovered $3.5 million of fixed costs allocated to ITS. Central only recovered $2.29 million of fixed costs; therefore, a refund is not required. Also, there will not be a refund required for ISS because there was no ISS revenue for the twelve-month period ended September 2002.

Central states that a copy of its filing was served on all of participants listed on the service list maintained by the Commission in the docket referenced above and on all of Central's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 11, 2002. 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31331 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–24–000, et al.]

Global Common Greenport LLC, et al.; Electric Rate and Corporate Filings

December 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Global Common Greenport LLC

[Docket No. EG03–24–000]

Take notice that on November 27, 2002, Global Common GreenportLLC (Applicant), having its principal place of business at 1285Avenue of the Americans, 35th Floor, New York, New York 10019 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: December 27, 2002.

2. PSEG Power Connecticut LLC

[Docket No. EG03–25–000]

Take notice that on December 4, 2002, PSEG Power ConnecticutLLC (Applicant), having its principal place of business at 80 ParkPlaza, T–16, Newark, NJ 07102, filed with the Federal EnergyRegulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant states it will be exclusively engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding CompanyAct of 1935 (PUHCA), in owning or owning

and operating eligible electric facilities in Connecticut and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA.

Comment Date: December 27, 2002.

3. Consolidated Hydro Southeast, Inc.

[Docket No. EG03–26–000]

Take notice that on December 5, 2002, Consolidated HydroSoutheast, Inc. (CHISE) filed with the Federal Energy RegulatoryCommission (Commission) an Application for Determination of ExemptWholesale Generator Status pursuant to part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935.

CHISE operates an eligible facility with a capacity of 80 megawatts, powered by two (2) hydroelectric turbine generators, which is located in Nicholas County, West Virginia.

Comment Date: December 27, 2002.

4. Gauley River Power Partners, L.P.

[Docket No. EG03–27–000]

Take notice that on December 5, 2002, Gauley River PowerPartners, L.P. (GRPP) filed with the Federal Energy RegulatoryCommission (Commission) an Application for Determination of ExemptWholesale Generator Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935.

GRPP owns an eligible facility with a capacity of 80 megawatts, powered by two (2) hydroelectric turbine generators, which is located in Nicholas County, West Virginia.

5. Reliant Energy Hunterstown, LLC

[Docket No. ER01–3036–002]

Take notice that on December 4, 2002 Reliant Energy Hunterstown,LLC (Hunterstown) filed an amendment to its FERC Electric Tariff with the Federal Energy Regulatory Commission. The proposed amendment changes the effective date of the tariff.

Comment Date: December 26, 2002.

6. ISO New England Inc.

[Docket No. ER01–3086–003]

Take notice that on December 2, 2002, ISO New England Inc. submitted a compliance report on its Demand Response Program and the addition of new generation in New England in the above Docket.

Comment Date: December 23, 2002.

7. Keystone Energy Group, Inc.

[Docket No. ER02–2605–001]

Take note that on December 2, 2002, Keystone Energy Group, Inc.(Keystone) tendered for filing an amendment to an application filed on September 23, 2002 for acceptance of Keystone 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.

Keystone intends to engage in wholesale electric power and energy purchases and sales as a marketer. Keystone is not in the business of generating or transmitting electric power.

Comment Date: December 23, 2002.

8. Reliant Energy Solutions West, LLC

[Docket No. ER03–81–001]

Take notice that on December 3, 2002 Reliant Energy SolutionsWest, LLC (RESW) filed an Amended FERC Electric Rate Schedule No. 1 in this docket. The Amended Rate Schedule deletes references to certain non-jurisdictional activities.

Comment Date: December 24, 2002.

9. Peaker LLC

[Docket No. ER03–191–000]

Take notice that on December 4, 2002, Peaker LLC submitted an amendment to its petition for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.

Comment Date: December 26, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–232–001]

Take notice that on December 3, 2002, PJM Interconnection,L.L.C. (PJM), amended its November 27, 2002 filing in the above-captioned proceeding to correct the page numbers on the amended sheets of the Amended and Restated Operating Agreement of PJMInterconnection, L.L.C. (Operating Agreement) that it filed on November 27, 2002 to incorporate Commission-approved PJM Economic Load Response Program into the Second Revised Operating Agreement. The Operating Agreement sheet preceding these sheets also was included to correct its page designation.

PJM requests an effective date of June 1, 2002, for the amended Operating Agreement sheets incorporating the PJM Economic Load Response Program into the Second Revised Operating Agreement. In addition, PJM states that no substantive changes were made to the Operating Agreement sheet preceding the PJM Economic Load ResponseProgram sheets, and therefore, PJM requests an effective date of April 1, 2002, for the corrected sheet. PJM states that this is the current effective date of the original sheet.

Copies of this filing have been served on all PJM members and each state electric utility commission in the PJM region.

Comment Date: December 24, 2002.

11. South Carolina Electric & Gas Company

[Docket No. ER03–237–000]

Take notice that on December 2, 2002, South Carolina Electric &Gas Company (SCE&G) submitted for filing supplemental agreements between SCE&G and the Southeastern Power Administration (SEPA).

SCE&G requests an effective date of November 1, 2002 and, accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon SEPA and the South Carolina Public Service Commission.

Comment Date: December 23, 2002.

12. New York Independent System Operator, Inc.

[Docket No. ER03–238–000]

Take notice that on December 2, 2002, the New York IndependentSystem Operator, Inc. (NYISO) filed revisions to its MarketAdministration and Control Area Services Tariff to clarify the calculation of Day-Ahead Market balancing payments.

The NYISO has requested an effective date of January 31, 2003, for the proposed clarification. The NYISO has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO Services Tariff or Open-Access Transmission Tariff and to the New York State Public Service Commission.

Comment Date: December 23, 2002.

13. Western Systems Power Pool, Inc.

[Docket No. ER03–239–000]

Take notice that on December 3, 2002, the Western Systems PowerPool, Inc. (WSPP) submitted changes to the WSPP Agreement intended to update or clarify certain commercial provisions of the Agreement. The WSPP seeks an effective date of February 1, 2003, for these changes.

Copies of the transmittal letter have been served on all state commissions within the United States. This filing also has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: December 24, 2002.

14. Wisconsin Public Service Corporation

[Docket No. ER03–240–000]

Take notice that on December 3, 2002, Wisconsin Public Service Corporation

(WPSC) tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the WestMarinette Unit.

Wisconsin Public Service Requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2003.

Comment Date: December 24, 2002.

15. Xcel Energy Services, Inc.

[Docket No. ER03–241–000]

Take notice that on December 3, 2002, Xcel Energy Services, Inc.(XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing an Experimental Sales Rider between SPS and LeaCounty Electric Cooperative, Inc.; a First Amendment to ExperimentalSales Rider between SPS and New Corp Resources, Inc.; and a FirstAmendment to Experimental Sales Rider between SPS and RooseveltElectric Cooperative, Inc.

XES requests that these agreements become effective on October 1, 2002.

Comment Date: December 24, 2002.

16. American Electric Power Service Corporation

[Docket No. ER03–242–000]

Take notice that American Electric Power Service Corporation(AEPSC), on behalf of Appalachian Power Company, Columbus SouthernPower Company, Indiana Michigan Power Company, Kentucky PowerCompany, Kingsport Power Company, Ohio Power Company and WheelingPower Company (collectively AEP) on December 3, 2002, tendered for filing proposed changes to transmission service rates.

AEPSC requests that the proposed rates become effective in two steps, with effective dates no earlier than February 1, 2003 and May 1, 2003, respectively.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, Public Utilities Commission of Ohio, Public Service Commission of West Virginia, Tennessee Regulatory Authority, and Virginia State Corporation Commission. A copy of this transmittal letter was served upon AEP's transmission customers. AEP also has posted this filing on its Web site at *http://oasis.buyaep.com/OASIS/AEP/Tariff.cfm,* (under Open AccessTransmission Tariff Supplemental Information). AEP's transmission customers and the public may obtain a complete copy of this filing from AEP's website. In addition, AEP will provide a complete copy of this filing, on paper or CD, to any customer that requests a copy.

Comment Date: December 24, 2002.

17. PJM Interconnection, L.L.C.

[Docket No. ER03–243–000]

Take notice that on December 3, 2002, PJM Interconnection,L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM OpenAccess Transmission Tariff to include the annual and monthly revenue requirements for Reactive Supply and Voltage Control from GenerationSources Service for Sunbury Generation, L.L.C. (Sunbury) andCommonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake) accepted by the Commission in Docket Nos. ER02–2362–000 and 001, andER02–2520–000, respectively.

PJM requests an effective date of September 1, 2002 for the Third Revised Sheet No. 112A of the PJM Tariff which incorporatesSunbury's revenue requirement, and November 1, 2002 for the FourthRevised Sheet No. 112A which incorporates Commonwealth Chesapeake's revenue requirement.

Copies of this filing have been served on all PJM members, including Sunbury and Commonwealth Chesapeake, and each state electric utility regulatory commission in the PJM region.

Comment Date: December 24, 2002.

18. Midwest Energy, Inc.

[Docket No. ES03–15–000]

Take notice that on December 3, 2002, Midwest Energy, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to and including $37,714,286 of long-term debt securities from the National Rural UtilitiesCooperative Finance Corporation.

Midwest Energy, Inc. also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: December 27, 2002.

19. Entergy Services, Inc.

[Docket Nos. OA96–158–005 and OA 97–657–002]

Take notice that on December 2, 2002, Entergy Services, Inc.(Entergy) on behalf of the Entergy Operating Companies, tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to Entergy's FERC Electric Tariff, Second Revised Volume No. 3 in compliance with Entergy Services, Inc., 101 FERC ¶ 61,141 (2002). Entergy states that, in this order, the Federal Energy Regulatory Commission (Commission) accepted for filing, as modified, Entergy's May 1, 2000 compliance filing to a Commission order requesting certain public utilities to file status reports regarding their various open access dockets. Entergy notes that the Commission also ordered Entergy to correct certain misstatements found in Schedule No. 1 of Entergy's Open Access Transmission Tariff (OATT). Entergy states that this filing submits these accepted (and modified) revisions in Order No. 614 format.

Comment Date: January 2, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street,NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contactFERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (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. 02–31387 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

December 6, 2002.

a. *Type of filing*: Notice of Intent to File Application for a New License.

b. *Project No.:* 2107.

c. *Submitted by*: (1) Pacific Gas and Electric Company, filed July 2, 2002;

(2) City of Fremont, California, filed July 2, 2002;

(3) County of Butte, California, filed July 8, 2002; and

(4) Northern California Power Agency, filed July 10, 2002.

d. *Date filed*: *see* c, above

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to*: 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license*: October 1, 1953.

i. *Expiration date of current license*: September 30, 2003.

j. *The project consists of*: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter; (7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Pacific Gas and Electric Company, Power Generation, 245 Market Street, Room 1103, San Francisco, California, 94105. Contact Mr. John Gourley by mail at the above address or by phone at (415) 972–5772 to make an appointment to review the information.

l. *FERC contact*: John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

m. Each application for a new license must be filed with the Commission within 18 months of the date on which it filed its Notice of Intent.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31316 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM00–12–000]

Electronic Filing of Documents; Notice of New Release and Additional Qualified Documents for Electronic Filing

December 6, 2002.

1. Take notice that on Saturday, December 7, 2002, the Commission will upgrade its electronic filing system to Release 4.0 and begin accepting additional types of documents for filing via the Internet in lieu of paper copies. Release 4.0 also contains several notable system enhancements.

2. New Qualified Documents in Release 4.0: Order No. 619,[1] authorized the Secretary of the Commission to issue and amend a list of qualified documents that, at the filer's option, may be submitted via the Internet without also filing paper copies.[2] In Release 4.0 of the electronic filing system, the following additional documents are ''qualified documents'' for the purposes of electronic filing:

a. *General Filings in Docketed Proceedings:*

i. Briefs.

ii. Interlocutory Appeals: Motions and Answer/Responses.

iii. Request for Change in Service List

iv. Withdrawal of Application.

b. *Filings Specific to the Electric Industry:*

i. Accounting Filing or Request.

ii. Annual Charges Report.

iii. Complaint.

iv. Qualifying Facility Notice of Self-Certification.

v. Qualifying Facility Notice of Self-Recertification.

c. *Filings Specific to the Natural Gas Industry:*

i. Accounting Filing or Request.

ii. Complaint.

iii. Peak Day Capacity Report.

iv. Semi-Annual Storage Report Under part 157.

v. Semi-Annual Storage Report Under part 284.

d. *Filings Specific to the Oil Pipeline Industry:*

i. Accounting Filing or Request.

ii. Complaint.

e. *Filings Specific to Hydropower projects:*

i. Annual Conveyance Report.

ii. Annual Generation Report.

iii. Complaint.

iv. Progress Report.

3. Attachment A to this notice contains a complete list of all qualified documents and a description of each filing type.

4. Qualified documents may be combined and submitted in the same document. For example, a motion to intervene may also include comments and/or a protest in the same document and be eligible for filing via the Internet.

5. Non-qualified documents may not be included in an electronic submission with other qualified documents. For example, an Electric Rate Compliance Filing may not be electronically filed together with or under the filing type ''Compliance Electric Refund Report''.

6. Release 4.0 Enhancements: Release 4.0 of the Electronic Filing System contains the following enhancements:

f. *Multiple file submission*: Filers may now select and submit up to five unzipped files with a maximum file size of 10 Mb per file. The files may also be submitted in .zip file format, provided that the total number of unzipped files does not exceed five files. The File Upload screen allows the filer to select, review, and attach up to five files per submission. The screens also provides for deleting and replacing files, as well as ordering them in the proper sequence for filing.

For multiple file submissions, the first (text) file should include a list of the additional files to be submitted with a brief description of the contents of each file.

g. *Filings Requiring a New Docket or Subdocket Number(s):* Certain of the new ''qualified documents'' for e-filing require a new docket number. The filer will not *see* the Docket Entry screen for these filings. The FERC Dockets Staff will assign the new docket number and initiate a service list. The new docket number will appear in the Notice of Acceptance e-mail that is sent to the filer after Dockets reviews the submission. As with previous releases, the Dockets staff will assign a new subdocket number to your submission if one is required.

h. *Additional file formats*: The multiple file submission feature will

[1] III FERC Stats. & Regs., Regulations Preambles ¶ 31,107.

[2] 18 CFR 385.2003(c)(2), 65 FR 57088.

enable filers to include one or more attachments to the Microsoft Word (.doc), Corel WordPerfect (.wpd), Adobe Portable Document Format (.pdf), ASCII (.txt), or Rich Text Format (.rtf) text file, in one or more of the following formats:

i. Microsoft Excel (.xls, .xlb).

ii. Lotus (.wk1, .wk3, .wk4).

iii. Microsoft PowerPoint (.ppt, .pps).

iv. Zipped files, provided that the total number of unzipped files does not exceed five files and each unzipped file does not exceed 5 Mb (.zip).

v. Graphic Interchange Format (.gif).

vi. Joint Photographic Experts Group (.jpg).

vii. Moving Picture Experts Group (.mpg).

i. *Filing Type Selection:* The menu for selecting the filing type has been revised and is arranged according to filings common to all program areas and those that are specific to the electric, natural gas, oil, or hydropower programs.

7. We are revising the User Guide to reflect the additions to the qualified documents list. The guide contains the instructions for electronic submission and provides more detail on the system enhancements. The User Guide is accessible via the eFiling link at *www.ferc.gov.*

8. If you have questions about this notice or the new release for electronic filing, please contact Brooks Carter at (202) 502–8145or by e-mail at *brooks.carter@ferc.gov.*

Magalie R. Salas,

Secretary.

Attachment A—Complete List of Qualified Documents for Electronic Filing (Effective December 4, 2002)

For multiple file submissions, the first (text) file should include a list of the additional files to be submitted with a brief description of the contents of each file. There is a maximum of five unzipped files per submission.

1. Filings Common to Docketed Proceedings in All or Most Program Areas:

Answer/Response to a Pleading/Motion: An answer (18 CFR 385.213) may be made to any pleading (18 CFR 385.202) except a protest, answer, motion for oral argument, or request for rehearing. Select Response to Complaint if you are responding to a complaint or show cause order.

Briefs/Statement of Position: Any brief filed before (Rule 706) or after (Rule 711) an initial decision (18 CFR 385.706 and 385.711).

Comment on Filing: Comments on Filing is a document filed in response to a FERC public notice or order in a specific FERC docketed proceeding (any docket prefix except RM). It may include a protest. This filing type does not add contact names to the service list. You must select Motion/Notice of Intervention (or Motion to Intervene Out-of-Time) to be included on the service list for a docket. Comment on Filing includes:

a. Comments on applications and other filings.

b. Comments on technical conferences

c. Comments filed in connection with environmental documents (Notices, Environmental Assessments, and Environmental Impact Statements) (18 CFR 380.10(a))

d. Protests [3] and responses to certain protests [4].

e. Reply comments.

f. Mandatory and recommended terms and conditions or prescriptions on a hydropower application for exemption or license.

Interlocutory Appeal—Motion: Motions to the presiding officer in a proceeding to permit appeal of a ruling by the presiding officer (18 CFR 385.715(b)) or an appeal of a presiding officer's denial of a motion to permit appeal (18 CFR 385.715(c)).

Interlocutory Appeal—Response: Responses to a Motion to Permit Interlocutory Appeal (18 CFR 385.213(a)(2) and (a)(3).

Motion to Compel Production: A motion to compel production is a petition or request for an order directing another party in a proceeding to produce documents and records in discovery (18 CFR 385.410(b)).

Motion to Intervene Out of Time: Motion to intervene out of time is a pleading filed with the Commission by a party requesting permission for intervenor status after the deadline for filing has passed (18 CFR 385.214(b)(3)).

Motion/Notice of Intervention: Motion/notice of intervention is a pleading filed with the Commission by a party requesting intervenor status (legal basis to participate in proceeding). The motion or notice may also include comments, a protest, or other pleading.[5]

Objection to Motion to Compel Production: An objection to a motion to compel production is a pleading by the respondent named in a motion to compel production stating the basis for objection to producing the requested documents and records (18 CFR 385.410).

Procedural Motion: A procedural motion is a pleading by any party to a proceeding before an Administrative Law Judge or the Commission concerning the scope, procedures, or schedule established by the presiding judge or by FERC's rules of procedure (18 CFR 385.212).

Production of Document: This is a transmittal letter advising the Commission that documents or records have been provided to the requesting party, or as directed by the presiding officer, in the discovery phase of a proceeding (18 CFR 385.406).

Request for Change in Service List: A request to make a change to the service list for specific dockets. The change may be to revise a contact or information about a contact.

Request for Hearing: A request for hearing is a motion to the Commission that a matter within the jurisdiction of the Commission be set for hearing.

Request for Rehearing or Appeal: A request of rehearing or appeal is a pleading by any party to a proceeding before the Commission petitioning the Commission to reconsider an order in that proceeding; includes Motions for Clarification (18 CFR 385.713 and 18 CFR 385.715). There are statutory deadlines for filing requests for rehearing. Be advised that the Commission cannot waive these deadlines.

Response to Complaint: Any respondent to a complaint or order to show cause must make an answer, unless the Commission directs otherwise (18 CFR 385.206(f) and 385.213(a)).

Rulemaking Comment: Rulemaking comment is a document filed in response to a Notice of Inquiry or Notice of Proposed Rulemaking issued by the Commission (RM docket prefix only; 18 CFR 385.1903 and 18 CFR 380.10(b)).

Settlement Comment: Settlement comment is a document prepared by any party to a proceeding before the Commission that sets forth the views and position of the party on a proposed agreement or settlement to resolve any of the issues in dispute (18 CFR 385.602(f)).

Withdrawal of Application: A request to withdraw an application or other pleading previously filed with the Commission.

Withdrawal of Intervention: Withdrawal of intervention is a request by a party to a proceeding (one who has been granted intervenor status) to withdraw from that proceeding (18 CFR 385.216).

2. Filings Specific to Electric Program Area:

Accounting Filing or Request: Any request for approval of accounting

[3] 18 CFR 385.211 and 18 CFR 343.3 (*see* also 18 CFR 4.5, 4.13, 4.23, 35.8(a), 154,210(a), 157.10, and 157.205(e)).

[4] 18 CFR 343.3(b).

[5] 18 CFR 385.214, 385.1306 (*See* also 18 CFR 35.8(a), 154.210(a) and (b), 157.210, 157.106, 343.2(a), and 380.10).

procedures or a filing related to accounting issues.

Annual Charges Report: FERC Reporting Requirement No. 582: The report due annually by April 30 that must be filed by a public utility, as defined in § 382.102(b), on transmission of electric energy in interstate commerce, for the purpose of computing annual charges (18 CFR 382.201(c)).

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

Electric Quarterly Report: The Electric Quarterly Report is filed by all jurisdictional utilities, listing all contracts in effect and all power sales made during the previous quarter, as required by Order 2001.

Electric Refund Report (Compliance Only): A report of refund of any increased rates or charges either found by the Commission not to be justified, or approved for refund by the Commission as part of a settlement.

Qualifying Facility Notice of Self-Certification: Notice of self certification as a qualifying facility filed by a small power production facility or cogeneration facility that meets the requirements of 18 CFR 292.203 [18 CFR 292.207 and 131.80 (Form 556)].

Qualifying Facility Notice of Self-Recertification: A subsequent notice of self-recertification as a qualifying facility filed by a small power production facility or cogeneration facility (18 CFR 292.207).

3. Natural Gas Program Area Filings:

Accounting Filing or Request: Any request for approval of accounting procedures or a filing related to accounting issues.

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

Peak Day Capacity Report: A report of available capacity filed by an interstate pipeline by March 1 each year, showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities and the assignment of that capacity to the various firm services provided by the pipeline (18 CFR 284.13(d)).

Semi-Annual Storage Report Under part 157: Reports of storage activity filed by interstate pipelines for facilities under a blanket certificate or a certificate of public convenience and necessity (18 CFR 157.214; docket number known)

Semi-Annual Storage Report Under part 284: Reports of storage activity by interstate pipelines (18 CFR 284.13) and intrastate pipelines (18 CFR 284.126) filed at the end of each complete storage injection and withdrawal season (no docket number).

4. Oil Pipeline Program Area Filings:

Accounting Filing or Request: Any request for approval of accounting procedures or a filing related to accounting issues.

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

5. Hydropower Program Area Filings:

Annual Conveyance Report: A report filed by the licensee of a hydropower project, if required by its license, of conveyances of easements or rights-of-way across, or leases of, project lands that occurred in the previous year (18 CFR 141.15).

Annual Generation Report: A report filed by licensees of hydropower projects of more than 1.5 megawatts of installed capacity to enable the Commission to determine annual charges (18 CFR 11.1(c)(4)).

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f)).

Progress Report: Progress reports filed by a hydropower project licensee or preliminary permit holder in accordance with a license or preliminary permit requirement (file under 000 sub-docket for the project).

Request for Extension of Time (Hydro: Post-Licensing Only, Excluding Dam Safety-Related Extension Requests): Requests for extension of time to comply with filing schedules defined in the terms and conditions of a license or exemption and (*e.g.*, requests to extend due dates in license articles and settlement agreements incorporated into a license) and requests to extend due dates specified in postlicensing Commission and delegated orders.

Surrender of Exemption: Application filed requesting surrender of a conduit exemption (18 CFR 4.95) or for a 5MW exemption (18 CFR 4.102).

Surrender of License: Application filed requesting surrender of a license (18 CFR 6.1).

Surrender of Preliminary Permit: Petition requesting surrender of a preliminary permit (18 CFR 4.84).

[FR Doc. 02–31317 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–7]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives—Health-Effects Research Requirements for Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79, subpart F) (EPA ICR Number 1696.04, OMB Control Number 2060–0297, expiration date: 5–31–03). 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 February 10, 2003.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, Washington, DC 20460–0001. A paper or electronic copy of the ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture or import gasoline or diesel fuel, or manufacture or import an additive for gasoline or diesel fuel.

Title: Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79, subpart F), OMB Control Number 2060–0297, EPA ICR Number 1696.04, Expiring: 5–31–03.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts

A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) of additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirement of subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 309.10, OMB Control Number 2060–1050). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a ''baseline'' group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate ''nonbaseline'' groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate ''atypical'' groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 1 data were submitted for biodiesel and a water/diesel fuel emulsion in 1998 and 2000, respectively. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements have been established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. A similar situation exists with the Ethyl Corporation and its manganese additive MMT, and alternative requirements have been established. The API submitted Tier 2 data for diesel in 1997. Tier 2 data were submitted for biodiesel and a water/diesel fuel emulsion in 2000 and 2002, respectively. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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: There are approximately 150 fuel manufacturers, 650 additive manufacturers, 600 registered fuels, and 5700 registered additives. Due to the costs, it is likely that only limited additional Tier 1 research will be done. Future fuels and additives will almost exclusively be those that can group with existing Tier 1 data, and likely will come from manufacturers that have already paid for the Tier 1 research. It is estimated that new Tier 1 research will cost $0.35 million per product, and that there will be only one Tier 1 submission per year over the next three years. Standard Tier 2 activity also will be very limited. The EPA has concluded that existing data cover standard Tier 2 for baseline diesel. Baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT, are subject to alternative Tier 2 requirements. It is estimated that new standard Tier 2 research will cost $1.5 million per product, and that there will be only one standard Tier 2 submission per year over the next three years. It is estimated that the alternative Tier 2 testing for gasoline and oxygenates will cost $15 million over five years. It is estimated that the alternative Tier 2 testing for MMT will cost $10 million over five years. 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.

Dated: December 4, 2002.

Deborah K. Wood,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 02–31360 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–5]

Agency Information Collection Activities: Proposed Collection Extension; Comment Request; Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the U.S. Environmental Protection

Agency (EPA or the ''Agency'') is planning to submit a request for a three-year extension of the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures, EPA ICR No. 1838.01, OMB # 2040–0213 expiration December 31, 2002. Before submitting the request for extension 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 February 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Deborah Nagle at EPA by phone at (202) 566–1063, by Email at *nagle.deborah@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are those existing facilities that use cooling water intake structures to withdraw water from waters of the U.S. for cooling purposes and that have or are required to have a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Clean Water Act (CWA). In addition to the entities identified in the new facility rule, see 66 FR 65256 and 65257, this action may affect existing and new Offshore and Coastal Oil and Gas Extraction Facilities, and existing and new Offshore Seafood Processors because EPA did not survey these industry categories during the original information collection effort. In addition, EPA may contact approximately 25 Phase III facilities (Traditional Steam Electric Utilities, Nonutility Power Producers, Paper and Allied Products; Chemical and Allied Products; Petroleum and Coal Products; Primary Metals) because they did not fully answer the survey questions or because their responses were unclear and require additional inquiry.

B. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

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/*. You may download a copy of the ICR extension request at *http://www.epa.gov/icr* and refer to EPA ICR No. 1838.01, OMB # 2040–0213. You may obtain a copy of the Detailed Industry Questionnaire at *http://www.epa.gov/waterscience/316b* under the section, ''Questionnaires for Existing Facilities.''

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 will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. 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 in formulating a final decision. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rule.316b@epa.gov*, Attention EPA ICR No. 1838.01. EPA's e-mail system is not an ''anonymous access'' system; 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.

ii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: Ms. Deborah G. Nagle, U.S. EPA, Engineering and Analysis Division (4303T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention EPA ICR No. 1838.01.

3. *By Hand Delivery or Courier.* Deliver your comments to: Ms. Deborah G. Nagle, U.S. EPA, Engineering and Analysis Division (Room 6233N), 1301 Constitution Ave., NW., Washington, DC, 20004, Attention EPA ICR No. 1838.01. Such deliveries are only accepted during the normal hours of operation from 9 a.m. to 5 p.m..

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

E. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collection of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Title

Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures (OMB # 2040–0213; EPA ICR No. 1838.01, expiring December 31, 2002). This is a request for extension which would increase the scope and burden of the original ICR.

III. Abstract

EPA is developing regulations implementing section 316(b) of the CWA, 33 U.S.C. 1326(b) pursuant to a Consent Decree in *Riverkeeper* v. *Whitman* [93 civ.0314 (AGS)] entered on October 10, 1995, which was subsequently amended on November 22, 2002, and again on November 25, 2002. Under the first amended consent decree, EPA proposed ''Phase I'' regulations for cooling water intake structures at certain new industrial facilities on July 20, 2000, took final action on the Phase I regulations on November 9, 2001, and proposed ''Phase II'' regulations for approximately 550 existing electric power generating plants on February 28, 2002. Under the terms of the second amended consent decree, must take final action on the Phase II regulations by no later than February 16, 2004. Under the Second Amended Consent Decree, EPA must also propose ''Phase III'' regulations by November 1, 2004 and take final action on these regulations by June 1, 2006. The Phase III regulations must, at a minimum, address existing utility and non-utility power producers not covered by the Phase II Regulations; and other industrial facilities that employ cooling water intake structures.

In accordance with the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501, *et seq.*), this notice announces that the U.S. Environmental Protection Agency (EPA or the ''Agency'') plans to submit a request for a three-year extension of the Information Collection Request (ICR) entitled, ''Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (EPA ICR No. 1838.01, OMB # 2040–0213)'' to the Office of Management and Budget (OMB) for review and approval. Note that the Agency is substituting the term ''Phase III'' for ''Phase II'' to correspond to the structure of the rulemaking. EPA plans to request OMB approval to extend the survey for facilities potentially subject to Phase III of the cooling water intake structure rulemaking effort. The offshore and coastal oil and gas extraction facilities and offshore seafood processing facilities would be most likely affected by extension of the data collection effort because EPA did not survey these industries during the original information collection request effort. EPA did not survey these industries because, at the time, EPA was not aware that these facilities used cooling water in volumes potentially subject to regulation under section 316(b) of the CWA. Information provided in public comments on EPA's ''Phase I'' regulatory proposal for new power plants and industrial facilities made EPA aware of the use of cooling water by these facilities and prompted EPA to defer consideration of these categories until the Phase III rule.

The Offshore and Coastal Oil and Gas Extraction category contains a large number of facilities and it presents unique engineering, cost, and economic issues associated with drilling rigs, ships, and platforms. EPA has acquired current industry surveys and commercial databases that identify offshore and coastal oil and gas extraction facilities in the Gulf of Alaska, California, and the Gulf of Mexico. Preliminary information indicates that there are about 200 offshore oil and gas platforms and mobile drilling units that are potentially subject to the Phase III regulation. Approximately 100 businesses own these platforms and mobile drilling units. Through these sources, EPA has obtained sufficient current technical data on offshore and coastal oil and gas extraction facilities and does not intend to collect additional technical data through the Detailed Industry Survey. However, EPA does not have current economic and financial data on these facilities and intends to send selected sections of the detailed questionnaire that cover scope and economic data to offshore and coastal oil and gas extraction firms.

The offshore seafood processing industry also proposes some unique regulatory issues. EPA has begun to collect publicly available information on seafood processing vessels to identify uses and volumes of cooling water, numbers of facilities, where they are located, and how many of them are small businesses. Data collected to date confirm that seafood processing plants (floating vessels or on-board factory trawlers) use cooling water mainly for cooling of diesel engines and generators and equipment during desalinization processes (condensation of steam). Data also indicate that these vessels withdraw volumes of cooling water that may make them potentially subject to regulation under section 316(b). EPA does not have sufficient current technical data on the offshore seafood processing industry to determine the impact the Phase III rule would have on the industry. Therefore, EPA proposes to collect additional technical, economic and financial data on seafood processing plants (floating vessels or on-board factory trawlers). First, EPA intends to send the Industry Short Technical Questionnaire to all the known offshore seafood processing facilities to determine which ones would potentially be affected by the Phase III rule. To reduce burden, EPA proposes to delete some of the questions in section 3 (Design and Operational Data for cooling Water Intake Structures and Cooling Water Systems) that do not apply to this industry. EPA then intends to send the Detailed Industry Questionnaire to a subset of potentially affected facilities. To reduce burden, EPA proposes to delete most of the questions in part 2 (Technical Data). Deleted questions are identified in the revised ICR supporting document.

EPA plans to use the information collected from the detailed questionnaire to assess the potential economic impacts of Phase III regulations on potentially affected facilities. The survey would also collect economic data on facility ownership, major production activities, markets and finances. The Agency will use this information to assess facility-level and firm-level impacts of complying with the proposed Phase III cooling water intake structure regulations as appropriate under CWA section 316(b). The economic data will also enable EPA to carry out required analyses, including a Regulatory Impact Analysis (RIA), a cost/benefit analysis, and a small business analysis.

EPA's authority to collect this information is fully discussed in the ICR supporting document. In summary, section 308 of the CWA authorizes EPA to collect technical, biological and financial data to support the rulemaking process. The ICR for the Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures matches the purpose authorized under section 308, therefore responses to the detailed questionnaire are mandatory. In accordance with 40 CFR part 2, subpart B, § 2.203, the survey will inform respondents of their right to claim information as confidential. The survey provides instructions on the procedures for making Confidential Business Information (CBI) claims, and the respondents also will be informed of the terms and rules governing protection of CBI obtained under the CWA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 26, 1998 (63 FR 3738); 363 comments were received. Based on these comments and the pretest results, EPA significantly modified the questionnaire.

IV. Burden Statement

The annual public reporting and recordkeeping burden for the detailed questionnaire is estimated to be about 45 hours per response for offshore oil and gas extraction facilities. The public reporting and recordkeeping burden for offshore seafood processing facilities would be 8 hours per response on the Industry Short Technical Questionnaire, and 56 hours per response on the Detailed Industry Questionnaire. These estimates are based upon estimates in the OMB approved ICR, taking into account the reduced burden from deleted questions. The respondent burden in the original approved ICR was 128,736 hours and the non-labor cost was $13,635. The total burden associated with this extension is articulated below and reflects the changes in applicable respondents described in section III of this notice:

Estimated Number of Respondents for Detailed Questionnaire: 250 (100 Offshore and Coastal Oil and Gas Extraction firms and 150 Offshore Seafood Processors).

Estimated Number of Respondents for Short Technical Questionnaire: 800.

Frequency of Response: one-time submission.

Estimated Burden: 19,300 hours.

Estimated Cost (non-labor costs): $3,950.

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.

Dated: December 9, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–31362 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency on November 14, 2002, to address two lawsuits filed by the New York Public Interest Research Group, Inc. and the Sierra Club and Georgia ForestWatch. The lawsuits were filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), and allege that the Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking the Agency's objection to eleven Clean Air Act Title V operating permits issued by the New York State Department of Environmental Conservation and eight Title V operating permits issued by the Georgia Environmental Protection Division. The lawsuits have been consolidated and both are addressed by the proposed consent decree, which establishes a schedule for the Administrator to respond to the outstanding petitions that are subject to the lawsuits.

DATES: Written comments on the proposed consent decree must be received by January 13, 2003.

ADDRESSES: Written comments should be sent to Padmini Singh (on the New York petition deadlines) or Kerry E. Rodgers (on the Georgia petition deadlines), Air and Radiation Law Office (MC 2344A), Office of General Counsel, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on November 14, 2002.

SUPPLEMENTARY INFORMATION: New York Public Interest Research Group, Inc. (''NYPIRG'') alleges that the United States Environmental Protection Agency (''EPA'') Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking EPA's objection to eleven Title V operating permits issued by the New York State Department of Environmental Conservation. Sierra Club and Georgia Forest Watch allege that the Administrator failed to meet the same deadline under section 505(b)(2) for granting or denying petitions seeking EPA's objection to eight Title V operating permits issued by the Georgia Environmental Protection Division.

Prior to negotiating the proposed consent decree, the Administrator signed orders responding to three petitions for New York facilities and three petitions for Georgia facilities that are subject to the lawsuits. The proposed consent decree establishes a schedule for EPA's responses to the remaining petitions that are subject to the lawsuits. Specifically, the proposed consent decree requires EPA to sign orders responding to the plaintiffs' petitions for the following facilities (listed with the states in which they are located) no later than the dates specified:

(a) King Finishing (GA)—October 15, 2002;

(b) Monroe Power (GA)—October 15, 2002;

(c) Shaw Industries, Plant No. 80 (GA)—November 15, 2002;

(d) Shaw Industries, Plant No. 2 (GA)—November 15, 2002;

(e) Oglethorpe Power Wansley Combined Cycle Energy Facility (GA)—November 15, 2002;

(f) Columbia University (NY)—December 15, 2002;

(g) Elmhurst Hospital (NY)—December 15, 2002;

(h) Starrett City (NY)—December 15, 2002;

(i) Bergen Point Sewage Treatment Plant (NY)—December 15, 2002;

(j) Maimonides Medical Center (NY)—December 15, 2002;

(k) Lovett Generating Station (NY)—January 30, 2003;

(l) Danskammer Generating Station (NY)—January 30, 2003;

(m) Con Edison 74th Street Station (NY)—January 30, 2003.

The proposed consent decree also requires EPA to provide the plaintiffs with notice of signature of each order within five business days following signature. In addition, the proposed consent decree requires EPA to deliver a notice of each order to the Office of Federal Register for prompt publication no later than thirty days following signature and to not take any steps to delay publication of such notice. After EPA has fulfilled all of its obligations under the proposed consent decree, the proposed consent decree will terminate and the lawsuits will be dismissed with prejudice.

For a period of thirty days following the date of publication of this notice, EPA will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the lawsuits in question. EPA or the United States Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the United States Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for the Administrator's responses to the remaining petitions that are subject to the lawsuits in question.

Dated: December 4, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 02–31359 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–8]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in Arizona and Nevada to be listed pursuant to Clean Water Act Section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On December 5, 2002, EPA partially approved and partially disapproved Arizona's submittal. Specifically, EPA approved Arizona's listing of 32 waters, associated pollutants, and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 3 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list.

On November 20, 2002, EPA partially approved and partially disapproved Nevada's submittal. Specifically, EPA approved Nevada's listing of 84 waters, associated pollutants, and associated priority rankings. EPA disapproved Nevada's decisions not to list 15 water quality limited segments and associated pollutants, and additional pollutants for 38 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to Arizona and Nevada's 2002 Section 303(d) lists, as required by EPA's Public Participation regulations [40 CFR part 25]. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Arizona and Nevada's final lists.

DATES: Comments must be submitted to EPA on or before January 13, 2003.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Team Leader, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3416, facsimile (415) 947–3537, e-mail *smith.davidw@epa.gov.* Oral comments will not be considered. Copies of the proposed decisions concerning Arizona and Nevada which explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region09/water/TMDL* by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for these decisions are available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 972–3416 or *smith.davidw@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA [40 CFR 130.7]. The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years [40 CFR 130.7]. On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit Section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 [65 FR 17170].

Consistent with EPA's regulations, Arizona submitted to EPA its listing decisions under Section 303(d)(2) on October 17, 2002. On December 5, 2002, EPA approved Arizona's listing of 32 waters and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 3 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list. EPA solicits public comment on its identification of 19 additional waters and associated pollutants, and additional pollutants for 3 waters

already listed by the State, for inclusion on Arizona's 2002 Section 303(d) list.

Consistent with EPA's regulations, Nevada submitted to EPA its listing decisions under Section 303(d)(2) on October 1, 2002. On November 20, 2002, EPA approved Nevada's listing of 84 waters and associated priority rankings. EPA disapproved Nevada's decisions not to list 15 water quality limited segments and associated pollutants, and additional pollutants for 38 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list. EPA solicits public comment on its identification of 15 additional waters and associated pollutants, and additional pollutants for 38 waters already listed by the State, for inclusion on Nevada's 2002 Section 303(d) list.

Dated: November 27, 2002.

Catherine Kuhlman,

Acting Director, Water Division, EPA Region IX.

[FR Doc. 02–31239 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the January 9, 2003 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Tuesday, January 7, 2003. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: December 9, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–31407 Filed 12–9–02; 5:04 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 27, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1002.

Title: Cable Horizontal and Vertical Ownership Information Collection.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 146.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 162 hours.

Total Annual Costs: None.

Needs and Uses: Under Section 613(f) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the FCC is directed to establish reasonable limits on the number of subscribers that may be reached through cable operators' owned or affiliated cable systems and on the number of channels that can be occupied by cable operators' owned or affiliated programming networks. This information collection will assist the Commission in its rulemaking proceeding revising these rules consistent with a court remand and reversal of previous rules.

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act (SHVA).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 848.

Estimated Time per Response: 30 minutes (0.5 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 125,000 hours.

Total Annual Costs: None.

Needs and Uses: In February 1999, the FCC released a *Report and Order* (R&O), FCC 99–14, that described a method for measuring the Grade B signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for calibrating actual household signal strength and thereby determine which consumers are ''unserved'' by over-the-air network signals. The written records of test results are made after testing and predicting the strength of a television station's signal. The R&O also endorsed a computer model to predict whether a household is likely to be able to receive a signal of the required strength. In May 2000, the FCC released a First Report and Order (First R&O), FCC 00–185, that prescribed an improved point-to-point predictive model (Individual Location Longley-Rice (ILLR)), which provides a reliable and presumptive means for determining whether the over-the-air signal of a network affiliated television station can be received at an individual location. The model can be refined when

additional data become available. Furthermore, the ILLR model significantly reduces the number of measurements conducted at individual households, thereby slowly negating the need for the rules mentioned in OMB's Terms of Clearance. In prescribing the ILLR model, the Commission is complying with new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999 (SHVIA).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31311 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2586]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 3, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC (202) 863–2893. Oppositions to these petitions must be filed by December 25, 2002. See section 1.4(b)(1) of the commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996:

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115).

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended (CC Docket No. 96–149).

In the Matter of 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 00–257).

Number of Petitions Filed: 4.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31385 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, December 17, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following item is anticipated. This matter will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Memorandum and resolution re: Delegations of Authority relating to FDIC Part 362—Investments in Equity Securities.

Discussion Agenda: Memorandum and resolution re: Notice of Proposed Rulemaking—12 CFR Part 308, Subpart U—Removal, Suspension and Debarment of Accountants from Performing Audit Services.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: December 10, 2002.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–31544 Filed 12–10–02; 3:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Meeting

DATE AND TIME: Thursday, December 18, 2002, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Election of officers.

Interim rules and explanation and justification for BCRA's Millionaire's Amendment.

Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–31520 Filed 12–10–02; 2:47 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—December 17, 2002

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China
2. Petition No. P2–02—Petition of the South Florida NVOCC–NAOCC Association, Inc. for an Investigation of the Service Contracting and Rating Practices of the Caribbean Shipowners Association
3. Docket No. 02–02—Canaveral Port Authority—Possible Violations of Section 10(b) (10), Unreasonable Refusal to Deal or Negotiate

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31403 Filed 12–9–02; 8:59 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisition by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standard enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Healthcare Bancorp, Inc.,* Broken Arrow, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Federal BankCentre, Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, December 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31262 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Geo-Analysis of HIV Prevention Services Provided by CDC Directly and Indirectly Funded Community-Based Organizations (CBOs) OMB No. 0920–0507—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC proposes to continue the Geo-Analysis of HIV Prevention Services Provided by CDC Directly and Indirectly Funded Community-Based Organizations data collection, previously approved OMB No. 0920-0507. This request is for a 3-year extension of clearance. There are no revisions to the report forms, data definitions, or reporting instructions.

The purposes of this project are: (1) To contribute to a national database of HIV prevention activities that was constructed using geo-codes that identify, locate and map all CBOs directly and indirectly funded by CDC in the U.S. and its territories, and (2) to evaluate the comprehensiveness of HIV prevention services in geographic areas across the United States of America and territories through the use of Geographic Information Systems (GIS) technology as the primary analytical tool.

This database is housed in the Program Evaluation Research Branch (PERB), Division of HIV/AIDS Prevention, in the National Center for STD, TB and HIV, at the Centers for Disease Control and Prevention, and will interface with other databases to complement PERB's evaluation efforts. By using GIS to identify gaps in service provision within a given geographic area, program changes can be recommended to those health departments and CBOs participating in the project. These recommended changes may include adjusting services provided or target populations in an effort to close identified gaps. Collaboration between government agencies and CBOs with access to a particular group at risk has been a traditional approach in public health in the United States. CDC promotes the collaboration and coordination of HIV prevention efforts between CBOs and of CBOs with State health departments, affiliates of National and Regional Minority Organizations (NRMOs), HIV prevention service agencies, and other public agencies including substance abuse programs, educational institutions and the criminal justice system. CDC promotes collaboration as a strategy for: (1) Improving access to and for at risk populations and communities; (2) improving the direct delivery of services; (3) improving referral of clients to services; and (4) creating comprehensive HIV services in designated geographical jurisdictions. The use of GIS will enhance the accomplishment of these three goals by providing information to funders and other shareholders to enhance CBOs in their efforts to provide interventions and client referrals and services that are accessible to the populations in need of them. This data will assist the CDC to determine the effectiveness of federal funding, whether the funding is affecting the designated high risk or infected groups such as disproportionately affected minorities where they live, or whether or not there are available programs to link with for more comprehensive services.

The project will use appropriate technology to minimize respondent burden. A self-report questionnaire, three pages in length, will be mailed. Attached, will be two maps of the geographical area (city and surrounding metropolitan area) where each CBO is located. The use of maps eliminates the need to locate maps to respond to questions concerning location and distance. This project will not be requesting information of a sensitive nature. The project deals with the types of interventions offered to high risk or HIV positive individuals, location and access. The CDC anticipates one person per CBO (total # of approximately 2000) to complete the data collection form once during the 2000 for approximately 30 minutes.

Therefore, the total response burden is estimated at 1,000 hours ($2000 \times .5 \times 1$). The total cost to respondents is estimated at $17,000 assuming a working wage for assigned CBO personnel of $17.00 per hour. There are no costs to respondents for participation in the study other than the time (.5 hours) it takes to complete the questionnaire. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
GIS Questionnaire for Directly and Indirectly Funded	2,000	1	30/60	1,000
Total				1,000

Dated: December 6, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31388 Filed 12–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Title IV–E Foster Care Eligibility Reviews, Child and Family Services Reviews

OMB No. 0970–0214

Description: ACF is requesting authority to renew an existing information collection that is expiring April 4, 2003. The initial information collection was contained in the final rule transmitting the Department's monitoring protocols for assessing title IV–E eligibility and payment accuracy, the child and family services reviews (CFSR), enforcement of the title IV–E anti-discrimination requirements, and certain provisions of the Adoption and Safe Families Act of 1997. Five information collections are associated with this information collection.

The collection of information for review of Federal payments to States for foster care maintenance payments (section 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The collection of information for review of State child and family services programs (section 1355.33(b), 1355.33(c), and 1355.33(a)) to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act is authorized by section 1123(a) [42 U.S.C. 1320a–1a] of the Act.

Section 474(d) of the Act [42 U.S.C. 674] deploys enforcement provisions (sections 1355.38(b) and (c)) for the requirements at section 471(a)(18) [42 U.S.C. 671] which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18).

The information collection is needed (1) To conduct Federal onsite eligibility reviews of title IV–E of the Act, ''Federal Payments for foster care and adoption assistance''; and (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow us to determine if States are in compliance with State plan requirements and are achieving desired outcomes for children and families, as well as assure eligibility for Federally-assisted foster care expenditures. These reviews not only address compliance with eligibility requirements, but also assist States in enhancing their capacities to serve children and families. In doing the OMB information collection, we based the annual burden estimates for the child and family service review instruments on the pilot reviews. We are therefore soliciting comments on the annual burden estimates from more accurate estimates of the annual burden. We would like to know the number of person-hours for State and local child welfare agency employees who completed the statewide assessment instrument, completed the onsite review instrument and completed a program improvement plan.

Respondents: State Agencies.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
1355.33(b) State agency statewide assessment	17	1	240	4,080
1355.33(c) On-site review	17	1	900	15,300
1355.35(a) Program improvement plan	17	1	80	1,360
1355.38(b) and (c) Corrective action plan	5	1	80	400
1356.71(i) Program improvement plan	17	1	63	1,071
Estimated Total Annual Burden Hours:				22,211

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–31258 Filed 12–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). The participating children will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Data collection for the study began in fall 2002 and extends through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews with teachers, care providers, and staff (setting interview), and quality of care assessments will be conducted each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coats Human Services Amendments of 1998, Pub. L. 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

A field test of instruments and procedures was conducted during fall 2001 and spring 2002. The field test involved approximately 450 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts.

Respondents: Individuals or households, Head Start Agencies, School Districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—Fall 2002, Spring 2003, Fall 2003, Spring 2004, Fall 2004, Spring 2005, Fall 2005, and Spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (Fall 2002):				
Parent interviews	5,111	1	1.00	5,111
Child Assessments	5,111	1	0.9166	4,685
Year 1 (Sprint 2003):				
Parent interviews	4,599	1	1.00	4,599
Father questionnaire	4,599	1	0.50	2,300
Child assessments	4,599	1	0.9166	4,216
Teacher provider ratings	966	5	0.0833	403
Center Directors/Principals Staff	368	1	0.25	92
Classroom teachers	736	1	0.50	368
Other care providers	230	1	0.50	115
Year 2 (Fall 2003):				
Parent interviews	4,139	1	1.00	4,139
Child assessments	2,287	1	0.9166	2,096
Year 2 (Spring 2004):				
Parent interviews	3,910	1	1.00	3,910
Child assessments	3,910	1	0.9166	3,584
Teach provider ratings	803	5	0.0833	335
Center directors/Principals/Staff	349	1	0.25	87
Classroom teachers	700	1	0.50	350
Other care providers	103	1	0.50	52
Year 3 (Fall 2004):				
Parent interviews	3,519	1	1.00	3,519
Year 3 (Spring 2005):				
Parent interviews	3,519	1	1.00	3,519
Child assessments	3,519	1	0.9166	3,226
Teacher ratings	704	5	0.0833	293
Principals/Staff	352	1	0.25	88
Classroom teachers	704	1	0.50	352
Year 4 (Fall 2005):				
Parent interviews	1,667	1	1.00	1,667

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year (Spring 2006):				
Parent interviews	1,667	1	1.00	1,667
Child assessments	1,667	1	0.9166	1,528
Teacher ratings	333	5	0.0833	139
Principals/Staff	167	1	0.25	42
Classroom teachers	333	1	0.50	167
Annualized Totals:				
Year 1				21,889
Year 2				14,553
Year 3				10,997
Year 4				5,210
Estimated Total Annual Burden Hours				13,162

Note: The 13,745 Total Annual Burden Hours is based on an average of 2002–03, 2003–04, 2004–05, 2005–06 estimated burden hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–31260 Filed 12–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Court Improvement Program.

OMB No.: New.

Description: The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. This Program Instruction (1) describes the requirements for states under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2003 through 2006; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements that are found in Public Law 103–66, as amended by Public Law 105–89 and Public Law 107–133, and pursuant to receiving a grant award. The information received will be used by the agency to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Program Report	52	1	36	1,872
Estimated Total Annual Burden Hours				3,952

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: December 4, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–31259 Filed 12–11–02; 8:45 am]

BILLING CODE 41184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Service Medical Staff Credentials and Privileges Files

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30-day proposed collection: Indian Health Service medical staff credentials and privileges files.

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (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. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval.

The IHS received comments in response to the 60-day **Federal Register** notice (67 FR 50892) published on August 6, 2002. The public comments received in response to the notice and the agency responses are summarized and addressed below.

Comment: One comment questioned the accuracy of the public burden estimate for this collection of information by indicating the burden estimate seemed to be too low.

Agency response: The burden estimate was checked by having additional clinical staff review and complete the application formats. This consultation was conducted within the Department of Health and Human Services with the Federal Credentialing Program, and with several Department of Defense (DoD) hospital medical staff members. They confirmed the accuracy of the burden hour estimates for formats used in this information collection activity and the burden for the Application to Medical staff was increased accordingly. They made no specific recommendations to change any of the application formats or process.

Comments: One comment suggested we consider the time burden spent by agency staff on this activity.

Agency response: The time spent by agency staff to handle and process this data collection is not considered in the ''public'' burden estimate. However, the agency is examining methods to reduce the time it takes agency staff to process this required data.

Comment: One comment suggested IHS centralize or regionalize the credentialing process and make it a web-based format.

Agency response: Agency staff responsible for oversight of the medical staff credentials and privileges application process are currently collaborating with the Veterans Health Administration and DoD health program staff to make cost-appropriate advances and improvements in the credentials process and to automated appropriate portions of the credentials and privileges process. At present, automation of this process and use of a data repository like the Federal Credentialing Program or other complex relational databases is prohibitively expensive for the IHS. It is hoped that the collaboration will result in the automation and/or centralization/regionalization of some aspects of the agency's credentialing process and thereby reduce the public burden to provide the data and the agency staff time needed to process the data.

Comment: One comment suggested IHS implement a nationwide corporate credentialing service with staff trained in the credentialing process.

Agency response: The collaboration discussed above will address this suggestion.

Comment: One comment suggested the credentialing process include a ''criminal background check''.

Agency response: The criminal background check is not a part of the IHS credentialing process. However, Public Law 101–630, the Indian Child Protection and Family Violence Protection Act, requires that all IHS employees, including the medical staff, with potential direct or unobserved contact with kids be checked for any history of criminal acts against children. In addition, the Division of Commissioned Personnel, United States Public Health Service, conducts a criminal background check as part of its Childcare National Agency Check with Written Inquiries (CNACI) system on all new appointees.

The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: 09–17–0009, ''Indian Health Service Medical Staff Credentials and Privileges Files.'' Type of Information Collection Request: Extension of a currently approved information collection, 09–17–0009, ''Indian Health Service Medical Staff Credentials and Privileges Files.'' Form Number: Instructions and information collection formats are contained in IHS Circular No. 95–16, ''Credentials and Privileges Review Process for the Medical Staff.'' Need and Use of Information Collection: The IHS operates health care facilitates that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS (2) contract health care providers who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Health Care Financing Administration and by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) require health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State

Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual health care providers applying for medical staff privileges at Indian Health Service (IHS) health care facilities.

Affected Public: Individuals, Businesses or other for-profit, Not-for-profit institutions and State, local or Tribal Government.

Type of Respondents: Health care providers requesting medical staff privileges at IHS health facilities.

The table below provides the following: Types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Application to Medical Staff	600	1	600	1.00 (60 mins)	600.0
Reference letter	1,800	1	1,800	0.33 (20 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (20 mins)	42.2
Optometric Privileges	21	1	21	0.33 (20 mins)	6.9
Psychology Privileges	23	1	23	0.17 (10 mins)	4.0
Audiology Privileges	6	1	6	0.08 (5 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (5 mins)	0.5
Radiology Privileges	9	1	9	0.33 (20 mins)	3.0
Pathology Privileges	3	1	3	0.33 (20 mins)	1.0
Total	3,709				2,371.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Cost, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestion regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, *Attention:* Allison Eydt, Desk Officer for IHS.

Send requests for more information on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lace Hadohkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852, 1601, call non-toll free (301) 443–1116, send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: *1hodahkw@hqe.ihs.gov.*

FOR FURTHER INFORMATION CONTACT: Directly pertaining to the proposed data collection instruments and/or the process, please contact Katherine Ciacco Palatianos, MD, 801 Thompson Avenue, Suite 320, Rockville, Md 20852–1627, Telephone (303) 443–1479.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 3, 2002.

Robert G. McSwain,

Acting Interim Director.

[FR Doc. 02–31251 Filed 12–11–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms may be obtained by contacting the Office's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 13, 2003, in order to be assured of consideration.

ADDRESSES: Office Information and Regulatory Affairs, Office of Management and Budget, Attention, Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John Moresko, Department of the Interior, 1849 C Street NW., MS–5512, Washington, DC 20240 or electronically to *john_moresko@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John Moresko at (202) 208–5704, or electronically to *john_moresko@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary will be submitting to OMB for extension or re-approval.

Form DI–381 and Form DI–382 were created because of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17.

The Office of the Secretary will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Titles: Claim For Relocation Payments-Residential, Claim for Relocation Payments-Nonresidential.

OMB Approval Number: 1084–0010.

Summary: The information on the application will be used to determine the amount of money, if any, owed to persons or businesses displaced by Federal acquisition of their real property.

Bureau Form Number(s): DI–381, DI–382.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisition of their real property.

Total Annual Responses: 200.

Total Annual Burden Hours: 88.

Dated: December 9, 2002.

Debra Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 02–31307 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before February 10, 2003.

ADDRESSES: Written comments should be sent directly to Larry Blair, Bureau of Indian Affairs, Branch of Tribal Government, Division of Social Services, l849 C Street NW., (MS–4660–MIB), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 208–2479, Facsimile number (202) 208–5113.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission are available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. 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.

III. Data

Title of the Information Collection: Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

Summary of Collection of Information: The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

Affected Entities: Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: December 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31312 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–02–1232–EB–AZ11; 8371]

Notice of Proposed Supplementary Rules on Public Lands Within all Arizona and California Long-Term Visitor Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas managed by the California Desert District office, California, and the Yuma Field Office, Arizona.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office, Palm Springs Field Office, and El Centro Field Office are proposing revised supplementary rules applying to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit. The revised supplementary rules are necessary to allow safe accommodation by BLM of increasing demand for long-term winter visitation and provide for protection of natural resources through improved management.

DATES: Comments on the supplementary rules must be received or postmarked by January 13, 2003 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Internet e-mail: *Mark_Lowans@blm.gov.* Mail, personal, or messenger delivery: Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365 (Attention: Mark Lowans); Palm Springs Field Office, 690 West Garnet Avenue, North Palm Springs, California 92258 (Attention: Anna Atkinson); or El Centro Field Office, 1661 South Fourth Street, El Centro, California 92243 (Attention: Bob Haggerty).

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, telephone (928) 317–3210; or Anna Atkinson, Outdoor Recreation Planner, telephone (760) 251–4800; or Bob Haggerty, Outdoor Recreation Planner, telephone (760) 337–4400; or by e-mail: *Mark_Lowans@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the supplementary rules should be specific, should be confined to issues pertinent to the supplementary rules, and should explain the reason for any recommended change. When possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules, comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Yuma Field Office, BLM located at 2555 Gila Ridge Road, Yuma, Arizona, 85365 during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. You may include reasons for your request. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

These supplementary rules will apply to all lands within designated Long-Term Visitor Areas in Arizona and California. The BLM has determined these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health, to reduce the potential for damage to the environment, and to enhance the safety of visitors. The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and BLM wrote environmental assessments for each site location.

The program was established for safe and proper accommodation of the increasing demand for long-term winter visitation and for natural resource protection through improved management of this use. The designation of LTVAs ensures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside LTVAs, for up to 14 days in any 28-day period, on public lands not otherwise posted or closed to camping.

The authority for the designation of LTVAs is contained in 43 CFR 8372.0–3 and 8372.0–5(g). The authority for the establishment of an LTVA program is contained in 43 CFR 8372.1. The authority for the payment of fees is contained in 36 CFR subpart 71. The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

III. Procedural Information

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at the effective management of developed Long-Term Visitor Areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity.

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared environmental assessment documents including the Yuma Resource Management Plan and Environmental Impact Statement dated 1988; La Posa Interdisciplinary Management Plan and Environmental Assessment dated July 1997; California Desert Conservation Area Plan as amended and final Environmental Impact Statement and Proposed Plan dated 1980 and has found that the supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules will enable effective BLM management of its Long-Term Visitor Areas for the public. BLM has placed the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so to the addresses in the **ADDRESSES** section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined in SBREFA at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who wish to camp on public lands. In this respect, the regulation of such use is necessary to protect the public lands, facilities, and those, including small business concessioners, who use them. The supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal government or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in Arizona and California, and do not address jurisdictional issues involving the State governments. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule would apply only to persons engaged in long-term camping on certain designated public lands in Arizona and California.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. It will have no discernible effect on the production or sale of energy minerals, and any effect on the consumption of such minerals, either in manufacturing camping and mobile home or trailer equipment or traveling to LTVA areas, will be imperceptible, since the provision should not have a measurable effect on either activity.

Paperwork Reduction Act

The supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Mervin G. Boyd of the Yuma, Arizona, Field Office, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43

CFR 8365.1–6, the Bureau of Land Management proposes supplementary rules for public lands in Arizona and California, to read as follows:

Dated: July 19, 2002.

Carl Rountree,

State Director, Arizona.

James Wesley Abbott,

Acting State Director, California.

Supplementary Rules on Use of Long-Term Visitor Areas in Arizona and California

The following are the supplemental rules for the designated Long Term Visitor Areas (LTVAs) and are in addition to rules of conduct set forth in 43 CFR subpart 8365. The supplemental rules apply year-long to all public land users who enter the LTVAs.

Sec. 1 Permit Requirements and Fees

You must have a permit to camp in a designated LTVA between September 15 and April 15. The permit authorizes you to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and Short-visit. The long-term permit fee is $125.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $25.00, U.S. funds only, for 14 consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $25.00 for 14 consecutive days. BLM will not refund permit fees.

Sec. 2 Displaying the Permit

To make it valid, at the time of purchase, you must affix your short-visit permit decal or long-term permit decal, using the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. You may use no more than 2 secondary vehicles within the LTVA.

Sec. 3 Permit Transfers

You may not reassign or transfer your permit.

Sec. 4 Permit Revocation

An authorized BLM officer may revoke, without reimbursement, your LTVA permit if you violate any BLM rule or regulation, or if your conduct or that of your family or guest is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of these supplementary rules. If BLM revokes your permit, you must remove all of your property and leave the LTVA system within 12 hours of notice, and you may not enter any other LTVA in Arizona or California for the remainder of the LTVA season.

Sec. 5 Unoccupied Camping Units

Do not leave your LTVA camping unit or campsite unoccupied for a period of greater than 5 days unless an authorized BLM officer approves in advance.

Sec. 6 Parking

For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

Sec. 7 Removal of Wheels and Campers

Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. You may set trailers and pickup campers on jacks manufactured for that purpose.

Sec. 8 Quiet Hours

Quiet hours are from 10 p.m. to 6 a.m. under applicable state time zone standards, or as otherwise posted.

Sec. 9 Noise

Do not operate audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer. Outdoor amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM and when approved in advance by an authorized BLM officer.

Sec. 10 Access

Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

Sec. 11 Structures and Landscaping

a. Fixed fences, dog runs, storage units, windbreaks, and other such structures are prohibited. Temporary structures of these types must conform to posted policies.

b. Do not alter the natural landscape by painting rocks or defacing or damaging any natural or archaeological feature.

Sec. 12 Livestock

Do not board or keep livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries, unless an authorized BLM officer approves in advance.

Sec. 13 Pets

Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. You are responsible for clean-up and sanitary disposal of your pet's waste.

Sec. 14 Cultural Resources

Do not disturb any archaeological or historical values, including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

Sec. 15 Trash

You must place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Do not deposit trash or holding-tank sewage in vault toilets. An LTVA permit is required for trash disposal within all LTVA campgrounds. You may not change motor oil, vehicular fluids, or dispose of or possess these used substances within an LTVA.

Sec. 16 Dumping

Do not dump sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products. Federal, state, and county sanitation laws and county ordinance specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. You must have an LTVA permit for dumping within all LTVA campgrounds.

Sec. 17 Self-Contained Vehicles

a. In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, you may camp only in self-contained camping units. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

b. Self-contained camping units must have a permanent, affixed waste water holding tank of 10-gallon minimum capacity. BLM does not consider port-a-potty systems, or systems that utilize portable holding tanks or permanent holding tanks of less than 10-gallon capacity, to be self-contained.

Sec. 18 Campfires

You may have campfires in LTVAs, subject to all local, state, and Federal regulations. You must comply with posted rules.

Sec. 19 Wood Collection

Do not collect wood within LTVAs. You may not possess native firewood (*i.e.*, mesquite, ironwood, palo verde) within LTVAs. Please contact the nearest BLM office for current regulations concerning wood collection.

Sec. 20 Speed Limit

The speed limit in LTVAs is 15 miles per hour or as otherwise posted.

Sec. 21 Off-Highway Vehicle Use

Motorized vehicles must remain on existing roads, trails, and washes.

Sec. 22 Vehicle Use

Do not operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

Sec. 23 Firearms

Do not discharge or otherwise use firearms or weapons inside or within ½ mile of LTVAs.

Sec. 24 Vending Permits

You must have a vending permit to carry on any commercial activity. Please contact the nearest BLM office for information on vending or concession permits.

Sec. 25 Aircraft Use

Do not land or take off in aircraft, including ultralights and hot air balloons, in LTVAs.

Sec. 26 Perimeter Camping

Do not camp within 1 mile outside the boundaries of Hot Springs, Tamarisk, and Pilot Knob LTVAs and within 2 miles outside the boundary of Midland LTVA.

Sec. 27 Hot Springs Spa and Day Use Area

Do not consume, possess, or use food, beverages, glass containers, soap, pets, or motorized vehicles within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

Sec. 28 Mule Mountain LTVA

You may camp only at designated sites within Wiley's Well and Coon Hollow campgrounds. You may have only one (1) camping or dwelling unit per site.

Sec. 29 Imperial Dam and La Posa LTVAs

Do not camp overnight in desert washes in Imperial Dam and La Posa LTVAs.

Sec. 30 La Posa LTVA

You may enter La Posa LTVA only by legal access roads along U.S. Highway 95. Do not create or use any other access points. Do not remove or modify barricades, such as fences, ditches, and berms.

Sec. 31 Posted Rules

You must observe and obey all posted rules. Individual LTVAs may have additional specific rules in addition to these supplementary rules. If posted rules differ from these supplementary rules, the posted rules take precedence.

Sec. 32 Other Laws

If you hold an LTVA permit, you must observe and obey all Federal, state, and local laws and regulations applicable to the LTVA.

Sec. 33 Campsite Maintenance

You must keep the LTVA and, specifically, your campsite, in a neat, orderly, and sanitary condition.

Sec. 34 Length of Stay

Between April 16 and September 14, you may stay in an LTVA only 14 days in any 28-day period. After your 14th day of occupation at an LTVA, you must move outside of a 25-mile radius of that LTVA.

Sec. 35 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, BLM may revoke your LTVA permit, and you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 02–30991 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–475]

Certain Electronic Educational Devices and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant Franklin Electronic Publishers, Inc.'s Motion for Leave To Withdraw the Complaint and for Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting complainant Franklin Electronic Publisher, Inc.'s motion for leave to withdraw its amended complaint and for termination of investigation as to all respondents.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 9, 2002, based on a complaint filed by Franklin Electronic Publishers, Inc. of Burlington, New Jersey (''Franklin''), against LeapFrog Enterprises, Inc. of Emeryville, California, and Jetta Company Ltd. of Fanling, N.T., Hong Kong. 67 FR 51686 (Aug. 2002). The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain electronic educational devices and components thereof by reason of infringement of claims 1–4 of U.S. Patent No. 5,203,705. On November 5, 2002, Franklin filed an unopposed motion for leave to withdraw its complaint and terminate the investigation. On November 12, 2002, the Commission investigative attorney filed a response in support of Franklin's motion.

On November 14, 2002, ALJ issued an ID granting Franklin's motion. No party filed a petition for review of the ALJ's ID. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: December 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–31309 Filed 12–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Applicant Survey; Form G–942.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 10, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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 currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 6, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31253 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Contacts Concerning INS Practitioner Fraud Pilot Program; Form G–1046.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 10, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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 current information collection.

(2) *Title of the Form/Collection:* Contacts Concerning INS Practitioner Fraud Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–1046. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The INS will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60,000 responses at 52 minutes (0.866) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 51,960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291,

Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 6, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31254 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,337]

Corning Cable Systems; Telecommunication Cable Plant, Hickory, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a worker petition, which was filed on behalf of workers at Corning Cable Systems, Telecommunication Cable Plant, Hickory, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31288 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,122]

FCI USA, Inc., Communications, Data, and Consumer Division (CDC) Fiber Optics Group, a Member of the Areva Group, Etters, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002 in response to a worker petition filed on behalf of workers at FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a member of the Areva Group, Etters, Pennsylvania.

The Department issued negative determinations applicable to the petitioning group of workers on September 20, 2002 (TA–W–41,571). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determinations. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31290 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,117]

Flextronics International USA, Inc., Longmont, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002, in response to a worker petition filed on behalf of workers at Flextronics International USA, Inc., Longmont, Colorado.

The Department issued negative determinations applicable to the petitioning group of workers on August 28, 2002 (TA–W–41,700). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31289 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,304]

The Virkler Company, Charlotte, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002, in response to a worker petition which was filed by a company official on behalf of workers at The Virkler Company, Charlotte, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31287 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6613]

State of Alaska Commercial Fisheries Entry Commission Permit # 65631U Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65631U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31277 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6614]

State of Alaska Commerical Fisheries Entry Commission Permit #61392C Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61392C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31278 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6616]

State of Alaska Commercial Fisheries Entry Commission Permit #65917F Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as mended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65917F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31279 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6615]

State of Alaska Commercial Fisheries Entry Commission Permit #61393U Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61393U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31280 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6617]

State of Alaska Commercial Fisheries Entry Commission Permit #58144S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58144S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31281 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6618]

State of Alaska Commercial Fisheries Entry Commission Permit #57752K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57752K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31282 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6620]

State of Alaska Commercial Fisheries Entry Commission Permit #62266S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62266S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31283 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6621]

State of Alaska Commercial Fisheries Entry Commission Permit #58572M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58572M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31284 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6622]

State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31285 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6624]

State of Alaska Commercial Fisheries Entry Commission Permit #61408K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61408K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31286 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6583]

State of Alaska Commercial Fisheries Entry Commission Permit #65470B, Dillingham, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65470B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31292 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7230]

State of Alaska Commercial Fisheries Entries Commission Permit #60644C, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #60644C, Iliamna, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31293 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7446]

State of Alaska Commercial Fisheries Entries Commission Permit #55165N, South Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #55165N, South Naknek, Alaska.

The workers stopped fishing on July 10, 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31294 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7448]

State of Alaska Commercial Fisheries Entries Commission Permit #58963S, South Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #58963S, South Naknek, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31295 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6598]

State of Alaska Commercial Fisheries Entry Commission Permit #61326M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61326M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31297 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6599]

State of Alaska Commercial Fisheries Entry Commission Permit #60231P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60231P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31298 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6601]

State of Alaska Commercial Fisheries Entry Commission Permit #56890B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56890B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31299 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6602]

State of Alaska Commercial Fisheries Entry Commission Permit #61819K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61819K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31300 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6603]

State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31301 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6604]

State of Alaska Commercial Fisheries Entry Commission Permit #57451Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57451Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31302 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6605]

State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31303 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6606]

State of Alaska Commercial Fisheries Entry Commission Permit #68192C Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #68192C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31304 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6607]

State of Alaska Commercial Fisheries Entry Commission Permit #60844R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60844R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31305 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6608]

State of Alaska Commercial Fisheries Entry Commission Permit #57260F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57260F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31306 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7651]

J.C. Apparel, Sebastopol, Mississippi; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA, and in accordance with section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a petition dated October 25, 2002, filed by a company official on behalf of workers at J.C. Apparel, Inc., Sebastopol, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 20th day of November 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31296 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–006531]

Venice T-Shirt and Medical Corporation, Venice, CA; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 30, 2002, in response to a petition filed on behalf of workers at Venice T-Shirt and Medical Corporation, Venice, California. Workers produced knit t-shirts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31291 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D–10934]

Amendment to Prohibited Transaction Exemption 97–11 (PTE 97–11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of amendment to PTE 97–11.

SUMMARY: This document amends PTE 97–11, a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) [1] or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The amendment affects individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne or Mr. Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8540, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department proposed an amendment to PTE 97–11 (67 FR 41504) [2] PTE 97–11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code.[3] The amendment to PTE 97–11 was requested in an exemption application dated September 26, 2000, filed on behalf of American Funds Distributors, Inc. (AFD), a broker-dealer registered under the Securities Exchange Act of 1934.

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. Two comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B. No requests for a public hearing were received.

For the sake of convenience, the entire text of PTE 97–11, as amended, has been reprinted.

1. Description of the Exemption

PTE 97–11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that certain conditions are met.

Relief under PTE 97–11, as originally amended, was limited to transactions involving IRAs, as defined in section III(b) of the class exemption. In this regard, section III(b) defined the term ''IRA'' as ''an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code.'' The exemption stated further that ''(f)or purposes of the exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.''

AFD requested that PTE 97–11 be amended to expand the definition of IRA contained in section III(b) of PTE 97–11 to include Individual Retirement Annuities, as such term is defined in section 408(b) of the Code.

2. Discussion of the Comments Received

The Department received two comments on the proposed amendment to PTE 97–11. One of the commenters, the American Council of Life Insurers (ACLI), supported the amendment. The second commenter sought clarification with respect to the reduction of commissions in connection with the aggregation of variable annuity contracts and mutual funds that are offered and/or managed by unaffiliated entities. Specifically, the commenter asked the Department whether the amendment to PTE 97–11 is applicable to situations where the distributor of the annuity contract, the investment manager of the variable annuity separate account and mutual funds, and the provider of the annuity contracts are not affiliated.

[1] In Advisory Opinion 98–03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A) of the Internal Revenue Code of 1986 (the Code) is an ''individual retirement account'' described in section 408(a) of the Code. Therefore, a Roth IRA which is not an employee benefit plan covered by Title I of ERISA (except for certain Simplified Employee Pensions and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97–11, if all conditions therein are met. In this regard, the Department wishes to clarify that this proposed modification of section III(b) of PTE 97–11 would include Roth individual retirement annuities described in section 7701(a)(37)(B) of the Code.

[2] PTE 97–11 was granted on February 7, 1997 (62 FR 5855) and amended on March 8, 1999 (64 FR 11042). Any references to PTE 97–11 include the 1999 amendment.

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

As stated above, PTE 97–11 permits a broker-dealer to offer reduced or no cost services to individuals for whose benefit an IRA or Keogh Plan is established or maintained, provided that the conditions of the exemption have been met. The Department notes that the exemption does not limit relief to those services that are offered pursuant to an arrangement involving only affiliated entities.

Accordingly, a broker-dealer offering reduced commissions to an individual in connection with the purchase of a variable annuity contract under circumstances where the broker-dealer, the investment manager of the variable annuity separate account and mutual funds, and the provider of the annuity contracts are unaffiliated would be covered by the class exemption are met. In particular, the Department notes that PTE 97–11 requires, among other things, that the services offered under the relationship brokerage arrangement must be of the type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers. Additionally, the services offered under the arrangement must be provided by the broker-dealer or its affiliate in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

General Information

The attention of interested persons is directed to the following:

(1) The Department finds that the amendment is administratively feasible, in the interest of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The amendment is applicable to a transaction only if the conditions specified in the class exemption are met.

Exemption

Accordingly, PTE 97–11 is amended under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 CFR 32836, August 10, 1990).

Section I: Covered Transactions

Effective January 1, 1998, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of the section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA or Keogh Plan whose account value or whose fees are taken into account for purposes of determining eligibility to receive services under the arrangement is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the relationship brokerage arrangement must be of type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement are provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

(c) For the purpose of determining eligibility to receive services, the arrangement satisfies one of the following:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as any such requirements based on the value of any other type of account which the broker-dealer includes to determine eligibility; or

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan are as favorable as any requirements based on the amount of fees incurred by any other type of account which the broker-dealer includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

(f) The investment performance of the IRA or Keogh Plan investment is no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term ''broker-dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term ''IRA'' means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(c) The term ''Keogh Plan'' means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(d) The term ''account value'' means investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term cash shall include savings accounts that are insured by a federal deposit insurance

agency that constitute deposits as that term is defined in section 29 CFR 2550.408b–4(c)(3). The term account value shall not include investments in securities that are offered by the broker-dealer [or its affiliate] exclusively to IRAs and Keogh Plans.

(e) An affiliate or a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term ''members of his or her family'' refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(g) The term ''service'' includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term ''fees'' means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investments management fees, custodial fees, and administrative fees.

Dated: Signed at Washington, DC, this 9th day of December, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–31366 Filed 12–11–02; 8:45 am]

BILLING CODE 4520–29–M

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Teleconference)

Time and Date: 12 p.m., EST, January 24, 2003.

Place: National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in the meeting (teleconference) call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: December 6, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–31379 Filed 12–11–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Task Force on National Workforce Policies for Science & Engineering.

DATE AND TIME: December 17, 2002, 1:30 p.m.–2:30 p.m. Open Session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 120, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Tuesday, December 17, 2002.

Open Session (1:30 p.m. to 2:30 p.m.)—Discussion of comments on the draft report of the NSB/EHR Task Force on National Workforce Policies for S&E.

FOR FURTHER INFORMATION CONTACT: Gerald Glaser, Executive Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb*.

Gerard Glaser,

Executive Officer.

[FR Doc. 02–31428 Filed 12–10–02; 10:55 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Final Sequestration Report

AGENCY: Office of Management and Budget, Budget Analysis Branch.

ACTION: Notice of transmittal of the Final Sequestration Report to the President and Congress for Fiscal Year 2003.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted the Final Sequestration Report for Fiscal Year 2003 to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Sarah Lee, Budget Analysis Branch—202/395–3674.

Dated: December 6, 2002.

Richard P. Emery, Jr.,

Assistant Director for Budget Review.

[FR Doc. 02–31357 Filed 12–11–02; 8:45 am]

BILLING CODE 4810–25–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27611]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

December 6, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 31, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 31, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. et al. (70–7561)

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113;

Entergy's nonutility subsidiary, System Energy Resources, Inc. (''System Energy''), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; and Entergy's utility subsidiaries (''System Operating Companies''): Entergy Arkansas, Inc. (''EAI''), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201; Entergy Louisiana, Inc. (''ELI''), 4809 Jefferson Highway, Jefferson, Louisiana 70121; Entergy Mississippi, Inc. (''EMI''), 308 East Pearl Street, Jackson, Mississippi 39201; Entergy New Orleans, Inc. (''ENOI''), 1600 Perdido Building, New Orleans, LA 70112; (together, ''Applicants''), have filed a post-effective amendment under sections 6, 7 and 12(b) of the Act and rules 45, 53, and 54 under the Act to a previously filed application-declaration with the Commission.

By order dated December 23, 1998 (HCAR No. 24791), System Energy was authorized to enter into two separate but identical arrangements for the sale and leaseback of undivided portions of its interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station (''Unit No. 1''). In connection with the equity funding of the arrangements, financial support in the form of letters of credit (''LOCs'') was required to be maintained to secure the payment to the equity investors of certain amounts that may be payable by System Energy under the respective leases from time to time.

Applicants state that initial LOCs in an aggregate principal amount of $128,126,450 were issued in 1988 and through additional orders, the Commission authorized issuances of replacement LOCs in this file in 1991, 1993, 1996, and 1999.[1] Applicants state that the LOCs issued in 1999 in the amount of approximately $193 million are scheduled to expire on March 20, 2003.

By order dated November 6, 1996 (HCAR No. 26601), during the basic terms of the leases, (a) System Energy was authorized to extend, increase the amount of and/or change the pricing terms of subsequent LOCs within the parameters set forth in the Commission's previous orders; (b) System Energy was authorized to enter into new reimbursement agreements or further amendments to the then existing reimbursement agreement; (c) System Energy and the System Operating Companies were authorized to enter into one or more additional assignments of the availability agreement (''Availability Agreement''); [2] and (d) System Energy and Entergy were authorized to enter into one or more additional assignments of the capital funds agreement (''Capital Funds Agreement''),[3] in each case, to provide further security for System Energy's reimbursement obligations to the entity which will issue the replacement LOCs (''LOC Entity'') the administrating bank and, the participating banks.

Applicants now request authority to enter into a transaction, which will result in pre-funded LOCs.[4] Applicants state that the proposed transaction would require the creation of a financing entity (''Financing Entity''), currently anticipated to be a Delaware business trust. Applicants state that neither System Energy, Entergy, nor any associate company of either corporation would form the Financing Entity or hold an equity stake in the Financing Entity. Applicants further state that the Financing Entity would issue pass-through certificates (''Pass-Through Certificates'') to investors in a private placement. The Pass-Through Certificates would evidence an undivided ownership interest in all of the Financing Entity's assets and contemplate a fixed or floating return on the investment. The amount of the proceeds of the sale of the Pass-Through Certificates would equal the amount of the replacement LOCs to be issued which amount will not exceed $200 million.

Applicants state that the Financing Entity would invest the proceeds of the sale of the Pass-Through Certificates in permitted investments, currently anticipated to include and primarily consist of a guaranteed investment contract (''GIC'') issued by an insurance company or other investments. The GIC or other investments would bear interest at a specified rate, would mature as to principal at the same time as the Pass-Through Certificates and be redeemable, at the option of its holder, in the same amounts and at the same time as drawings on the LOCs.

System Energy, the entity which will issue the replacement LOCs (''LOC Entity''), and the Financing Entity propose to enter into a reimbursement agreement (''New Reimbursement Agreement'') providing for the issuance of the replacement LOCs that System Energy would be required to reimburse in the case of draws on the LOCs. Applicants state that, in the event of unreimbursed drawings on the LOCs, the LOC Entity would be permitted to cause the Financing Entity's investments to be liquidated and utilized to reimburse the LOC Entity for the drawings. System Energy would be obligated to reimburse the Financing Entity for the amount of the drawing. Applicants assert that the LOC Entity, currently anticipated to be a bank, may be the Financing Entity described above.

Applicants state that annualized fees, not to exceed five percent per annum, payable by System Energy under the New Reimbursement Agreement to the Financing Entity would, together with the return on the Financing Entity's permitted investments, equal the return to be paid on the Pass-Through Certificates. Applicants further state that unreimbursed drawings on the LOCs would bear interest at the same rate and be payable at the same time as the principal and interest are payable on the Pass-Through Certificates.

To support System Energy's obligations under the New Reimbursement Agreement to the LOC Entity and the Financing Entity, the Applicants may be required to enter into one or more supplementary agreements and assignments of the Capital Funds Agreement and one or more assignments of the Availability Agreement evidencing support to or for the benefit of the other parties to the New Reimbursement Agreement. The Applicants hereby request authority for (a) Entergy and System Energy to enter into one or more supplementary agreements and assignments of the Capital Funds Agreement and (b) the System Operating Companies and System Energy to enter into one or more assignments of the Availability Agreement, in each case to or for the

[1] *See* HCAR No. 25241 (January 11, 1991), HCAR No. 25944 (December 10, 1993), HCAR No. 26601 (November 6, 1996), and HCAR No. 27157 (March 23, 2000).

[2] The System Operating Companies entered into an Availability Agreement in 1974 to pay System Energy each month, in return for the right to receive capacity and energy from Unit No. 1, amounts adequate (together with other funds received by System Energy) to cover a certain proportion of System Energy's operating expenses and interest charges. System Energy's benefits and rights under the Availability Agreement have been assigned to various creditors of System Energy since 1977.

[3] Under the Capital Funds Agreement dated as of June 21, 1974, Entergy agreed to furnish System Energy capital sufficient to enable System Energy to (a) maintain a minimum 35% equity ratio; (b) pay certain indebtedness when due; and (c) continue the commercial operation of Unit No. 1. Since 1977, System Energy has entered into supplementary agreements and assignments to secure System Energy's creditor group. These assignments extend terms comparable to the Capital Funds Agreement to each specific creditor group.

[4] System Energy states that, due to changes in the credit markets since the issuance of the 1999 replacement LOCs, it has become increasingly difficult and expensive to obtain these replacement LOCs. System Energy asserts that the purpose in proposing pre-funded LOCs is that the proposed transaction could result in replacement LOCs with terms that could extend through the remainder of the basic term of the leases (July 15, 2015) at a cost comparable to that which may be required to periodically renew, replace, or extend the LOCs in the commercial bank market through the basic term of the leases.

benefit of other parties to the New Reimbursement Agreement. Additionally, to evidence or secure System Energy's obligations under the New Reimbursement Agreement to LOC Entity and the Financing Entity, System Energy may be required to issue its first mortgage bonds or other secured or unsecured debt securities (''Bonds'') to or for the benefit of, other parties to the New Reimbursement Agreement. The Bonds would be issued in an amount equal to the maximum amount of up to $200 million of the replacement LOCs, have the same term as the replacement LOCs, and bear interest at the same rates as will be borne by the Pass-Through Certificates. The interest rate on the Pass-Through Certificates would not exceed at the time of issuance the greater of (a) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of such certificates, if issued at a fixed rate, or 500 basis points over LIBOR for the relevant interest rate period, if issued at a floating rate and (b) a spread over U.S. Treasury securities or LIBOR, as the case may be, that is consistent with similar securities of comparable credit quality and maturities issued in similar transactions with other companies.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31336 Filed 12–11–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *State Partnership Initiative (SPI) Cooperative Agreements—0960–0610. Executive Order 13078 dated March 13, 1998, Increasing Employment of Adults with Disabilities.* This action orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force ''evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities.'' To comply with the EO, SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects. SSA has employed a monitoring and technical assistance contractor to collect information from the State awardees' databases on behalf of SSA. The Contractor will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions. Following is a table that outlines the public reporting burden of the 18 State agencies for this project:

Type of Request: Revision of an OMB-approved Information Collection(s).

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Demonstration Site Form	16 (electronic)	One Time	1 minute	1 hour.
	2 (manual)	One Time	1 minute	1 hour.
Participant Demographic Data Form	3,080 (electronic)	One Time	15 minutes	770 hours.
	300 (manual)	One Time	20 minutes	100 hours.
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257 hours.
	300 (manual)	One Time	7 minutes	35 hours.
Participant Update Form	12,320 (electronic)	Quarterly	4 minutes	821 hours.
	1,200 (manual)	Quarterly	5 minutes	100 hours.
Change in Employment Status	1,540 (electronic)	Completed only if	3 minutes	77 hours.
	150 (manual).	employment changes	4 minutes.	10 hours.
State Quarterly & State Semiannual & Annual Report.	72	Quarterly	15	18 Hours.
	36	Semiannual	minutes	9 Hours.
	18	Annual	for each report	4 Hours.
Stakeholder Interviews	50	Varies per Stakeholder.	10 minutes	8 hours.

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Total	12,024			2,211 Hours.

2. *Claimant's Recent Medical Treatment—0960–0292.* The information collected on Form HA–4631 is used to provide an updated medical history for a disability claimant who requests a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. This information is necessary to assure that the Social Security Administration has the most recent medical information before making a final determination on a claim. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II (Old-Age, Survivors and Disability Insurance) and/or title XVI (Supplemental Security Income) of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 309,490.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 51,582 hours.

3. *Report to U.S. SSA by Person Receiving Benefits for a Child or Adult Unable to Handle Funds; & Report to U.S. SSA–0960–0049.* SSA needs the information on Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to determine continuing entitlement to Social Security benefits and correct benefit amounts for beneficiaries outside the U.S., as well as to monitor the performance of representative payees outside the U.S. The respondents are individuals outside the U.S. who are receiving benefits on their own behalf (or for someone else) under title II of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection(s):

	SSA–7161–OCR–SM	SAA–7162–OCR–SM
Number of Respondents	30,000	205,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15	5
Estimated Annual Burden (hours)	7,500	17,083

4. *Partnership Questionnaire—0960–0025—20 CFR, Subpart K, 404.1080-.1082.* Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for Old Age, Survivors and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection(s):

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes .

Estimated Annual Burden: 6,175 hours.

5. *SSI-Quality Review Case analysis-0960–0133.*

The form SSA–8508 is used in a personal interview with a sample of Supplemental Security Income (SSI) recipients and covers all elements of SSI eligibility. The information is used to assess the effectiveness of SSI policies and procedures and to determine payment accuracy rates. The respondents are SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 12,000.

6. *SSI Wage Reporting Pilot—0960–NEW.* SSA regulations at 20 CFR 416.701–732 require that recipients of Supplemental Security Income (SSI) report changes, such as change in income, resources and living arrangements, that could affect the receipt and amount of payments. Currently, SSI recipients report changes on form SSA–8150, Reporting Events—SSI, or to a SSA teleservice representative through SSA's toll-free telephone number or they visit their local Social Security Office. SSA is proposing to conduct a 6-month SSI wage reporting pilot to test a different method of collecting the information. During the pilot, a sample of individuals who need to report a change in earned income would call an SSA toll-free telephone number which will allow them to either speak their report (voice recognition technology) or key in the information using the telephone key pad. At the conclusion of the pilot, SSA will evaluate whether this is an effective method of reporting the information.

Number of Respondents: 4,000.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Statement of Marital Relationship (by One of the Parties)—20 CFR, Subpart H 404.726—0960–0038.* SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under state law are met. The respondents are applicants for spouse's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

2. *Marital Relationship Questionnaire—20 CFR, Subpart R, 416.1826—0960–0460.* The information collected on Form SSA–4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to Supplemental Security Income (SSI) couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

3. *Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR, Subpart K, 416.1130–.1148—0960–0174.* Form SSA–8006 provides a national uniform vehicle for collecting

information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

4. *Application for Widow's or Widower's Insurance Benefits—20 CFR, Subpart D, 404.335—.338—0960–0004.* SSA uses the information collected on the Form SSA–10–BK to determine if the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for Widow(er)'s benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

5. *Student Reporting Form—20 CFR, Subpart B, 404, and 20 CFR, Subparts D & E 422—0960–0088.* Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security Student Beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

6. *Voluntary Customer Surveys in Accordance with E.O. 12862 within the Social Security Administration—0960–0526.* These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card, to 2 hours for participation in a focus group.

Type of Request: Extension of an OMB-approved information collection.

FY 2003:

Number of Respondents: 1,526,892.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,013 hours.

FY 2004:

Number of Respondents: 1,527,732.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,028 hours.

FY 2005:

Number of Respondents: 1,169,592.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,013 hours.

7. *Application for Supplemental Security Income—20 CFR, Subpart C, 416.301–.360—0960–0444.* The information collected on Form SSA–8001–F5 is used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 872,956.

Frequency of Response: 1.

Average Burden Per Response: 18 minutes.

Estimated Annual Burden: 261,887 hours.

8. *Application for Supplemental Security Income—20 CFR, Subpart C, 416.305–.335—0960–0229.* The information collected using Form SSA–8000–BK is needed and used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,249,933.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 833,289 hours.

9. *Application for Wife's or Husband's Insurance Benefits—20 CFR, Subpart D, 404.330–.333; Subpart G, 404.603—0960–0008.* SSA needs and uses the information collected on Form SSA–2–F6 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,000 hours.

10. *Supplemental Security Income Claim Information Notice—20 CFR, Subpart B, 416.210—0960–0324.* Form SSA–L8050 is used by SSA to ensure that all sources of potential income, which can be used to provide for the support and maintenance of an individual receiving SSI, are utilized. SSI is intended to supplement other income available to an individual. The respondents are applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

Dated: December 6, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–31313 Filed 12–11–02; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Australia, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Australia on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by January 3, 2003. A

hearing will be held in Washington, DC, beginning on January 15, 2003 and will continue as necessary on subsequent days. Written comments are due by noon, January 21, 2003.

ADDRESSES: *Submissions by electronic mail:*

FR0058@ustr.gov (notice of intent to testify and written testimony);

FR0059@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Barbara Weisel, Deputy Assistant U.S. Trade Representative, Southeast Asia and the Pacific at (202) 395–6813.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and nontariff barriers on imports pursuant to any proposed agreement.

On November 13, 2002, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Australia and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. The ITC intends to provide this advice no later than June 3, 2003. This notice solicits views from the public on these negotiations and provides information on a hearing which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the harmonized Tariff Schedule of the United States (HTSUS) that are products of Australia, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Australian trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on (1) Product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Australian origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Australian sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Australia that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations. Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country.

At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on January 15, 2003, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by January 3, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon January 21, 2003. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularly the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''United States-Australia Free Trade Agreement'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. 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.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–31364 Filed 12–11–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) and a Written Reevaluation for the Evaluation of New Information Regarding the National Aeronautics and Space Administration (NASA) Land Release at Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a ROD and a written reevaluation for the evaluation of new information regarding the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio.

SUMMARY: The Federal Aviation Administration (FAA) is making available a ROD and a Written Evaluation for new information concerning the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio.

POINT OF CONTACT: Mr. Ernest Gubry, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 4811 (734) 487–7280.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD and a Written Reevaluation of new information regarding the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio. The purpose of the ROD and Written Reevaluation was to evaluate the temporary impacts arising from NASA's need to remain in the South 40 area after the opening of Stage One of Runway 6L/24R in December 2002. These documents will be available during normal business hours at the following locations: FAA Detroit Airports District Office, 8820 Beck Rd., Belleville, MI 48111; FAA Airports Division Office, 2300 East Devon Ave., Des Plaines, IL 60018; Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, OH 44135. Due to current security requirements, arrangements must be made with the point of contact prior to visiting these offices.

Issued in Detroit, Michigan, December 4, 2002.

Irene R. Porter,

Manager, Detroit Airport District Office FAA, Great Lakes Region.

[FR Doc. 02–31343 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request To Release Airport Property at the Salt Lake City Airport Number 2, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Salt Lake City Municipal Airport Number 2 under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before January 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Alan Wiechmann, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Domino, Director of Planning, Salt Lake City Department of Airports, AMF Box 22084, Salt Lake City, Utah 84122.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Romero, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21.

On November 15, 2003, the FAA determined that the request to release property at the Salt Lake City Municipal Airport Number 2 submitted by the Salt Lake City Department of Airports met the procedural requirements of the Federal Aviation Regulations, Part 155.

The FAA may approve the request, in whole or in part, no later than February 28, 2003.

The following is a brief overview of the request: The Salt Lake City Municipal Airport Number 2 requests the release of 18.35 acres of non-aeronautical airport property to the Salt Lake City Department of Airports, Utah. The purpose of this release is to allow the Salt Lake City Department of Airports to sell the subject land that has been severed from other airport property by recently constructed roadways. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Salt Lake City Department of Airports, Salt Lake City International Airport, 776 North Terminal Drive, Terminal One, Room 250, Salt Lake City, UT 84116.

Issued in Denver, Colorado on November 26, 2002.

Alan Wiechmann,

Manager, Seattle Airports District Office.

[FR Doc. 02–31349 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Philadelphia for Philadelphia International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Philadelphia International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before May 20, 2003.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 21, 2002. The public comment period ends January 30, 2003.

FOR FURTHER INFORMATION CONTACT: James Byers, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Camp Hill, PA 17011. Telephone 717–730–2833. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Philadelphia International Airport are in compliance with applicable requirements of part 150, effective November 21, 2002. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 20, 2003. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Philadelphia submitted to the FAA on June 28, 2001 and November 20, 2002, noise exposures maps, descriptions and other documentation which were produced during the Philadelphia International Airport part 150 Noise Compatibility Study Update conducted between August 2000 and June 2002. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Philadelphia. The specific maps under consideration are ''2001 Noise Exposure Map'' (NEM1) and ''2006 Noise Exposure Map''(NEM2) with ''Recommended Noise Compatibility Program'' (NCP) in the submission. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: NEM1 and NEM2 contain current and forecast condition graphics such as depiction of the airport and its boundaries and runway configurations; land uses such as hospitals, libraries, churches, historical points, schools, nursing homes, commercial and industrial areas, community service areas, and residential areas; and the areas within the DNL 65, 70 and 75. Estimates of the number of people residing within the DNL 65, 70 and 75 are found in Table 3–2. The locations of noise monitoring sites are found in Exhibit B–1. Flight tracks for the existing condition and the five-year forecasted timeframes are found in Exhibits C–6 and C–7. The type and frequency of aircraft operations (including nighttime operations) are found in Tables C–2, C–3, C–4, and C–5.

Comparability of Conditions: Federal Part 150 regulations require the preparation of noise exposure contours based on forecast aircraft operations at the airport for five years from the date of submission and that reasonable assumptions concerning fleet mix, flight patterns, and planned airport developments be incorporated. The initial schedule of the Philadelphia International Airport's Part 150 Study indicated that the Noise Exposure Maps would be submitted near the end of 2001. Therefore, 2006 operating levels were used for the Future NEM/NCP. The Part 150 Study was not submitted until 2002, due in part to the events of September 11. A comparison of the 2006 and 2007 forecasts was completed and found that there would be less than 1 percent difference between the two conditions (2006 = 556,625 and 2007 = 560,140). In addition, there is nothing to indicate that there would be significant changes in flight patterns, runway use, or fleet mix between 2006 and 2007. Therefore, the 2006 Future NEM/NCP noise contours are representative of 2007 conditions as well. The FAA has determined that these maps for Philadelphia International Airport are in

compliance with applicable requirements. This determination is effective on November 21, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in an way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Philadelphia International Airport, also effective on November 21, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 20, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examinations at the following locations: Philadelphia International Airport Terminal E, Philadelphia, Pennsylvania, 19153 and Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Camp Hill, Pennsylvania, November 21, 2002.

Sharon A. Daboin,

Manager, Harrisburg Airports District Office.

[FR Doc. 02–31345 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Sitka Rocky Gutierrez Airport, Sitka AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of projects proposed at the Sitka Rocky Gutierrez Airport.

FOR FURTHER INFORMATION CONTACT: Patricia A. Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue, #14, Anchorage, AK 99513–7587; Telephone (907) 271–5454.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare an EIS for implementation of proposed projects at the Sitka Airport. Major projects proposed to be assessed in the EIS include Runway Safety Area; Parallel Taxiway; Seaplane Pullout; improvements to the Airport's Seawall; and Obstruction Removal. These projects, along with other projects proposed to improve safety and efficiency and accommodate growing aviation demand, were identified in the Sitka Airport Master Plan. The State of Alaska Department of Transportation and Public Facilities published the Airport Master Plan April 1999. The City and Borough of Sitka passed a resolution supporting the Airport Master Plan on May 25, 1999. The FAA approved the Airport Layout Plan based on the Master Plan on August 8, 2000.

To ensure that the full range of issues related to the proposed projects are addressed and that all significant issues are identified, FAA intends to consult and coordinate with Federal, State and local agencies that have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. The scoping meeting will be scheduled at a later date. Notification of the scoping meeting will be published in the Juneau Empire, the Daily Sitka Sentinel and the **Federal Register**. In addition to providing input at the public scoping meeting, the public may submit written comments to the address **FOR FURTHER INFORMATION CONTACT.** Comments should be submitted within 30 days of the publication of this Notice.

Issued in Anchorage, Alaska on November 26, 2002.

Byron K. Huffman,

Manager, Airports Division, AAL–600, Alaskan Region.

[FR Doc. 02–31348 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–65]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick or Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13323.

Petitioner: Eagle Jet Charter, Inc.

Section of 14 CFR Affected: 14 CFR § 121.313(j).

Description of Relief Sought: To permit Eagle Jet to operate its fleet of five Fokker F–27 aircraft without having a door installed between each passenger compartment and pilot compartment that resists forcible intrusion by unauthorized individuals and penetration by small arms fire and fragmentation devices.

Docket No.: FAA–2002–13224.

Petitioner: Petersen Aviation.

Section of 14 CFR Affected: 14 CFR 135.269(b)(5).

Description of Relief Sought: To permit Petersen Aviation to operate on-demand charter flights of more than 10 hours but less than 12 hours without meeting the requirement to have adequate sleeping facilities on the aircraft for the relief pilot.

Docket No.: FAA–2002–11565.

Petitioner: Fresh Water Adventures.

Section of 14 CFR Affected: 14 CFR 135.267(f).

Description of Relief Sought: To permit Fresh Water Adventures to provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each 3-month period beginning in February instead of in each calendar quarter.

[FR Doc. 02–31352 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–66]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13656–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Carol Greb (816–329–4136), Small Airplane Directorate ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Dated: Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13656–1.

Petitioner: Ente nazionale per l'Aviazione Civile (ENAC).

Section of 14 CFR Affected: 14 CFR 23.562.

Description of Relief Sought: Iniziative Industriali Italiane (3I) seeks exemption from 14 CFR 23.562 for the Sky Arrow 650 TCS/TCNS models. The Sky Arrow 650 TCS/TCNS models meet the criteria for JAR–VLA class aircraft. Each model has a maximum gross weight equal to 1432 pounds (650kg) and a flap down stall speed equal to 41 knots. The exemption will permit the Sky Arrow 650bTCNS to receive a part 23 normal category type certification as required for night VFR operations and the Sky Arrow 650 TCS to receive a part 23 normal category type certification as required for VFR day operations but with an increased level of safety. The Sky Arrow 650 TCS/TCNS are equipped with compensating design features that provide suitable occupant protection in an emergency dynamic landing condition. The exemption will permit the Sky Arrow 650 TCNS to receive a part 23 normal category type certification as required for night VFR operations and the Sky Arrow 650 TCS to receive a part 23 normal category type certification as required for VFR day operations but with an increased level of safety. The Sky Arrow 650 TCS/TCNS Models are equipped with compensating design features that provide suitable occupants protection in an emergency dynamic landing condition.

[FR Doc. 02–31353 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–67]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13603–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Orr (816–329–4151), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13603–1.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR part 23, § 23.3(d).
Description of Relief Sought: To allow Cessna Aircraft Company to obtain an exemption from 14 CFR part 23, § 23.3(d) to permit Type Certificate Data Sheet A1WI to include the Cessna Model 525B under the commuter category. Section 23.3(d) limits commuter category to propeller-driven multiengine airplanes. The Cessna Model 525B is a turbofan powered business jet, a derivative of the Models 525/525A, which is certified under 14 CFR part 23 normal category. The Cessna Model 525B will have a takeoff weight that has been increased to 13, 870 pounds, which exceeds the part 23 normal category maximum certification takeoff weight of 12,500 pounds or less.

[FR Doc. 02–31354 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–68]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9331.
Petitioner: Pratt & Whitney.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow Pratt & Whitney organizational designated airworthiness representatives to issue export airworthiness approvals for Class II and Class III products manufactured and located at Pratt & Whitney suppliers located in Germany, Italy, Japan, and Sweden.
Grant, 11/04/2002, Exemption No. 7915.

Docket No.: FAA–2000–8421.
Petitioner: Commodore Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To permit Commodore to issue export airworthiness approvals for Class II products manufactured in Tel Aviv, Israel, by Israel Aircraft Industries, Bedek Aviation Group, as an approved supplier to Commodore under Commodore's parts manufacturing authority.
Grant, 10/07/2002, Exemption No. 6861B.

Docket No.: FAA–2002–13187.
Petitioner: The Soaring Society of America, Inc.
Section of 14 CFR Affected: 14 CFR 45.11(a) and (d).
Description of Relief Sought/Disposition: To permit owners, operators, and manufacturers of gliders to forgo the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations.
Grant, 10/25/2002, Exemption No. 4988F.

Docket No.: FAA–2001–8684.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.709(b)(3).
Description of Relief Sought/Disposition: To allow Northwest to use electronic signatures generated by its SCEPTRE electronic recordkeeping system in place of physical signatures to satisfy the airworthiness release or aircraft log entry signature requirements.
Grant, 11/15/2002, Exemption No. 6575C.

[FR Doc. 02–31355 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–U–00–PNS To Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pensacola Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: Pensacola Regional Airport, 2430 Airport Blvd., Suite 225, Pensacola, Florida 32504.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltime National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pensacola Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 5, 2002, the FAA determined that the application to use the revenue from a PFC submitted by City of Pensacola was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 20, 2003.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2002.

Proposed charge expiration date: September 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $12,300,000.

Brief description of proposed project(s): Runway 8/26 Extension.

Level of the proposed PFC: $4.50.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southern Headquarters/ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida, on December 5, 2002.

W. Dean Stringer,

Manager, Airports Division, Southern Region.

[FR Doc. 02–31344 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement on Standardization of Application Regarding Hazardous Misleading Heading Information for Attitude-Heading Reference Systems (AHRS); PS–ACE100–2002–003

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: This notice announces the availability of, and request for comments for, a proposed policy statement on the standardization of application of 14 CFR part 23, § 23.1309 regarding hazardous misleading heading information for attitude-heading reference systems (AHRS); PS–ACE100–2002–003.

DATES: Comments sent must be received by February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Erv Dvorak, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; facsimile: (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Discussion

You may download a copy from the FAA Web site at <*http://www.faa.gov/certification/ aircraft/small_airplane_directorate_news_proposed.htm*>, or request a copy by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

This proposed policy's purpose is to clarify Federal Aviation Administration (FAA) certification policy on the application of Advisory Circular (AC) 23.1309–1C, Equipment, Systems, and Installations in Part 23 Airplanes, regarding hazardous misleading heading information.

The issue in question is specifically about the application of AC 23.1309–1C for an airplane with the certification basis under amendments 23–41 or later. This clarification is limited to installations approved for operation in Instrument Meteorological Conditions (IMC) under Instrument Flight Rules (IFR).

Issued in Kansas City, Missouri on November 18, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30052 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–15]

Certification of Passenger Seat Armrests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that clarifies current FAA policy with respect to certification of passenger seat armrests.

DATES: The final policy was issued by the Transport Airplane Directorate on November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2194; fax (425) 227–1320; e-mail: *jayson.claar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in **Federal Register** on August 16, 2002 (67 FR 53641). Two (2) commenters responded to the request for comments.

Background

The policy provides additional guidance with respect to compliance with § 25.785(d), Amendment, 25–88, for transport category airplane passenger seat armrests, and is specifically aimed at documenting an alternative to current policy and guidance for demonstrating compliance with that section for seat armrests which may be struck by persons seated behind them.

The final policy as well as the disposition of public comments is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on November 25, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Driectorate, Aircraft Certification Service.

[FR Doc. 02–31346 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 33 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 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:

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 33 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Michael D. Archibald

Mr. Archibald, age 57, lost his right eye in 1967 due to trauma. The visual acuity in his left eye is 20/15 corrected. His optometrist examined him in 2002 and stated, ''It is my opinion, and I will certify that the ocular health and visual condition of Michael D. Archibald, Sr. are stable and that he has demonstrated the visual competency required to perform the driving tasks of a commercial vehicle.'' Mr. Archibald reported that he has 5 years and 7,000 miles of experience in operating straight trucks, and 14 years and 1.2 million miles of experience in operating tractor-trailer combinations. He holds a Class A commercial driver's license (CDL) from the State of Washington, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

2. Howard K. Bradley

Mr. Bradley, 38, has optic nerve atrophy in his right eye due to an accident in 1983. His visual acuity is 20/400 in the right eye and 20/20 in the left. An ophthalmologist who examined him in 2002 certified, ''In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bradley submitted that he has operated tractor-trailer combinations for 19 years, accumulating 1.7 million miles. He holds a Class AM CDL from Virginia. His driving record shows he has had one accident and no convictions for traffic violations in a CMV during the last 3 years. According to the police report, a driver following Mr. Bradley rear-ended his vehicle. The other driver was charged with ''Reckless Driving'; Mr. Bradley was not cited.

3. Kirk G. Braegger

Mr. Braegger, 52, has amblyopia in his left eye. His best-corrected visual acuity is 20/30 in the right eye and 20/80 in the left. An ophthalmologist examined him in 2002 and stated, ''I certify that he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Braegger reported that he has driven tractor-trailer combinations for 20 years, accumulating 2.4 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. Daniel L. Butler

Mr. Butler, 60, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. An ophthalmologist examined him in 2002 and stated, ''In my professional opinion, this person has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle.'' Mr. Butler reported that he has driven straight trucks for 18 years, accumulating 1.0 million miles, and tractor-trailer combinations for 20 years, accumulating 1.2 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, the driver of another vehicle ran over the curb of the median. The driver stated that she was forced to move toward the median when Mr. Butler changed into her lane. Mr. Butler stated that he observed the other vehicle

to be approximately a truck-length behind him when he started to change lanes. Neither driver was cited.

5. Ambrosio E. Calles

Mr. Calles, 55, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/20 in the left. Following an examination in 2002 his optometrist stated, ''I certify that in my medical opinion Mr. Calles has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Calles submitted that he has driven straight trucks for 2 years, accumulating 82,000 miles, and tractor-trailer combinations for 3 years, accumulating 123,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Sandy Clark

Mr. Clark, 67, incurred damage to the macula area of his right eye due to injury 40 years ago. His visual acuity is 20/200 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and certified, ''Due to his past driving record and good vision when using both eyes, I feel his vision is adequate to safely operate a commercial motor vehicle.'' Mr. Clark reported that he has driven straight trucks for 22 years, accumulating 143,000 miles, and tractor-trailer combinations for 9 years, accumulating 270,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, another driver entered the roadway from a private driveway and struck Mr. Clark's vehicle on the side as Mr. Clark swerved to avoid the collision. The other driver was charged with ''Failure to Yield'; Mr. Clark was not cited.

7. Jose G. Cruz

Mr. Cruz, 32, lost his left eye due to trauma 23 years ago. The uncorrected visual acuity in his right eye is 20/20. Following an examination in 2002, his ophthalmologist certified, ''Mr. Cruz in all regards is able to operate a commercial vehicle as safely as possible with his current vision such as he has been doing in the past.'' Mr. Cruz submitted that he has driven tractor-trailer combinations for 4 years, accumulating 336,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Everett A. Doty

Mr. Doty, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/80. An optometrist examined him in 2002 and stated, ''In my medical opinion, Everett Allen Doty has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Doty submitted that he has driven straight trucks for 22 years, accumulating 220,000 miles. He holds a Class A driver's license from Arizona. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Donald K. Driscoll

Mr. Driscoll, 35, has amblyopia in his right eye. His visual acuity is 20/70 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist certified, ''In my opinion, Mr. Driscoll has vision sufficient and adequate for the performance of the driving tasks required to operate a commercial vehicle.'' Mr. Driscoll reported that he has driven straight trucks for 6 years, accumulating 84,000 miles. He holds a Class A CDL from Massachusetts, and there are no accidents or convictions for moving violations on his driving record for the last 3 years.

10. Donald J. Goretski

Mr. Goretski, 57, has had retinal scarring in his left eye since 1996. His best-corrected visual acuity is 20/20 in the right eye and 20/200+ in the left. Following an examination in 2002 his optometrist stated, ''It is my opinion that Mr. Goretski has adequate visual acuity and peripheral vision to safely operate a commercial motor vehicle.'' Mr. Goretski reported that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 32 years, accumulating 3.2 million miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. Alf M. Gronstedt

Mr. Gronstedt, 56, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/25 in the left. Following an examination in 2002, his optometrist certified, ''In my medical opinion, Alf M. Gronstedt should be able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gronstedt reported that he has driven tractor-trailer combinations for 35 years, accumulating 2.8 million miles. He holds a Class A CDL from Texas, and his driving record shows that he has had no accidents or convictions for traffic violations in a CMV during the last 3 years.

12. David R. Gross

Mr. Gross, 63, has had retinal scarring in his left eye for 35 years. His best-corrected visual acuity is 20/20–1 in the right eye and 20/200 in the left. Following an examination in 2002, his optometrist stated, ''I believe that Mr. Gross has the visual ability to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gross submitted that he has driven straight trucks for 20 years, accumulating 1.6 million miles. He holds a Class A CDL from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

13. Thomas L. Hall

Mr. Hall, 47, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/40 in the left. An ophthalmologist examined him in 2002 and certified, ''Based upon my examination of Mr. Thomas Hall, it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hall submitted that he has driven straight trucks for 16 years, accumulating 560,000 miles, and tractor-trailer combinations for 11 years, accumulating 330,000 miles. He holds a Class AM CDL from New York. His driving record for the past 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Hall was proceeding through an intersection on a green light when another driver attempting to make a right turn on red struck his vehicle. Neither driver was cited.

14. Raymond G. Hayden

Mr. Hayden, 60, lost all but light perception in his left eye in 1988 after failure of a retinal detachment procedure. The best-corrected visual acuity in his right eye is 20/20. An ophthalmologist examined him in 2002 and certified, ''In my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle provided he meets all the other requirements of the visual exemption program.'' Mr. Hayden reported that he has driven tractor-trailer combinations for 35 years, accumulating 3.5 million miles. He holds a Class A CDL from Louisiana. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

15. Harry P. Henning

Mr. Henning, 38, lost his right eye due to injury at the age of 8. His uncorrected visual acuity in the left eye is 20/15. An optometrist examined him in 2002 and certified, ''Although Harry's visual function is slightly less than a binocular patient, I believe he has sufficient vision to drive a commercial vehicle as long as he is careful in using his mirrors and judgment.'' Mr. Henning reported that he has driven straight trucks for 15 years, accumulating 225,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from Pennsylvania. His driving record shows one accident and no convictions for moving violations in a CMV during the last 3 years. According to the accident report, an oncoming vehicle crossed the centerline and struck the vehicle that Mr. Henning was driving. The other driver was cited for ''Roadways Laned for Traffic''; Mr. Henning was not cited.

16. Bruce G. Horner

Mr. Horner, 51, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. An optometrist examined him in 2002 and certified, ''I believe that in my medical opinion, Bruce has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Horner submitted that he has driven tractor-trailer combinations for 16 years, accumulating 2.1 million miles. He holds a Class A CDL from the State of Washington. His driving record shows no accidents or convictions for moving violations during the last 3 years.

17. Jeffery S. Lathrop

Mr. Lathrop, 42, has amblyopia in his left eye. His best-corrected vision in the right eye is 20/20 and in the left, 20/400. An optometrist examined him in 2002 and certified, ''In my opinion, Jeff has sufficient vision to operate a commercial vehicle.'' Mr. Lathrop submitted that he has driven straight trucks for 3 years, accumulating 39,000 miles, and tractor-trailer combinations for 11 years, accumulating 352,000 miles. He holds a Class A CDL from North Carolina, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

18. Tommy R. Masterson

Mr. Masterson, 48, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. Following an examination in 2002, his optometrist commented, ''It is my opinion that Mr. Masterson has the vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Masterson submitted that he has driven straight trucks for 25 years, accumulating 1.0 million miles, and tractor-trailer combinations for 20 years, accumulating 850,000 miles. He holds a Class A CDL from Oregon, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

19. Daniel A. McKeon

Mr. McKeon, 60, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/70. Following an examination in 2002, his optometrist commented, ''In my opinion, Mr. McKeon's visual condition, refractive amblyopia—left eye, does not prevent him from safely performing the driving tasks required to operate a car or truck.'' Mr. McKeon reported that he has driven straight trucks for 6 years, accumulating 300,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.9 million miles. He holds a Class A CDL from Minnesota. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

20. Ralph J. Miles

Mr. Miles, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. Following an examination in 2002 his ophthalmologist certified, ''My medical opinion is that Mr. Miles has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Miles submitted that he has driven straight trucks for 6 years, accumulating 240,000 miles. He holds a Class C driver's license from Oregon. His driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

21. William R. New

Mr. New, 54, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/70 in the left. An ophthalmologist examined him in 2002 and certified, ''It is my medical opinion that Mr. New's vision is sufficient to perform his job as a commercial truck driver.'' Mr. New submitted that he has driven straight trucks for 14 years, accumulating 840,000 miles, and tractor-trailer combinations for 10 years, accumulating 600,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

22. Kirby G. Oathout

Mr. Oathout, 51, has amblyopia in his left eye. His best-corrected visual acuity is 20/20–1 in the right eye and 20/80–1 in the left. Following an examination in 2002, his optometrist commented, ''Because of the excellent vision in the right eye and the normal peripheral vision in both eyes as well as the fact that he has had his entire life to adapt to this condition, I believe Mr. Oathout has sufficient vision to perform driving tasks related to driving a commercial vehicle.'' Mr. Oathout submitted that he has driven straight trucks for 5 years, accumulating 275,000 miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

23. Ronald F. Prezzia

Mr. Prezzia, 47, has amblyopia in his right eye. His best-corrected visual acuity is 20/60 in the right eye and 20/30 in the left. An ophthalmologist examined him in 2002 and certified, ''In my medical opinion, Mr. Prezzia has sufficient vision to perform the driving tasks that are required to operate a commercial vehicle.'' Mr. Prezzia reported that he has driven straight trucks for 1½ years, accumulating 40,000 miles, and tractor-trailer combinations for 23 years, accumulating 1.1 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

24. Joseph J. Rettenmeier

Mr. Rettenmeier, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/50 in the left. An optometrist examined him in 2002 and certified, ''My medical opinion is that Joe Rettenmeier has sufficient vision to perform all the driving tasks required to operate a commercial vehicle.'' Mr. Rettenmeier reported that he has driven straight trucks for 8 years, accumulating 520,000 miles, and tractor-trailer combinations for 10 years, accumulating 1.0 million miles. He holds a Class A CDL from Iowa. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

25. Thomas C. Rylee

Mr. Rylee, 55, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. Following an examination in 2002, his optometrist certified, ''Mr. Rylee has sufficient vision to perform the driving tasks required to operate a

commercial vehicle.'' In his application, Mr. Rylee indicated he has driven tractor-trailer combinations for 26 years, accumulating 1.1 million miles, and buses for 3 years, accumulating 4,000 miles. He holds a Class A CDL from Georgia, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

26. Stanley B. Salkowski III

Mr. Salkowski, 40, has amblyopia in his right eye. His visual acuity is 20/60- in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist certified, ''His condition is stable and it is my impression that his vision is sufficient to perform all the driving tasks required to drive a commercial vehicle.'' Mr. Salkowski submitted that he has driven straight trucks for 11 years, accumulating 297,000 miles, and tractor-trailer combinations for 10 years, accumulating 680,000 miles. He holds a Class A CDL from Pennsylvania, and his driving record shows he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

27. Wolfgang V. Spekis

Mr. Spekis, 47, has amblyopia in his left eye. His visual acuity is 20/25 in the right eye and 20/400 in the left. Following an examination in 2002, his ophthalmologist stated, ''Given what he has told me, I do believe that his visual acuity is sufficient to permit him to drive a commercial vehicle accurately and that his diabetic retinopathy is not at present leading to any visual deficiency.'' Mr. Spekis submitted that he has driven straight trucks for 12 years, accumulating 720,000 miles. He has a Maryland Class B CDL, and there are no accidents or convictions for moving violations on his driving record for the last 3 years.

28. James A. Stoudt

Mr. Stoudt, 50, has amblyopia in his left eye. His best-corrected vision in the right eye is 20/20–2 and in the left, 20/100+. Following an examination in 2002, his ophthalmologist stated, ''I feel that he can compensate fairly well visually, and he is able to continue his career as a truck driver from my standpoint.'' Mr. Stoudt submitted that he has 14 years and 1.0 million miles of experience in driving tractor-trailer combinations. He holds a Class A CDL from Pennsylvania, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

29. Michael G. Thomas

Mr. Thomas, 31, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/200. An optometrist examined him in 2002 and stated, ''I certify that in my professional opinion, Michael G. Thomas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' In his application, Mr. Thomas indicated he has 9 years and 148,000 miles of experience in driving straight trucks. He holds a Class C driver's license from Maryland, and his driving record shows no accidents or moving violations in a CMV during the last 3 years.

30. Brian S. Thompson

Mr. Thompson, 38, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. An optometrist examined him in 2002 and stated, ''Brian has sufficient visual function to perform his duties as a driver of commercial vehicles.'' Mr. Thompson submitted that he has driven straight trucks for 18 years, accumulating 201,000 miles. He holds a Class B CDL from Ohio. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

31. William H. Twardus

Mr. Twardus, age 56, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. Following an examination in 2002, his optometrist certified, ''It is my opinion that with the visual field and the visual acuity of Mr. William Twardus that he has adequate vision to perform the driving tasks that are required to operate a commercial vehicle.'' Mr. Twardus reported that he has driven straight trucks for 24 years, accumulating 624,000 miles. He holds a Class A CDL from Delaware. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

32. Ronald J. Watt

Mr. Watt, 71, lost his right eye in 1996 due to trauma. His best-corrected visual acuity is 20/20 in the left eye. An optometrist examined him in 2002 and certified, ''In my opinion, Mr. Watt has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Watt reported that he has driven straight trucks for 40 years, accumulating 1.2 million miles, and tractor-trailer combinations for 24 years, accumulating 2.5 million miles. He holds a Class A CDL from North Dakota. His driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

33. Dale R. Wheeler

Mr. Wheeler, 49, has had a macular scar in his right eye since birth. His best-corrected visual acuity is 20/260 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and stated, ''In my opinion, Dale Wheeler has sufficient vision to operate a commercial vehicle.'' Mr. Wheeler reported that he has driven straight trucks for 1 year, accumulating 20,000 miles, and tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—Speeding—in a CMV. He exceeded the speed limit by 15 mph.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 5, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–31356 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 9, 2002 (67 FR 63010).

DATES: Comments must be submitted on or before January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 9, 2002, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 63010. FRA received no comments after issuing the 60-day notice referenced earlier. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Inspection and Maintenance Standards For Steam Locomotives.

OMB Control Number: 2130–0505.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: The Locomotive Boiler Inspection Act (LBIA) OF 1911 requires each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. Additionally, the collection of information is used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed, and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Annual Estimated Burden Hours: 314 hours.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Type of Request: Extension of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Abstract: Prior to the enactment of the Transportation Equity Act of the 21st Century (''TEA 21''), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Annual Estimated Burden Hours: 5,881 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 9, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–31340 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–02–13481 (PDA–29(R))]

Massachusetts Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Medical Waste Institute for an administrative determination whether

Federal hazardous materials transportation law preempts requirements of the Commonwealth of Massachusetts concerning regulations on the storage and disposal of infectious or physically dangerous medical or biological waste.

DATES: Comments received on or before January 27, 2003, and rebuttal comments received on or before March 12, 2003, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''*http://dms.dot.gov.*''

Comments must refer to Docket No. RSPA–02–13481 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov,* and click on ''Help'' to obtain instructions. You may also sign up on the DOT's DMS ''List Serve'' at this Web site. This service will automatically notify you when certain documents are put into a docket that is of interest to you.

A copy of each comment must also be sent to (1) Alice P. Jacobsohn, Esq., Director, Public Affairs and Industry Research, Medical Waste Institute, 4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008, and (2) Howard S. Wensley, M.S., C.H.O., Director, Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Division of Community Sanitation, 305 South Street, Jamaica Plain, MA 02130–3597. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Ms. Jacobsohn and Mr. Wensley at the addresses specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at ''*http://rapa-atty.dot.gov.*'' A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Medical Waste Institute (the ''Institute'') has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts requirements contained in Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.000 *et seq.* applicable to the storage and disposal of ''infectious or physically dangerous medical or biological waste.'' In its application, the Institute challenges packaging, labeling, and manifesting requirements for this waste that it states are not substantially the same as requirements in the HMR. The test of the Institute's application is set forth in Addendum A to this notice.

Packaging. The Institute asserts that Massachusetts' storage requirements in 105 CMR 480.100 provide that storage containers must be ''rodent-proof'' and ''fly-tight'' without defining these standards, which are not contained in the HMR, and which could be shown only by additional, different testing. The Institute also states that, with one exception, Massachusetts' requirements do not distinguish between materials stored purely for on-site treatment and those stored in preparation for transport and disposal off-site: certain wastes must be stored in ''a non-permeable three mil or greater polyethylene bag (or equivalent which is securely sealed to prevent leaks'' but that, under 105 CMR 480.200, wastes must be ''placed in a second three mil bag if they are to be transported off-site for disposal.''

Labeling. The Institute alleges that, unlike the HMR, 105 CMR 480.300 requires (1) a special label to be used on containers of ''sharp wastes,'' and (2) a label with the name, address, and telephone number of the generator on ''every container or bag of waste that has not been rendered infectious and which will be transported off the premises of the waste generator.'' The Institute asserts that these differences may confuse emergency responders and users of packaging, and that interstate shipments may be frustrated if a transporter must stop at the State border and re-label packages.

Manifest. The Institute asserts that Massachusetts requires a specific manifest form which is not required in the HMR. The Institute states that the manifest requirements in 105 CMR 480.500 cover items that fall outside the HMR's definition of hazardous waste, including blood and blood products, pathological waste, cultures and stocks of infectious agents and associated biologicals, sharps, biotechnological by-product effluents, and contaminated animal carcasses, body parts, and bedding. It refers to PD–23(FR), Morrisville, PA Requirements for Transportation of ''Dangerous Waste,'' 66 RR 37260 (July 17, 2001), decision on petition for reconsideration, 67 FR 2948 (Jan. 22, 2002), where RSPA explained that regulated medical waste is not a ''hazardous waste'' regulated by the Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* In PD–23(RF), RSPA concluded that a local requirement to carry a hazardous waste manifest on a truck transporting medical waste is not ''substantively the same as'' requirements in the HMR ''because the HMR does not require the use of any specific form for shipments of regulated medical wastes (or other hazardous materials that are not hazardous wastes).'' 66 FR at 37265.

The Institute also notes that definitions in 105 CMR 480.010 may not be consistent with revised provisions in the HMR that become effective on February 14, 2003, as issued in the final rule in Docket No. RSPA–98–3971 (HM–226), Hazardous Materials: Revisions to Standards for Infectious Substances, 67 FR 53118 (Aug. 14, 2002), corrections, 67 FR 54967 (Aug. 27, 2003), 67 FR 57635 (Sept. 11, 2002).

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to the Institute's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a wavier of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must ''conform in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d)

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in law and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–614 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing, which have been delegated to the Federal Motor Carrier Safety Administration. 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized to another Federal law or whether a fee is fair. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principals and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (Aug. 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to whether 49 U.S.C. 5125 preempts the Massachusetts requirements challenged by the Institute. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which these requirements are applied and enforced, including but not limited to:

(1) What are the differences between Massachusetts' packaging requirements and the HMR packaging requirements?

(2) What do the requirements for a ''rodent proof'' and ''fly-tight'' container mean?

(3) Are Massachusetts' packaging, labeling, and manifesting requirements ''substantively the same as'' the requirements in the HMR?

(4) Do Massachusetts' packaging, labeling, and manifesting requirements ''present an obstacle'' to accomplishing and carrying out Federal hazmat law and the HMR?

(5) Are any of Massachusetts' requirements ''authorized by another Federal law''?

Issued in Washington, DC on December 6, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Addendum A

National Solid Wastes Management Association
4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008, 800–424–2869

Application of the Medical Waste Institute for a Preemption Determination as to

Massachusetts' Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

In accordance with Title 49 of the Code of Federal Regulations (CFR), Part 107, Subsection C, the Medical Waste Institute (Institute) is submitting this application for a preemption determination requesting that certain sections of the Massachusetts Code be found in violation of federal transportation law.

Anyone with questions about this application, may contact Alice Jacobsohn at 202–364–3724 (phone), 202–364–3792 (fax), or alicej@envasns.org (e-mail).

Submitted By:

Alice P. Jacobsohn, Esq.
Director, Public Affairs and Industry Research.

August 30, 2002.

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A. List of Massachusetts Requirements for Which the Preemption Determination Applies

Each of the regulations is detailed in full below. The specific text at issue in this application is highlighted by the use of capital letters.

1. Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.010 Definition of *Infectious or Physically Dangerous Medical or Biological Waste* [1]

Waste which because of its characteristics may: cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The following types of waste are identified and defined as infectious or physically dangerous medical or biological waste, and shall be subject to the requirements of 105 CMR 480.000:

(a) *Blood and Blood Products:* Discarded bulk human blood and blood products in free draining liquid state; body fluids contaminated with visible blood; and materials saturated/dripping with blood.

(b) *Pathological Waste:* Human anatomical parts, organs, tissues and body fluids removed and discarded during surgery or autopsy, or other medical procedures and specimens of body fluids and their containers.

(c) *Cultures and Stocks of Infectious Agents and Associated Biologicals:* All discarded cultures and stocks of infectious agents and associated biologicals, biotechnological by-product effluents, cultures of specimens from medical and pathological laboratories, cultures and stocks of infectious agents from research laboratories, wastes from the production of biologicals, and discarded live and attenuated vaccines intended for human use.

(d) *Contaminated Animal Carcasses, Body Parts and Bedding:* The contaminated carcasses and body parts and bedding of all research animals known to be exposed to pathogens.

(e) *Sharps:* Discarded medical articles that may cause puncture or cuts, including but not limited to all used and discarded hypodermic needles and syringes, pasteur pipettes, broken medical glassware, scapel blades, disposable razors, and suture needles.

(f) *Biotechnological By-Product Effluents:* Any discarded preparations made from genetically altered living organisms and their products.

2. 105 CMR 480.020 When Waste is Subject to 105 CMR 480.000

(a) Once material becomes waste, as defined in 105 CMR 480.010, such material shall remain waste and shall be subject to the requirements of 105 CMR 480.000 unless and until it has been both labeled in compliance with 105 CMR 480.300 and disposed of in compliance with 105 CMR 480.200 as applicable.

(b) The requirements of 105 CMR 480.000 shall not apply to waste which is contained in a mixture which, due to the presence of other materials, is subject to regulation as a hazardous or radioactive waste.

3. 105 CMR 480.100 Storage

(a) WASTE GENERATIONS SHALL CONTAIN AND STORE MEDICAL WASTE AT ALL TIMES IN LEAK PROOF, RODENT PROOF, FLY-TIGHT CONTAINERS WHICH ENSURE THAT NO DISCHARGE OR RELEASE OF SUCH WASTE OCCURS AND THAT NO ODOR OR OTHER NUISANCE IS CREATED.

(b) All onsite storage of containers of waste shall be held in an area away from general traffic flow patterns, preferably in a room identified for this purpose. The manner of storage shall restrict access or contact with such waste to authorized persons only. SHARPS SHALL BE SEGREGATED FROM OTHER WASTES AND AGGREGATED IN LEAK PROOF, RIGID, PUNCTURE-RESISTANT, SHATTERPROOF CONTAINERS IMMEDIATELY AFTER USE.

(c) WASTES OTHER THAN FREE DRAINING BLOOD AND BLOOD PRODUCTS, SHARPS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE PLACED IN A NON-PERMEABLE THREE MIL OR GREATER POLYETHYLENE BAG (OR EQUIVALENT) WHICH IS SECURELY SEALED TO ELIMINATE LEAKS. FREE DRAINING BLOOD AND BLOOD PRODUCTS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE STORED AT ALL TIMES IN LEAK PROOF CONTAINERS THAT ARE SECURELY SEALED.

4. 105 CMR 480.200 *Disposal*

(C) *Blood Saturated Materials, Cultures, and Stocks of Infectious Agents and Associated Biologicals, Dialysis Waste and Laboratory Waste*

(2) Disposed of on-site at an approved incinerator facility, OR PLACED IN A SECOND 3 MIL BAG FOR TRANSPORT TO AN APPROVED INCINERATION FACILITY OFF-SITE.

(E) Pathological waste and contaminated animal carcasses shall be disposed of at an approved incineration facility or by interment, provided however, that liquid pathological waste may also be disposed in accordance with 105 CMR 480.200(A) and discarded teeth and tissue may also be disposed of in accordance with 105 CMR 480.200(C)(1). THESE WASTES SHALL BE PLACED IN A SECOND THREE MIL BAG IF THEY ARE TO BE TRANSPORTED OFF-SITE FOR DISPOSAL.

5. 105 CMR 480.300 *LABELING*

(A) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS SHALL:

(2) IN THE CASE OF SHARP WASTES, BE DISTINCTIVELY LABELED TO INDICATE THAT IT CONTAINS SHARP WASTE CAPABLE OF INFLICTING PUNCTURES OR CUTS.

(B) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS AND WHICH WILL BE TRANSPORTED OFF THE PREMISES OF THE WASTE GENERATOR SHALL IN ADDITION TO THE REQUIREMENTS OF 105 CMR 480.300(A):

BEAR A LABEL WHICH STATES THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE GENERATOR. THE LABEL SHALL BE AFFIXED IN A MANNER WHICH ENSURES THAT IT CANNOT BE EASILY REMOVED.

6. 105 CMR 480.500 *MANIFESTS*

(A) GENERATORS SHALL PREPARE MANIFESTS BEFORE SHIPPING WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS OFF-SITE. THE MANIFEST IS A TRACKING DOCUMENT DESIGNED TO RECORD THE MOVEMENT OF WASTE FROM THE GENERATOR THROUGH ITS TRIP WITH A TRANSPORTER TO AN APPROVED DISPOSAL FACILITY AND FINAL DISPOSAL. THE GENERATOR SHALL APPOINT A DESIGNEE TO PREPARE, SIGN AND MAINTAIN SUCH MANIFESTS.

(B) THE MANIFEST MUST INCLUDE THE FOLLOWING INFORMATION:

(1) DESCRIPTION OF WASTE TO BE SHIPPED;

(2) TOTAL QUANTITY OF WASTE; AND

(3) TYPE OF CONTAINER IN WHICH WASTE IS TRANSPORTED.

(C) A GENERATOR SHALL DESIGNATE ON THE MANIFEST THE ADDRESS OF THE SITE TO WHICH THE WASTE IS TO BE

[1] The Institute believes that Massachusetts regulations found in 105 CMR 480.010 that include definitions for terms used in the Commonwealth's medical waste provisions may now be in violation of the HMR under the revised rules published on August 14, 2002 (67 Fed. Reg. 53117; HM–226). We do not take issue with those terms in this application for preemption because the federal rules are new. However, we hope that the commonwealth will review these provisions soon and make appropriate adjustments.

DELIVERED AND SIGN IT. THE TRANSPORTER OF THE WASTE OR AN AGENT OF THE TRANSPORTER SHALL SIGN THE MANIFEST TO INDICATE THAT THE TRANSPORTER HAS RECEIVED THE WASTE AND WILL COMPLY WITH THE GENERATOR'S TRANSPORTATION INSTRUCTIONS. WHEN THE WASTE ARRIVES AT THE APPROVED OFF-SITE DISPOSAL FACILITY, AND HAS BEEN DISPOSED OF, THE DISPOSAL FACILITY OWNER OR AGENT SHALL SIGN THE MANIFEST AND RETURN THE ORIGINAL TO THE GENERATOR.

(D) IF THE GENERATOR DOES NOT RECEIVE THE MANIFEST FROM THE DISPOSAL FACILITY WITHIN 30 DAYS AFTER SHIPMENT OF WASTE BY THE GENERATOR, THE GENERATOR SHALL REPORT THIS FACT TO THE DEPARTMENT OF PUBLIC HEALTH.

(E) THE GENERATOR SHALL MAINTAIN A COPY OF THE MANIFEST BOTH AS INITIALLY SENT OUT AND AS RETURNED BY THE DISPOSAL FACILITY FOR A PERIOD OF THREE YEARS.

(F) IN THE ABSENCE OF ANY RESTRICTION CONCERNING INDIVIDUALS WHO ARE AUTHORIZED TO TRANSPORT WASTE, INCLUDING BUT NOT LIMITED TO THOSE IMPOSED BY BOARDS OR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, GENERATORS WHO TRANSPORT THEIR OWN WASTE SHALL FOLLOW THE MANIFEST REQUIREMENTS SET FORTH IN 105 CMR 480.500.

B. Each Requirement of the HMR for Which the State Regulations Are Being Compared

Under 49 CFR § 107.202(a), a state regulation that is not substantively the same as any provision of federal hazardous material transportation law concerning the following subjects is preempted:

1. Designation, description, and classification of hazardous material;

2. Packing, repacking, handling, labeling, marking, and placarding of hazardous material; and

3. Preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

In addition, under 49 CFR § 107.202(b), a state regulation is preempted if, as applied or enforced, it is an obstacle to accomplishing and carrying out the federal hazardous material transportation law or regulation.

The Institute asserts that Massachusetts' requirements are in conflict with the federal hazardous material transportation rules found in:

- 49 CFR §§ 172.200 et seq. Shipping papers
- 49 CFR §§ 172.300 et seq. Marking
- 49 CFR §§ 172.400 et seq. Labeling
- 49 CFR § 173.24 General requirements for packagings and packages
- 49 CFR § 173.24a Additional general requirements for non-bulk packagings and packages
- 49 CFR § 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments
- 49 CFR §§ 178.600 et seq. Testing of non-bulk packagings and packages

C. Explanation of Why the State Regulations Should Be Preempted

1. Packaging Requirements

When Congress enacted the Hazardous Materials Transportation Act, it intended to create one system of commerce for the transport of hazardous materials throughout the United States. Congress found that preemption was necessary to avoid the potential for unreasonable hazards created by multiple and conflicting requirements in other jurisdictions. Shippers and carriers should not be confused by the rules regardless of where they are conducting business nor should they be required to stop at every town and state border to repackage, re-label, and prepare new shipping documents. See Pub. L. 101–615 §§ 2(3) and 2(4), 104 Stat. 3244 (Nov. 16, 1990) (preemption provisions found in 49 U.S.C. § 5125(c)).

In 105 CMR 480.100, Massachusetts established several packaging requirements that are not substantively the same as the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations (HMR) found in 49 CFR. As applicable to storage incidental to transportation, the packaging requirements in 105 CMR 480.100(b) include requirements that the HMR do not. For example, the CMR requires that containers be rodent proof and fly-tight. The HMR does not require testing or other proof to ensure that a container is rodent proof and fly-tight. A laboratory or self-tester of the performance tests required by the HMR cannot use those tests to certify that the containers will meet Massachusetts' requirements. Different tests would be required. We can speculate that a container tested to HMR standards for infectious substances may also be rodent and fly proof, but this is not certain and the performance tests in 49 CFR § 178.600 et seq. were not designed for that purpose.

The Massachusetts' storage requirements do not distinguish between materials stored purely for on-site treatment and disposal and those stored in preparation for transport and disposal off-site. In fact, interpretation letters from the commonwealth do not make this distinction (see Appendix A) and provisions in 105 CMR 480.200 that reference to off-site treatment require a ''second * * * bag'' before transport, implying a first packaging found in the storage provisions.

In addition, both 105 CMR 480.100 and 480.200 require the use of three mil or greater polyethylene (or equivalent) bags. The HMR does not require this type of packaging. The requirements in 49 CFR §§ 173.24, 173.24a, 173.196, and 173.197 include significant detail on packaging requirements, none of which refers to three mil or greater polyethylene (or equivalent) bags. Instead, the HMR allows for a variety of packaging materials as long as the user can show that the packaging complies with the performance tests or requirements in the exceptions to the rules.

2. Labeling Requirements

Massachusetts' labeling requirements in 105 CMR 480.300 are not substantially the same as the labeling and marking requirements found in HMR—49 CFR §§ 172.400, 172.301, 172.332, and 172.336. The HMR does not require a special label to be used on sharps containers nor does it require a label to indicate information about the generator. The Institute does not take issue in this application with the intent of Massachusetts regulations. The problem occurs when states or localities require their own and different labeling requirements. This confuses users of packaging and emergency responders. To comply with Massachusetts regulations, transporters would have to stop at state borders and re-label each package or hope that federal and other state enforcement officers would look the other way when they see a Massachusetts label on a package. The conflict is an obstruction to commerce, the very problem Congress aimed to resolve in the Hazardous Materials Transportation Act.

3. Manifesting

The manifesting requirements in 105 CMR 480.500 conflict with the HMR's shipping paper requirements in 49 CFR § 172.200. Manifesting in the HMR is required for hazardous waste not hazardous materials and is part of the HMR because of the relationship between the U.S. Environmental Protection Agency's (EPA) regulations under the Resource Conservation and Recovery Act and transportation requirements under the HMR.

The DOT already concluded in its Notice of administrative determination of preemption—Morrisville, PA Requirements for Transportation of ''Dangerous Waste'' (PD–23) (July 17, 2001; 66 FR 37260, at 37265) [2] that manifesting by state and local governments for other than hazardous waste is in conflict with the HMR. The CMR manifesting requirements apply to blood and blood products; pathological waste; cultures and stocks of infectious agents and associated biologicals; contaminated animal carcasses, body parts, and bedding; sharps; and biotechnological by-product effluents. Setting aside differences in definitions for these terms between the CMR and HMR, none of these items fall within the definition of hazardous waste under the HMR or any other federal agency, i.e., EPA.

D. Explanation of How the Applicant Is Affected by the Commonwealth's Regulations

The Institute, a policy-making group within the National Solid Wastes Management Association, represents companies that transport regulated medical waste and infectious substances, assist shippers in complying with hazardous material packaging requirements, and manufacture and distribute packaging used to transport regulated medical waste and infectious substances. When state transportation requirements are in conflict with federal transportation laws, Institute members are placed in a difficult position. They are subject to enforcement actions where they cannot show compliance. This, in

[2] This determination was appealed on the grounds that the DOT did not have jurisdiction to make a determination; however, the DOT did not change its opinion in the final decision and further discussion on manifesting was not provided. The detailed discussion found in DOT's determination is not repeated in this application.

turn, jeopardizes their relationship with existing and potential customers. In addition, many state permit requirements include a company's compliance record; thus, an untenable position on compliance may prevent a company from conducting business.

E. Conclusion

Congress passed a law to avoid the precise problems created by the CMR. For purposes of intra and interstate transportation, Congress mandated a national system whereby generators, shippers, transporters, emergency responders, enforcement officers, and the public would all follow the same protective rules.

The Commonwealth of Massachusetts has the same opportunity as the Institute and all other living in the United States to file a petition for rulemaking with the DOT to make changes to the HMR. In fact, Massachusetts could have filed comments on the advanced notice of proposed rulemaking and notice of proposed rulemaking that led to the revised infectious substance rule published on August 14, 2002.

The Institute continues to offer its services to states to ensure appropriate rules for the management of medical waste. We make the same offer to Massachusetts in revising the CMR to reflect federal requirements.

Appendix A

The Commonwealth of Massachusetts

February 28, 2000

Paul Hartman,
Stericycle, Inc., 369 Park East Drive, Woonsocket, RI 02895

Dear Mr. Hartman: It has come to my attention that my letter to you relative to acceptable equivalency to the required 3.0 mil red plastic bags did not contain sufficient information. The following equivalency statement should eliminate any questions.

The equivalency to the 3.0 mil is a bag meeting ASTM D 1709–85 and ASTM D 959–80 standards. 1709–85 is the Dart Impact Resistance—165 grams and the 959–80 is the load drop test, requiring a 125 pound load to be dropped from a four foot height, five times without rupturing.

Sincerely,

Howard S. Wensley, M.S., C.H.O.,
Director.

[FR Doc. 02–31339 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 6)]

Railroad Cost of Capital—2002

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2002 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2002. The decision solicits comments on: (1) The railroads' 2002 current cost of debt capital; (2) the railroads' 2002 current cost of preferred stock equity capital; (3) the railroads' 2002 cost of common stock equity capital; and (4) the 2002 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 13, 2003. Statements of the railroads are due by March 28, 2003. Statements of other interested persons are due by April 21, 2003. Rebuttal statements by the railroads are due by May 12, 2003.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *www.stb.dot.gov*. In addition, copies of the decision may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 6, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,
Secretary.

[FR Doc. 02–31337 Filed 12–11–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Transfer Account (ETA) Financial Agency Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 111, ''Electronic Transfer Account (ETA) Financial Agency Agreement.''

DATES: Written comments should be received on or before February 10, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Birdie M. McKay, Director, Program Compliance Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6630.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Electronic Transfer Account (ETA) Financial Agency Agreement.

OMB Number: 1510–0073.

Form Number: FMS 111.

Abstract: Any financial institution that offers the ETA must do so subject to the terms and conditions of the agreement. The agreement incorporates the final features of the account and other account criteria, such as standards for opening and closing accounts.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federally insured financial institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 40.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 6, 2002.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–31249 Filed 12–11–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Citizens Insurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44303 to reflect this addition:

Citizens Insurance Company of America

Business Address: 645 West Grand River Avenue, Howell, MI 48843.

Phone: (517) 546–2160. Underwriting Limitation b/: $48,293,000.

Surety Licenses c/: AL, IL, IN, KS, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA. Incorporated in: Michigan.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* 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–-04067–1.

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: December 2, 2002.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–31248 Filed 12–11–02; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 67, No. 239

Thursday, December 12, 2002

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 DEFENSE

Office of the Secretary

Defense Science Board

Correction

In notice document 02–28106 beginning on page 67605 in the issue of Wednesday, November 6, 2002, make the following correction:

On page 67605, in the third column, under the heading **SUMMARY**, in the first paragraph, in the second and third lines, the date ''January 20–30'' should read, ''January 29–30.''

[FR Doc. C2–28106 Filed 12–11–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MA–075–7209a; A–1–FRL–7374–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Approval of PM10 State Implementation Plan (SIP) Revisions and Designation of Areas for Air Quality Planning Purposes

Correction

In rule document 02–25154 beginning on page 62184 in the issue of Friday, October 4, 2002, make the following corrections:

§ 81.322 [Corrected]

1. On page 62188, in § 81.322, in the table, in the first column, under the heading ''Designated area'', in the fourth entry, ''Gratton'' should read, ''Grafton''.

2. On page 62189, in the same section, in the same table, in the same column, under the same heading, in the sixth entry, ''Stonehamd'' should read, ''Stoneham''.

[FR Doc. C2–25154 Filed 12–11–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 12, 2002

Part II

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4799–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (Code). The United States Department of Housing and Urban Development makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Steven Ehrlich, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0426, e-mail *Steven_R._Ehrlich@hud.gov.* For specific legal questions pertaining to section 42: Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224, telephone (202) 622–3000, fax (202) 622–4524. For questions about the HUBZones program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail *michael.mchale@sba.gov.* A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and QCTs are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this notice are based on Fiscal Year (FY) 2002 Fair Market Rents (FMRs), FY 2002 income limits and 2000 Census population counts as explained below. This notice designates Difficult Development Areas for each of the fifty States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. The designations of QCTs in this Notice are based on 2000 Census data. This notice designates QCTs for each of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The QCT designations for American Samoa, Guam, and the Northern Mariana Islands are unchanged and remain based on 1990 census data as 2000 census data necessary for the designation of QCTs has not been released for these areas. The QCT designations for these areas are repeated in this notice for convenience.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan counties are used in the designation of Difficult Development Areas. The Census Bureau has recently released most of the data from the 2000 Census necessary to make Qualified Census Tract designations. The Census Bureau has released the data needed for updated Qualified Census Tract designations for each of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The Census Bureau has not yet released the data needed to update Qualified Census Tract designations for American Samoa, Guam, and the Northern Mariana Islands. Thus the 2003 QCTs for American Samoa, Guam, and the Northern Mariana Islands, are unchanged from the 2002 QCTs.

Background

The U.S. Treasury Department and the Internal Revenue Service, thereof, are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and QCTs by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and QCTs for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allocated credit based on a statutory formula indicated at section 42(h)(3). States may carry forward unused or returned credit derived from the credit ceiling for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides section 42 credits derived from the credit ceiling, states may also provide section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or 40 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or

substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,650 at the 38.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the ''applicable fraction'' of the building and the ''eligible basis'' of the building. The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated QCTs or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated Difficult Development Areas in MSAs (Metropolitan Statistical Areas)/PMSAs (Primary Metropolitan Statistical Areas) may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract (QCTs) is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or, where the poverty rate is at least 25 percent. There is a limit on the number of QCTs in any MSA or PMSA that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of QCT, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this list of LIHTC QCTs, HUD used 2000 Census data and the MSA/PMSA definitions established by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04 on June 30, 1999. The LIHTC QCTs were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more to be ''eligible.'' In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the MSA/PMSA median family income for 1999 as reported by the 2000 Census by a factor of 0.6. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the state-specific, non-metro balance median family income by a factor of 0.6.

2. For each census tract, the percentage of households below the 60 percent income standard (income criterion) was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below poverty by the population for whom poverty status has been determined.

4. QCTs are those in which 50 percent or more of the households meet the income criterion, or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 2000 Census population data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999, with the exceptions described in section D. below. The basis for these comparisons was the FY 2002 HUD FMRs and the FY 2002 HUD income

limits for Very Low-Income households (or Very Low-Income Limits, ''VLILs'') used for the housing Choice Voucher program. The procedure used in making the Difficult Development Area calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 2002 two-bedroom FMR and the FY 2002 four-person VLIL.

a. The numerator of the ratio was the area's FY 2002 FMR. In general the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162), the 40th percentile rent is used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and QCTs, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of non-metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all non-metropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and non-metropolitan Difficult Development Areas there may be a minimal overrun of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ–UT: Kane County, Utah
New Orleans, LA: St. James Parish
Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkeley and Jefferson Counties, West Virginia

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

In the New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (MCDs) rather than county boundaries. Thus, when a New England county is designated as a non-metropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the non-metropolitan Difficult Development Area. Affected counties are assigned the indicator ''(part)'' in the list of non-metropolitan Difficult Development Areas. Also in the New England States, census tracts may be cut by MSA/PMSA boundaries. Only those LIHTC projects located in the part of the tract in the listed MSA/PMSA or non-metropolitan area may be allowed the increase in basis. Affected tracts are marked with an asterisk (*) in the list of QCTs.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in non-metropolitan Difficult Development Areas in the New England States are included in the list of Difficult Development Areas.

Certain non-metropolitan county equivalent areas in Alaska, for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area designations, are no longer recognized as geographic entities by the Census Bureau. Therefore, no 2000 Census population counts are produced for these areas. HUD estimates the 2000 population of these areas as follows:

1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.

2. The population of Yakutat City and Borough (808) was allocated to the

former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° longitude were allocated to the Valdez-Cordova Census Area.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. QCTs are updated periodically to reflect changes in OMB's designations of metropolitan areas.

Effective Date

The list of Difficult Development Areas and the list of QCTs is effective for allocations of credit made after December 31, 2002. In the case of a building described in section 42(h)(4)(B) of the Code, the list is effective if the bonds are issued and the building is placed in service after December 31, 2002.

Interpretive Examples for Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project A is located in a newly-designated 2003 Difficult Development Area. Bonds are issued for Project A on November 1, 2002, and Project A is placed in service March 1, 2003. Project A is not eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued before January 1, 2003.

(Case B) Project B is located in a newly-designated 2003 Difficult Development Area. Project B is placed in service November 15, 2002. The bonds which will support the permanent financing of Project B are issued January 15, 2003. Project B is not eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service before January 1, 2003.

(Case C) Project C is located in an area which is a Difficult Development Area in 2002, but is not a Difficult Development Area in 2003. Bonds are issued for Project C on October 30, 2002, but Project C is not placed in service until March 30, 2003. Project C is eligible for the increase in basis available to projects located in 2002 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 2002, a time when project C was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of Difficult Development Areas and QCTs as required by section 42 of the Code, as amended, for use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates Difficult Development Areas and QCTs as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. The notice also details the technical methodology used in making such designations.

Dated: December 12, 2002.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

2003 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	FLAGSTAFF, AZ Coconino County, AZ Kane County, UT	YUMA, AZ Yuma County		
CA	CHICO-PARADISE, CA Butte County	LOS ANGELES-LONG BEACH, CA Los Angeles County	MERCED, CA Merced County	OAKLAND, CA Alameda County Contra Costa County
	SALINAS, CA Monterey County	SAN DIEGO, CA San Diego County	SAN FRANCISCO, CA San Francisco County Marin County San Mateo County	SAN JOSE, CA Santa Clara County
	SAN LUIS OBISPO-ATASCADERO-PASO ROBLES, CA San Luis Obispo County	SANTA BARBARA-SANTA MARIA-LOMPOC, CA Santa Barbara County	SANTA CRUZ-WATSONVILLE, CA Santa Cruz County	SANTA ROSA, CA Sonoma County
	STOCKTON-LODI, CA	VALLEJO-FAIRFIELD-NAPA, CA Napa County Solano County		
CO	GREELEY, CO Weld County			
FL	MIAMI, FL Dade County	PUNTA GORDA, FL Charlotte County		
LA	NEW ORLEANS, LA Jefferson Parish Plaquemines Parish St. Charles Parish St. John the Baptist Parish Orleans Parish St. Bernard Parish St. James Parish St. Tammany Parish			
ME	PORTLAND, ME Buxton town Cumberland town Gorham town Limington town Old Orchard Beach town Scarborough town Standish town Windham town Cape Elizabeth town Falmouth town Gray town Long Island town Portland city South Portland city Westbrook city Yarmouth town Casco town Freeport town Hollis town North Yarmouth town Raymond town			
MA	BARNSTABLE-YARMOUTH, MA Barnstable city Harwich town Brewster town Mashpee town Chatham town Orleans town Dennis town Sandwich town Eastham town Yarmouth town	BOSTON, MA-NH Berkley town Rowley town Hudson town Waltham city Needham town Plymouth town Dighton town Salem city Lexington town Watertown city Norfolk town Rockland town Mansfield town Salisbury town Lincoln town Wayland town Norwood town Scituate town Norton town Saugus town Littleton town Weston town Plainville town Wareham town Taunton city Swampscott town Malden city Wilmington town Quincy city Boston city Amesbury town Topsfield town Marlborough city Winchester town Randolph town Chelsea city Beverly city Wenham town Maynard town Woburn city Sharon town Revere city Danvers town Acton town Medford city Bellingham town Stoughton town Winthrop town Essex town Arlington town Melrose city Braintree town Walpole town Berlin town Gloucester city Ashland town Natick town Brookline town Westwood town Blackstone town Hamilton town Ayer town Newton city Canton town Weymouth town Bolton town Ipswich town Belmont town North Reading town Cohasset town Wrentham town Harvard town Lynn city Boxborough town Reading town Dedham town Carver town Hopedale town Lynnfield town Burlington town Sherborn town Dover town Duxbury town Lancaster town Manchester-by-the-Sea Cambridge city Shirley town Foxborough town Hanover town Mendon town Marblehead town Carlisle town Somerville city Franklin city Hingham town Milford town Middleton town Concord town Stoneham town Holbrook town Hull town Millville town Nahant town Everett city Stow town Medfield town Kingston town Southborough town Newbury town Framingham town Sudbury town Medway town Marshfield town Upton town Newburyport city Holliston town Townsend town Millis town Norwell town Seabrook town, NH Peabody city Hopkinton town Wakefield town Milton town Pembroke town South Hampton town, NH Rockport town		

2003 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
NJ	ATLANTIC-CAPE MAY, NJ Atlantic County Cape May County	VINELAND-MILLVILLE-BRIDGETON, NJ Cumberland County	JERSEY CITY, NJ Hudson County	
NY	NASSAU-SUFFOLK, NY Nassau County Suffolk County	NEW YORK, NY Bronx County New York County Kings County Putnam County	Queens County Rockland County Richmond County Westchester County	
OR	EUGENE-SPRINGFIELD, OR Lane County	MEDFORD-ASHLAND, OR Jackson County		
PA	STATE COLLEGE, PA Centre County			
PR	AGUADILLA, PR Aguada Municipio Aguadilla Municipio Moca Municipio	CAGUAS, PR Caguas Municipio Gurabo Municipio Cayey Municipio San Lorenzo Mun. Cidra Municipio	MAYAGUEZ, PR Anasco Municipio Mayaguez Municipio Cabo Rojo Mun. Sabana Grande Mu Hormigueros Mun. San German Mun.	SAN JUAN-BAYAMON, PR Aguas Buenas Mu. Corozal Municipio Barceloneta Mun. Dorado Municipio Bayamon Mun. Fajardo Municipio Canovanas Mun. Florida Municipio Carolina Municipio Guaynabo Municipio San Juan Mun. Humacao Municipio Toa Alta Municipio Juncos Municipio Toa Baja Mun. Las Piedras Mun. Trujillo Alto Mun. Loiza Municipio Vega Alta Mun. Luquillo Municipio Vega Baja Mun. Manati Municipio Yabucoa Municipio Morovis Municipio Catano Municipio Naguabo Municipio Ceiba Municipio Naranjito Municipio Comerio Municipio Rio Grande Municipio
TX	EL PASO, TX El Paso County			
VT	BURLINGTON, VT Burlington city Essex town Grand Isle town Milton town South Burlington city St. Albans city St. George town Williston town Charlotte town Fairfax town Hinesburg town Richmond town South Hero town St. Albans town Swanton town Winooski city Colchester town Georgia town Jericho town Shelburne town			

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
AK	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH	HAINES BOROUGH
	JUNEAU BOROUGH	KENAI PENINSULA BOROUGH	KETCHIKAN GATEWAY BOROUGH	KODIAK ISLAND BOROUGH
	LAKE AND PENINSULA BOROUGH	MATANUSKA-SUSITNA BOROUGH	NOME CENSUS AREA	NORTH SLOPE BOROUGH
	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AR	SITKA BOROUGH	SOUTHEAST FAIRBANKS CENSUS AREA
	VALDEZ-CORDOVA CENSUS AREA	WADE HAMPTON CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY
	LA PAZ COUNTY	NAVAJO COUNTY	YAVAPAI COUNTY	
AR	BAXTER COUNTY	DREW COUNTY		
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	LASSEN COUNTY
	MARIPOSA COUNTY	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY
	NEVADA COUNTY	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY
	SISKIYOU COUNTY	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY
CO	ARCHULETA COUNTY	GARFIELD COUNTY	LA PLATA COUNTY	PITKIN COUNTY
	SAN MIGUEL COUNTY			
CT	LITCHFIELD COUNTY (part) Canaan town, Kent town, Norfolk town, Sharon town Colebrook town, Litchfield town, North Canaan town, Torrington town Cornwall town, Morris town, Salisbury town, Warren town Goshen town		MIDDLESEX COUNTY (part) Chester town, Essex town Deep River town, Westbrook town	NEW LONDON COUNTY (part) Lyme town, Volunton town
DE	SUSSEX COUNTY			
FL	CALHOUN COUNTY	CITRUS COUNTY	DESOTO COUNTY	DIXIE COUNTY
	FRANKLIN COUNTY	GILCHRIST COUNTY	GLADES COUNTY	GULF COUNTY
	HAMILTON COUNTY	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COUNTY
	INDIAN RIVER COUNTY	JACKSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY	PUTNAM COUNTY
	SUWANNEE COUNTY	TAYLOR COUNTY	WASHINGTON COUNTY	
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	ALLEN PARISH	AVOYELLES PARISH	CALDWELL PARISH	CATAHOULA PARISH
	CLAIBORNE PARISH	CONCORDIA PARISH	DE SOTO PARISH	EAST CARROLL PARISH
	EVANGELINE PARISH	FRANKLIN PARISH	JEFFERSON DAVIS PARISH	MADISON PARISH
	MOREHOUSE PARISH	NATCHITOCHES PARISH	POINTE COUPEE PARISH	RED RIVER PARISH
	RICHLAND PARISH	SABINE PARISH	ST. HELENA PARISH	TENSAS PARISH
	VERNON PARISH	WASHINGTON PARISH	WEST CARROLL PARISH	WEST FELICIANA PARISH

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part) Durham town Leeds town Livermore town Livermore Falls town Minot town	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part) Baldwin town Bridgton town Brunswick town Harpswell town Harrison town Naples town New Gloucester town Pownal town Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KENNEBEC COUNTY	KNOX COUNTY	LINCOLN COUNTY
	OXFORD COUNTY	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY
	PENOBSCOT COUNTY (part) Alton town Argyle unorg. Bradford town Bradley town Burlington town Carmel town Carroll plantation Charleston town Chester town Clifton town Corinna town Corinth town Dexter town Dixmont town Drew plantation East Central Penobscot unorg East Millinocket town Edinburg town Enfield town Etna town Exeter town Garland town Greenbush town Greenfield town Howland town Hudson town Kingman unorg. Lagrange town Lakeville town Lee town Levant town Lincoln town Lowell town Mattawamkeag town Maxfield town Medway town Millinocket town Mount Chase town Newburgh town North Penobscot unorg. Newport town Passadumkeag town Patten town Plymouth town Prentiss plantation Seboeis plantation Springfield town Stacyville town Stetson town Twombly unorg. Webster plantation Whitney unorg. Winn town Woodville town		WALDO COUNTY (part) Belfast city Belmont town Brooks town Burnham town Frankfort town Freedom town Islesboro town Jackson town Knox town Liberty town Lincolnville town Monroe town Montville town Morrill town Northport town Palermo town Prospect town Searsmont town Searsport town Stockton Springs town Swanville town Thorndike town Troy town Unity town Waldo town	YORK COUNTY (part) Acton town Alfred town Arundel town Biddeford city Cornish town Dayton town Kennebunk town Kennebunkport town Lebanon town Limerick town Lyman town Newfield town North Berwick town Ogunquit town Parsonsfield town Saco city Sanford town Shapleigh town Waterboro town Wells town
	WASHINGTON COUNTY			
MA	BARNSTABLE COUNTY (part) Bourne town Falmouth town Provincetown town Truro town Wellfleet town	DUKES COUNTY	FRANKLIN COUNTY (part) Ashfield town Bernardston town Buckland town Charlemont town Colrain town Conway town Deerfield town Erving town Gill town Greenfield town Hawley town Heath town Leverett town Leyden town Monroe town Montague town New Salem town Northfield town Orange town Rowe town Shelburne town Shutesbury town Warwick town Wendell town Whately town	
	HAMPDEN COUNTY (part) Blandford town Brimfield town Chester town Granville town Tolland town Wales town	HAMPSHIRE COUNTY (part) Chesterfield town Cummington town Goshen town Middlefield town Pelham town Plainfield town Westhampton town Worthington town	NANTUCKET COUNTY	WORCESTER COUNTY (part) Athol town Hardwick town Hubbardston town Petersham town New Braintree town Phillipston town Royalston town Warren town
MS	ISSAQUENA COUNTY	LAFAYETTE COUNTY		WASHINGTON COUNTY
MT	BEAVERHEAD COUNTY	BIG HORN COUNTY	BLAINE COUNTY	CARBON COUNTY
	CARTER COUNTY	CHOUTEAU COUNTY	CUSTER COUNTY	DANIELS COUNTY
	DEER LODGE COUNTY	FERGUS COUNTY	GALLATIN COUNTY	GARFIELD COUNTY
	GLACIER COUNTY	GOLDEN VALLEY COUN	GRANITE COUNTY	JUDITH BASIN COUNTY
	LAKE COUNTY	LINCOLN COUNTY	MADISON COUNTY	MCCONE COUNTY
	MEAGHER COUNTY	MINERAL COUNTY	MUSSELSHELL COUNTY	PARK COUNTY
	PETROLEUM COUNTY	PHILLIPS COUNTY	PONDERA COUNTY	POWDER RIVER COUNTY
	POWELL COUNTY	PRAIRIE COUNTY	RAVALLI COUNTY	RICHLAND COUNTY
	ROOSEVELT COUNTY	SANDERS COUNTY	SHERIDAN COUNTY	TETON COUNTY
	TREASURE COUNTY	VALLEY COUNTY	WHEATLAND COUNTY	WIBAUX COUNTY

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town, Lyndeborough town, Bennington town, New Boston town, Deering town, Peterborough town, Francestown town, Sharon town, Greenfield town, Temple town, Hancock town, Windsor town, Hillsborough town	MERRIMACK COUNTY (part) Andover town, Danbury town, Boscawen town, Dunbarton town, Bow town, Epsom town, Bradford town, Franklin city, Canterbury town, Henniker town, Chichester town, Hill town, Concord city	Hopkinton town, Pittsfield town, Loudon town, Salisbury town, Newbury town, Sutton town, New London town, Warner town, Northfield town, Webster town, Pembroke town, Wilmot town	ROCKINGHAM COUNTY (part) Deerfield town, Nottingham town, Northwood town
	STRAFFORD COUNTY (part) Middleton town, Strafford town, New Durham town			
NM	CATRON COUNTY	CIBOLA COUNTY	DEBACA COUNTY	GRANT COUNTY
	GUADALUPE COUNTY	HARDING COUNTY	LINCOLN COUNTY	LUNA COUNTY
	MCKINLEY COUNTY	MORA COUNTY	QUAY COUNTY	RIO ARRIBA COUNTY
	ROOSEVELT COUNTY	SAN JUAN COUNTY	SAN MIGUEL COUNTY	SIERRA COUNTY
	TAOS COUNTY	UNION COUNTY		
NY	COLUMBIA COUNTY	ESSEX COUNTY	GREENE COUNTY	JEFFERSON COUNTY
	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY	
NC	WATAUGA COUNTY			
OK	PAYNE COUNTY			
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GILLIAM COUNTY
	GRANT COUNTY	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY
	JOSEPHINE COUNTY	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY
	LINN COUNTY	MALHEUR COUNTY	MORROW COUNTY	SHERMAN COUNTY
	TILLAMOOK COUNTY	UNION COUNTY	WALLOWA COUNTY	WASCO COUNTY
	WHEELER COUNTY			
PA	MONROE COUNTY	UNION COUNTY	WAYNE COUNTY	
RI	NEWPORT COUNTY (part) Middleton town, Portsmouth town, Newport city	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	
TX	ARANSAS COUNTY	BURNET COUNTY	CAMP COUNTY	HUDSPETH COUNTY
	KIMBLE COUNTY	LLANO COUNTY	RAINS COUNTY	REAGAN COUNTY
	VAL VERDE COUNTY	WALKER COUNTY		
UT	DAGGETT COUNTY	IRON COUNTY	TOOELE COUNTY	WASHINGTON COUNTY
VT	ADDISON COUNTY	BENNINGTON COUNTY	CALEDONIA COUNTY	ESSEX COUNTY
	CHITTENDEN COUNTY (part) Bolton town, Underhill town, Buels gore, Westford town, Huntington town	FRANKLIN COUNTY (part) Bakersfield town, Fairfield town, Berkshire town, Fletcher town, Enosburg town, Franklin town	Highgate town, Richford town, Montgomery town, Sheldon town	GRAND ISLE COUNTY (part) Alburg town, North Hero town, Isle La Motte town
	LAMOILLE COUNTY	ORANGE COUNTY	RUTLAND COUNTY	WASHINGTON COUNTY
	WINDHAM COUNTY	WINDSOR COUNTY		
VA	CAROLINE COUNTY			

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
WA	ADAMS COUNTY	ASOTIN COUNTY	CHELAN COUNTY	CLALLAM COUNTY
	COLUMBIA COUNTY	COWLITZ COUNTY	FERRY COUNTY	GARFIELD COUNTY
	GRANT COUNTY	GRAYS HARBOR COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY
	KLICKITAT COUNTY	LEWIS COUNTY	LINCOLN COUNTY	MASON COUNTY
	OKANOGAN COUNTY	PACIFIC COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY
	SKAGIT COUNTY	SKAMANIA COUNTY	STEVENS COUNTY	WAHKIAKUM COUNTY
WV	RALEIGH COUNTY			
PI	PACIFIC ISLANDS			
PR	ALL NONMETRO PUERTO RICO			
VI	ST. CROIX	ST.JOHN/ST.THOMAS		

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Abilene, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Taylor County	101.00	102.00	103.00	104.00	108.00	110.00	117.00	119.00	121.00			

METROPOLITAN AREA: Aguadilla, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguada Municipio	4304.02	4305.02										
Aguadilla Municipio	4006.00	4008.00	4009.00	4010.00	4011.00							
Moca Municipio	4203.01											

METROPOLITAN AREA: Akron, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Portage County	6015.01	6015.02	6015.03									
Summit County	5011.00	5012.00	5013.01	5013.02	5017.00	5018.00	5019.00	5021.01	5024.00	5025.00	5032.00	5034.00
	5038.00	5041.00	5042.00	5044.00	5046.00	5051.00	5053.00	5056.00	5063.04	5065.00	5066.00	5067.00
	5068.00	5069.00	5074.00	5075.00	5101.00	5103.01						

METROPOLITAN AREA: Albany, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dougherty County	2.00	8.00	12.00	13.00	14.01	14.02	15.00	103.02	106.01			

METROPOLITAN AREA: Albany-Schenectady-Troy, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	1.00	2.00	4.04	5.01	6.00	7.00	8.00	11.00	15.00	21.00	23.00	25.00
	26.00	129.00	132.00									
Montgomery County	702.00	703.00	706.00	708.00	709.00							
Rensselaer County	404.00	405.00	406.00	407.00	408.00							
Schenectady County	201.02	202.00	203.00	208.00	209.00	210.01	210.02	211.02	214.00	215.00	217.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Albuquerque, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bernalillo County	6.03	6.04	9.01	9.03	12.00	13.00	14.00	15.00	16.00	17.00	18.00	20.00
	21.00	25.00	26.00	29.00	37.33	43.00	45.01	45.02	47.14	48.00	9403.00	9459.00
Sandoval County	101.02	102.00	103.02	9402.00	9409.00	9433.00						
Valencia County	9401.00	9703.01										

METROPOLITAN AREA: Alexandria, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rapides Parish	105.00	110.00	111.00	117.00	119.00	120.00	127.00	129.00				

METROPOLITAN AREA: Allentown-Bethlehem-Easton, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lehigh County	4.00	5.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	18.00	19.00	
Northampton County	105.00	110.00	112.00	113.00	144.00							

METROPOLITAN AREA: Altoona, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Blair County	1007.00	1008.00	1016.00	1019.00								

METROPOLITAN AREA: Amarillo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Potter County	103.00	106.00	120.00	122.00	128.00	130.00	139.00	146.00	148.00	153.00		

METROPOLITAN AREA: Anchorage, AK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anchorage Borough	5.00	6.00	10.00	11.00								

METROPOLITAN AREA: Ann Arbor, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lenawee County	613.01	613.02	616.00									
Washtenaw County	4001.00	4002.00	4003.00	4005.00	4008.00	4022.00	4042.00	4101.00	4105.00	4106.00	4107.00	4108.00
	4110.00	4111.00	4112.00	4140.00	4143.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Anniston, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calhoun County	1.00	3.00	4.00	5.00	6.00	21.01	23.00					

METROPOLITAN AREA: Appleton-Oshkosh-Neenah, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Winnebago County	5.00	7.00										

METROPOLITAN AREA: Arecibo, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arecibo Municipio	3004.00	3005.00	3012.00	3013.00	3019.00	3021.00						
Camuy Municipio	3205.00											
Hatillo Municipio	3105.00											

METROPOLITAN AREA: Asheville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buncombe County	1.00	2.00	3.00	9.00	10.00							

METROPOLITAN AREA: Athens, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clarke County	1.00	4.00	6.00	9.00	19.00	302.00	1504.00	1505.00				

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Atlanta, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Carroll County	9901.01	9905.02										
Clayton County	401.00	403.01	403.03									
Cobb County	307.00	308.00	310.02									
DeKalb County	205.00	206.00	207.00	212.04	221.00	235.01	236.01	237.00	238.02			
Fulton County	6.00	8.00	10.00	17.00	18.00	19.00	21.00	22.00	23.00	24.00	25.00	26.00
	27.00	28.00	29.00	31.00	33.00	35.00	36.00	37.00	38.00	39.00	40.00	41.00
	42.00	43.00	44.00	46.00	48.00	55.01	55.02	56.00	57.00	58.00	60.00	61.00
	62.00	63.00	64.00	66.01	66.02	67.00	68.02	69.00	70.01	70.02	71.00	72.00
	73.00	74.00	75.00	76.01	77.02	78.07	78.08	80.00	81.02	82.02	83.01	83.02
	84.00	85.00	86.01	86.02	87.01	87.02	88.00	106.01	106.03	106.04	107.00	109.00
	110.00	112.01	112.02	113.04								
Newton County	1007.00											
Spalding County	1603.00	1604.00	1608.00	1609.00								

METROPOLITAN AREA: Atlantic-Cape May, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Atlantic County	11.00	14.00	15.00	24.00	25.00	104.02						
Cape May County	214.00	215.00										

METROPOLITAN AREA: Auburn-Opelika, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lee County	403.00	406.01	406.02	407.00	408.00	416.00						

METROPOLITAN AREA: Augusta-Aiken, GA-SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McDuffie County, GA	9502.00											
Richmond County, GA	2.00	3.00	4.00	6.00	7.00	8.00	9.00	10.00	14.00	15.00	103.00	104.00
	105.04	106.00										
Aiken County, SC	204.00	214.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Austin-San Marcos, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Caldwell County	9602.00	9607.00										
Hays County	102.00	103.01	103.02	105.00	107.00							
Travis County	2.03	3.02	4.01	4.02	5.00	6.01	6.03	6.04	7.00	8.02	8.03	8.04
	9.01	9.02	10.00	18.04	18.05	18.06	18.11	18.12	21.05	21.07	21.09	21.10
	21.11	21.12	22.02	23.04	23.07	23.08	23.10	23.11	23.12	23.14	23.15	23.16
	24.13											
Williamson County	210.00	214.02										

METROPOLITAN AREA: Bakersfield, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kern County	4.00	6.00	11.03	12.01	12.02	13.00	14.00	15.00	16.00	19.02	20.00	21.00
	22.00	23.02	25.00	41.02	44.02	47.00	48.00	49.01	59.00	63.01	63.02	64.02

METROPOLITAN AREA: Baltimore, MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anne Arundel County	7028.00	7401.05										
Baltimore County	4016.01	4016.02	4084.00	4209.00	4210.00	4213.00	4505.01	4505.04	4508.00	4906.05	4918.00	
Harford County	3029.01											
Baltimore city	301.00	401.00	402.00	501.00	601.00	602.00	603.00	604.00	605.00	701.00	702.00	703.00
	704.00	801.02	802.00	803.01	803.02	804.00	805.00	806.00	807.00	808.00	904.00	905.00
	906.00	907.00	908.00	909.00	1001.00	1002.00	1004.00	1102.00	1202.00	1203.00	1204.00	1205.00
	1206.00	1207.00	1301.00	1302.00	1303.00	1304.00	1308.04	1401.00	1402.00	1403.00	1501.00	1502.00
	1503.00	1504.00	1505.00	1506.00	1508.00	1510.00	1512.00	1513.00	1601.00	1602.00	1603.00	1604.00
	1605.00	1606.00	1607.00	1608.02	1701.00	1702.00	1703.00	1801.00	1802.00	1803.00	1901.00	1902.00
	1903.00	2001.00	2002.00	2003.00	2004.00	2005.00	2006.00	2007.01	2008.00	2101.00	2102.00	2301.00
	2502.03	2502.04	2502.07	2503.01	2503.02	2503.03	2504.02	2505.00	2602.01	2602.02	2603.03	2604.01
	2604.02	2605.01	2606.04	2607.00	2608.00	2610.00	2707.01	2710.01	2716.00	2717.00	2718.01	2718.02
	2720.01	2803.01	2803.02	2804.04								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bangor, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Penobscot County	2.00	9.00	10.00	61.00	63.00							

METROPOLITAN AREA: Barnstable-Yarmouth, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barnstable County	123.00	124.00										

METROPOLITAN AREA: Baton Rouge, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ascension Parish	309.00											
East Baton Rouge Parish	1.00	2.00	3.00	4.00	5.00	6.01	6.02	7.01	8.00	9.00	10.00	11.02
	11.04	12.00	13.00	15.00	21.00	22.00	24.00	25.00	28.00	30.00	31.01	31.02
	33.00	34.00	36.04	40.07								
West Baton Rouge Parish	202.00											

METROPOLITAN AREA: Beaumont-Port Arthur, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	1.03	6.00	7.00	9.00	10.00	12.00	16.00	19.00	20.00	22.00	23.00	24.00
	25.00	26.00	51.00	53.00	54.00	59.00	61.00	62.00	63.00	64.00	66.00	70.01
	101.00											
Orange County	202.00											

METROPOLITAN AREA: Bellingham, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Whatcom County	5.00	6.00	10.00	12.00								

METROPOLITAN AREA: Benton Harbor, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berrien County	3.00	4.00	5.00	6.00	21.00	22.00	23.00	205.00				

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bergen-Passaic, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bergen County	154.00	181.00										
Passaic County	1251.00	1752.00	1753.00	1754.00	1755.00	1758.00	1759.00	1802.00	1803.00	1804.00	1805.00	1806.00
	1807.00	1808.00	1809.00	1810.00	1811.00	1812.00	1813.00	1814.00	1815.00	1817.02	1818.00	1820.00
	1821.00	1822.00	1823.00	1824.00	1827.00	1828.00	1829.00	1830.00	1831.00	1832.00	2239.00	

METROPOLITAN AREA: Billings, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yellowstone County	2.00	3.00										

METROPOLITAN AREA: Biloxi-Gulfport-Pascagoula, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Harrison County	3.00	4.00	18.00	20.00	21.00	24.00	26.00					
Jackson County	412.00	421.00	422.00									

METROPOLITAN AREA: Binghamton, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Broome County	1.00	3.00	4.00	5.00	6.00	11.00	12.00	13.00	14.00	135.00	139.00	140.00

METROPOLITAN AREA: Birmingham, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	3.00	4.00	5.00	7.00	8.00	12.00	14.00	15.00	16.00	19.02	20.00	23.03
	24.00	27.00	29.00	30.01	30.02	32.00	33.00	34.00	35.00	37.00	38.03	39.00
	40.00	42.00	45.00	49.00	51.01	55.00	101.00	102.00	103.01	103.02	106.02	112.10
	119.03	130.02	131.00	133.00	136.01	138.01						

METROPOLITAN AREA: Bloomington, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monroe County	1.00	2.01	2.02	9.01	16.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bloomington-Normal, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McLean County	1.04	2.00	4.00	5.01	15.00	16.00	17.00					

METROPOLITAN AREA: Boise City, ID MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ada County	1.00											
Canyon County	201.00	202.00	213.00									

METROPOLITAN AREA: Boston, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County, MA	6138.00	6140.00										
Essex County, MA	2043.00	2058.00	2060.00	2061.00	2062.00	2063.00	2068.00	2069.00	2070.00	2071.00	2072.00	2108.00
	2215.00											
Middlesex County, MA	3022.00	3522.00	3524.00	3527.00	3539.00	3549.00	3831.00					
Norfolk County, MA	4178.02											
Suffolk County, MA	4.01	6.02	7.01	7.02	8.01	8.02	101.02	102.01	102.02	103.00	104.01	104.02
	105.00	402.00	408.00	501.00	502.00	503.00	504.00	505.00	506.00	507.00	509.00	510.00
	512.00	607.00	610.00	611.00	701.00	702.00	704.00	709.00	711.00	712.00	801.00	803.00
	804.00	805.00	806.00	808.00	809.00	810.00	811.00	812.00	813.00	815.00	817.00	818.00
	820.00	821.00	901.00	902.00	903.00	904.00	906.00	909.00	913.00	914.00	915.00	916.00
	917.00	918.00	919.00	923.00	924.00	1001.00	1002.00	1003.00	1005.00	1011.01	1011.02	1102.00
	1401.04	1501.00	1601.00	1602.00	1604.00	1605.00	1606.00	1707.00				

METROPOLITAN AREA: Boulder-Longmont, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boulder County	122.02	122.05	123.00	124.01	126.05	126.06	134.01					

METROPOLITAN AREA: Brazoria, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brazoria County	6643.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bremerton, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kitsap County	805.00	808.00	810.00									

METROPOLITAN AREA: Bridgeport, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	702.00	703.00	704.00	705.00	706.00	709.00	710.00	711.00	712.00	713.00	714.00	716.00
	717.00	719.00	732.00	735.00	736.00	737.00	738.00	739.00	740.00	743.00	744.00	

METROPOLITAN AREA: Brockton, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Plymouth County	5103.00	5104.00	5105.02	5108.00	5109.00	5110.00	5114.00					

METROPOLITAN AREA: Brownsville-Harlingen-San Benito, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cameron County	109.00	119.03	123.03	124.03	126.09	126.10	131.06	132.03	132.06	132.07	133.07	134.01
	134.02	137.00	138.01	138.02	139.01	139.02	139.03	140.01	140.02			

METROPOLITAN AREA: Bryan-College Station, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brazos County	9.00	13.01	14.00	15.00	16.03	17.00						

METROPOLITAN AREA: Buffalo-Niagara Falls, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Erie County	3.00	4.00	5.00	12.00	13.02	14.01	14.02	15.00	16.00	17.00	18.00	20.00
	21.00	23.00	24.00	25.01	25.02	26.00	27.01	27.02	28.00	29.00	30.00	31.00
	32.01	32.02	33.01	33.02	34.00	35.00	36.00	37.00	39.01	40.01	40.02	44.02
	47.00	52.02	53.00	55.00	56.00	57.00	59.00	60.00	61.00	62.02	64.00	65.01
	66.01	67.01	67.02	68.00	69.00	70.00	71.01	71.02	72.01	83.00	119.01	121.00
	122.00	9400.00										
Niagara County	202.00	204.00	205.00	206.00	209.00	211.00	212.00	213.00	214.00	217.00	237.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Burlington, VT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chittenden County	3.00	4.00	5.00	6.00	10.00							

METROPOLITAN AREA: Caguas, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Caguas Municipio	2009.00	2010.00	2012.00	2014.00	2016.00	2017.00	2019.00	2027.01				
Cayey Municipio	2602.02	2606.00	2607.00									
Cidra Municipio	2402.01	2402.02										
Gurabo Municipio	2103.00											
San Lorenzo Municipio	2202.00	2203.00	2206.00	2207.00								

METROPOLITAN AREA: Canton-Massillon, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stark County	7001.00	7015.00	7017.00	7018.00	7021.00	7023.00	7102.00	7104.00	7105.00	7138.00	7142.00	

METROPOLITAN AREA: Casper, WY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Natrona County	2.00											

METROPOLITAN AREA: Cedar Rapids, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Linn County	19.00	27.00										

METROPOLITAN AREA: Champaign-Urbana, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Champaign County	1.00	2.00	3.00	4.00	51.00	52.00	53.00	58.00	59.00	60.00		

METROPOLITAN AREA: Charleston-North Charleston, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkeley County	201.00	202.00										
Charleston County	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	14.00	23.00
	27.01	31.04	31.13	33.00	34.00	37.00	38.00	40.00	41.00	42.00	43.00	44.00
	45.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Charleston, WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kanawha County	1.00	7.00	9.00	12.00	129.00	138.00						

METROPOLITAN AREA: Charlotte-Gastonia-Rock Hill, NC-SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Gaston County, NC	315.00	318.00	319.00	320.00	330.00	331.00						
Mecklenburg County, NC	1.00	3.00	4.00	6.00	7.00	8.00	9.00	14.00	23.00	26.00	36.00	37.00
	39.01	39.02	41.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	52.00	53.04
	56.04											
Rowan County, NC	501.00	502.02	504.00	508.00								
York County, SC	604.01	604.02	605.01									

METROPOLITAN AREA: Charlottesville, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albemarle County	109.02	109.03										
Charlottesville city	2.01	2.02	4.01	6.00								

METROPOLITAN AREA: Chattanooga, TN-GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hamilton County, TN	2.00	3.00	4.00	8.00	10.00	11.00	12.00	13.00	14.00	15.00	16.00	19.00
	20.00	25.00	26.00	31.00	115.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Chicago, IL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cook County	101.00	105.00	108.00	306.00	312.00	313.00	315.00	316.00	514.00	607.00	707.00	804.00
	805.00	808.00	819.00	1401.00	1402.00	1407.00	2005.00	2006.00	2102.00	2105.00	2106.00	2207.00
	2209.00	2210.00	2211.00	2213.00	2214.00	2215.00	2223.00	2224.00	2226.00	2227.00	2228.00	2229.00
	2301.00	2302.00	2303.00	2304.00	2305.00	2306.00	2307.00	2308.00	2309.00	2310.00	2311.00	2312.00
	2313.00	2315.00	2316.00	2317.00	2318.00	2401.00	2406.00	2407.00	2408.00	2409.00	2410.00	2411.00
	2420.00	2425.00	2426.00	2427.00	2501.00	2510.00	2511.00	2513.00	2514.00	2515.00	2516.00	2517.00
	2518.00	2519.00	2520.00	2521.00	2522.00	2523.00	2601.00	2602.00	2603.00	2604.00	2605.00	2606.00
	2607.00	2608.00	2609.00	2610.00	2701.00	2702.00	2703.00	2704.00	2705.00	2706.00	2707.00	2708.00
	2709.00	2710.00	2711.00	2712.00	2713.00	2714.00	2716.00	2717.00	2718.00	2719.00	2804.00	2805.00
	2806.00	2807.00	2808.00	2809.00	2810.00	2811.00	2813.00	2814.00	2815.00	2816.00	2817.00	2818.00
	2822.00	2824.00	2826.00	2827.00	2830.00	2831.00	2832.00	2835.00	2836.00	2838.00	2839.00	2840.00
	2841.00	2842.00	2902.00	2903.00	2904.00	2905.00	2906.00	2907.00	2908.00	2909.00	2910.00	2911.00
	2912.00	2913.00	2914.00	2915.00	2916.00	2917.00	2918.00	2919.00	2920.00	2921.00	2922.00	2923.00
	2924.00	2925.00	2926.00	3001.00	3002.00	3003.00	3004.00	3006.00	3007.00	3008.00	3009.00	3010.00
	3011.00	3012.00	3013.00	3014.00	3015.00	3016.00	3017.00	3104.00	3105.00	3106.00	3107.00	3108.00
	3109.00	3110.00	3111.00	3112.00	3113.00	3114.00	3206.00	3302.00	3303.00	3401.00	3402.00	3404.00
	3405.00	3406.00	3502.00	3504.00	3506.00	3507.00	3511.00	3512.00	3514.00	3515.00	3601.00	3602.00
	3603.00	3604.00	3605.00	3701.00	3702.00	3703.00	3704.00	3801.00	3802.00	3803.00	3804.00	3805.00
	3806.00	3807.00	3808.00	3809.00	3810.00	3812.00	3813.00	3814.00	3815.00	3816.00	3817.00	3818.00
	3819.00	3820.00	3902.00	3903.00	3904.00	4001.00	4002.00	4003.00	4004.00	4005.00	4006.00	4007.00
	4008.00	4106.00	4113.00	4201.00	4202.00	4203.00	4204.00	4205.00	4206.00	4207.00	4208.00	4209.00
	4210.00	4211.00	4212.00	4302.00	4303.00	4304.00	4305.00	4307.00	4309.00	4310.00	4313.00	4314.00
	4401.00	4408.00	4409.00	4601.00	4602.00	4603.00	4605.00	4606.00	4607.00	4608.00	4609.00	4610.00
	4701.00	4902.00	4910.00	4912.00	4913.00	4914.00	5002.00	5003.00	5105.00	5202.00	5301.00	5302.00
	5306.00	5401.00	5602.00	5802.00	5803.00	5807.00	5907.00	6001.00	6002.00	6003.00	6009.00	6014.00
	6102.00	6103.00	6104.00	6105.00	6109.00	6110.00	6111.00	6112.00	6113.00	6114.00	6115.00	6116.00
	6117.00	6118.00	6119.00	6120.00	6121.00	6122.00	6301.00	6302.00	6304.00	6305.00	6308.00	6601.00
	6606.00	6607.00	6608.00	6609.00	6701.00	6702.00	6703.00	6704.00	6705.00	6706.00	6707.00	6708.00
	6709.00	6710.00	6711.00	6712.00	6713.00	6714.00	6715.00	6716.00	6717.00	6718.00	6719.00	6720.00
	6801.00	6802.00	6803.00	6804.00	6805.00	6806.00	6807.00	6808.00	6809.00	6810.00	6811.00	6812.00
	6813.00	6814.00	6901.00	6902.00	6903.00	6904.00	6905.00	6907.00	6908.00	6909.00	6911.00	6912.00
	6915.00	7101.00	7102.00	7103.00	7106.00	7107.00	7109.00	7609.00	8087.02	8093.00	8133.00	8138.00

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Chicago, IL PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cook County (Continued)	8141.00	8142.00	8175.00	8215.00	8236.03	8243.00	8260.00	8268.00	8269.01	8269.02	8272.00	8273.00
	8274.00	8290.00	8291.00	8293.02	8294.01	8297.00						
DeKalb County	10.00	11.00	12.00									
Kane County	8509.00	8515.00	8536.00	8537.00								
Lake County	8623.00	8624.01	8624.02	8626.05	8627.00	8628.00	8629.02					
Will County	8813.00	8819.00	8820.00	8821.00	8824.00	8825.00						

METROPOLITAN AREA: Chico-Paradise, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Butte County	5.02	6.03	6.04	10.00	11.00	12.00	25.00	28.00	30.00			

METROPOLITAN AREA: Cincinnati, OH-KY-IN PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Campbell County, KY	501.00	502.00	505.00	506.00	512.00							
Kenton County, KY	603.00	607.00	610.00	651.00	671.00							
Hamilton County, OH	1.00	2.00	3.01	3.02	4.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00
	16.00	17.00	19.00	21.00	22.00	23.00	25.00	26.00	28.00	29.00	30.00	32.00
	33.00	34.00	35.00	36.00	37.00	38.00	39.00	47.02	63.00	66.00	67.00	68.00
	69.00	74.00	77.00	80.00	85.02	86.01	87.00	88.00	89.00	91.00	92.00	93.00
	94.00	95.00	100.02	227.00								

METROPOLITAN AREA: Clarksville-Hopkinsville, TN-KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Christian County, KY	2001.00	2002.00	2003.00	2004.00	2008.00							
Montgomery County, TN	1001.00	1004.00	1008.00									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Cleveland-Lorain-Elyria, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ashtabula County	7.01	7.03										
Cuyahoga County	1011.01	1012.00	1013.00	1015.00	1017.00	1018.00	1019.00	1024.02	1025.00	1026.00	1027.00	1028.00
	1029.00	1032.00	1033.00	1034.00	1035.00	1037.00	1038.00	1039.00	1041.00	1043.00	1044.00	1045.00
	1046.00	1047.01	1047.02	1048.00	1049.00	1051.00	1052.00	1056.01	1056.02	1072.00	1073.00	1075.00
	1077.00	1078.00	1079.00	1082.00	1083.00	1084.00	1085.00	1086.00	1087.00	1088.00	1089.00	1093.00
	1096.00	1097.00	1098.00	1104.00	1105.00	1106.00	1108.00	1109.00	1111.00	1112.00	1113.00	1114.01
	1114.02	1115.00	1116.00	1117.00	1118.00	1119.02	1121.00	1122.00	1123.00	1124.00	1126.00	1127.00
	1128.00	1129.00	1131.00	1132.00	1133.00	1134.00	1135.00	1136.00	1137.00	1138.00	1139.00	1141.00
	1142.00	1143.00	1144.00	1145.00	1146.00	1147.00	1148.00	1149.00	1151.00	1152.00	1153.00	1154.00
	1155.00	1161.00	1162.00	1164.00	1165.00	1166.00	1167.00	1168.00	1169.00	1171.02	1172.01	1173.00
	1175.00	1178.00	1179.00	1181.00	1182.00	1184.00	1185.00	1186.01	1186.02	1187.00	1188.00	1189.00
	1191.00	1192.01	1192.02	1193.00	1194.02	1195.02	1196.00	1197.02	1198.00	1199.00	1201.00	1202.00
	1204.00	1205.00	1206.00	1207.01	1211.00	1212.00	1213.00	1214.01	1216.00	1233.00	1238.00	1244.00
	1275.00	1501.00	1503.00	1504.00	1511.00	1512.00	1513.00	1514.00	1515.00	1516.00	1517.00	1518.00
	1527.01	1618.00	1915.00									
Lorain County	223.00	228.00	229.00	231.00	238.00	708.00	709.01					

METROPOLITAN AREA: Colorado Springs, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Paso County	17.00	22.00	23.00	29.00	61.00							

METROPOLITAN AREA: Columbia, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boone County	1.00	2.00	3.00	4.01	4.02	5.00	8.00	9.00	11.01			

METROPOLITAN AREA: Columbia, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lexington County	203.00	205.05										
Richland County	1.00	2.00	3.00	5.00	6.00	7.00	9.00	10.00	13.00	14.00	15.00	18.00
	19.00	20.01	20.02	28.00	105.02	106.00	107.01	108.02	109.00			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Columbus, GA-AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Russell County, AL	302.00	308.00	311.00									
Muscogee County, GA	1.00	3.00	5.00	13.00	14.00	15.00	16.00	18.00	22.00	24.00	25.00	27.00
	28.00	29.02	30.00	32.00	34.00	110.00						

METROPOLITAN AREA: Columbus, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	317.00											
Franklin County	7.20	7.30	9.10	9.20	10.00	11.10	11.20	12.00	13.00	14.00	15.00	16.00
	17.00	18.10	22.00	23.00	25.20	26.00	27.10	28.00	29.00	30.00	36.00	37.00
	40.00	42.00	47.00	48.20	50.00	51.00	53.00	54.10	54.20	55.00	56.10	60.00
	61.00	68.30	74.10	75.11	75.20	75.32	75.34	75.40	78.20	82.30	82.41	83.50
	87.20	87.30	93.31									
Licking County	7501.00	7504.00	7525.00									
Pickaway County	201.00	204.00										

METROPOLITAN AREA: Corpus Christi, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Nueces County	3.00	4.00	5.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	15.00	16.01
	16.02	17.00	50.00	56.02	59.00							
San Patricio County	113.00											

METROPOLITAN AREA: Corvallis, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benton County	7.00	8.02	11.01	11.02								

METROPOLITAN AREA: Cumberland, MD-WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allegany County, MD	7.00	18.00										
Mineral County, WV	107.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dallas, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Collin County	309.00	319.00										
Dallas County	4.01	4.03	4.05	6.01	9.00	12.04	14.00	15.02	15.03	15.04	16.00	20.00
	21.00	22.00	24.00	25.00	27.01	27.02	29.00	32.01	33.00	34.00	35.00	37.00
	38.00	39.01	39.02	40.00	41.00	43.00	46.00	47.00	48.00	49.00	50.00	52.00
	55.00	56.00	57.00	59.02	60.01	60.02	64.00	67.00	69.00	72.01	72.02	78.15
	78.18	78.19	84.00	86.03	86.04	87.01	87.03	87.04	87.05	88.01	88.02	89.00
	90.00	91.03	91.05	92.02	93.01	93.03	93.04	96.10	98.02	98.04	99.00	100.00
	101.01	101.02	102.00	104.00	105.00	106.01	106.02	107.01	107.04	108.01	108.02	109.02
	111.05	114.01	114.02	115.00	118.00	120.00	122.08	122.10	122.11	123.02	146.02	149.01
	155.00	159.00	161.00	166.05	169.01	182.04	190.13	192.09				
Denton County	206.01	207.00	208.00	209.00	210.00	211.00	212.00					
Ellis County	604.00											
Henderson County	9510.00	9512.00										
Hunt County	9605.00	9606.00	9608.00	9609.00								
Kaufman County	505.00											

METROPOLITAN AREA: Danbury, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	2101.00	2107.00										
Litchfield County	2536.00											

METROPOLITAN AREA: Danville, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Danville city	3.00	4.00	5.00	6.00	10.00							

METROPOLITAN AREA: Davenport-Moline-Rock Island, IA-IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rock Island County, IL	206.00	223.00	226.00	227.00	235.00	236.00	244.00					
Scott County, IA	106.00	107.00	108.00	109.00	114.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dayton-Springfield, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clark County	1.00	2.00	3.00	7.00	9.01	12.00						
Greene County	2001.02											
Montgomery County	3.00	7.00	9.00	10.00	12.00	13.00	14.00	15.00	17.00	18.00	19.00	20.00
	21.00	22.00	23.00	34.00	35.00	36.00	37.00	38.00	39.00	40.00	41.00	42.00
	43.00	44.00	45.00	602.00	702.01	702.02	703.00	805.00				

METROPOLITAN AREA: Daytona Beach, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Volusia County	812.00	815.00	817.00	819.00	820.00	821.00	823.02	905.00	906.00	907.02		

METROPOLITAN AREA: Decatur, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Morgan County	1.00	4.00	6.00	7.00								

METROPOLITAN AREA: Decatur, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Macon County	1.00	3.00	5.00	6.00	7.00	8.00	9.00					

METROPOLITAN AREA: Denver, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	78.00	79.00	81.00	83.08	87.03	87.06	89.01	89.52	93.19			
Arapahoe County	65.01	72.02	73.00									
Denver County	2.02	4.02	6.00	7.01	7.02	8.00	9.04	9.05	10.00	11.01	11.02	14.01
	15.00	16.00	18.00	19.00	20.00	23.00	24.02	24.03	26.01	26.02	27.01	31.02
	35.00	36.01	36.02	41.01	44.04	45.01	45.02	83.13				
Jefferson County	100.00	104.02	104.05									

METROPOLITAN AREA: Des Moines, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County	11.00	12.00	17.00	26.00	27.00	42.00	48.00	49.00	50.00	51.00	52.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Detroit, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Macomb County	2313.00	2450.00	2470.00	2471.00	2605.00							
Monroe County	8318.00											
Oakland County	1412.00	1416.00	1417.00	1421.00	1422.00	1423.00	1424.00	1425.00	1427.00	1716.00	1724.00	1725.00
	1981.00											
St. Clair County	6200.00	6230.00	6240.00	6250.00								
Wayne County	5003.00	5004.00	5005.00	5006.00	5017.00	5020.00	5032.00	5033.00	5034.00	5035.00	5036.00	5037.00
	5039.00	5040.00	5041.00	5042.00	5043.00	5044.00	5045.00	5046.00	5047.00	5048.00	5050.00	5051.00
	5052.00	5053.00	5063.00	5064.00	5065.00	5070.00	5072.00	5073.00	5074.00	5075.00	5076.00	5077.00
	5078.00	5079.00	5080.00	5102.00	5103.00	5104.00	5105.00	5106.00	5107.00	5108.00	5109.00	5112.00
	5115.00	5116.00	5117.00	5121.00	5122.00	5123.00	5124.00	5126.00	5129.00	5132.00	5134.00	5135.00
	5136.00	5139.00	5140.00	5141.00	5143.00	5145.00	5146.00	5147.00	5148.00	5149.00	5150.00	5151.00
	5152.00	5153.00	5156.00	5157.00	5161.00	5162.00	5163.00	5164.00	5166.00	5168.00	5169.00	5174.00
	5175.00	5176.00	5177.00	5178.00	5180.00	5181.00	5184.00	5185.00	5186.00	5188.00	5201.00	5202.00
	5203.00	5204.00	5205.00	5206.00	5207.00	5211.00	5213.00	5214.00	5215.00	5218.00	5219.00	5220.00
	5221.00	5222.00	5223.00	5224.00	5231.00	5232.00	5233.00	5234.00	5235.00	5236.00	5237.00	5238.00
	5240.00	5241.00	5242.00	5243.00	5245.00	5247.00	5251.00	5252.00	5253.00	5254.00	5255.00	5256.00
	5257.00	5258.00	5260.00	5261.00	5262.00	5263.00	5264.00	5265.00	5302.00	5303.00	5304.00	5307.00
	5308.00	5310.00	5311.00	5313.00	5314.00	5315.00	5316.00	5317.00	5318.00	5319.00	5322.00	5324.00
	5325.00	5326.00	5327.00	5330.00	5331.00	5332.00	5333.00	5334.00	5335.00	5336.00	5337.00	5341.00
	5342.00	5343.00	5344.00	5345.00	5346.00	5350.00	5351.00	5352.00	5354.00	5357.00	5361.00	5363.00
	5364.00	5365.00	5366.00	5367.00	5370.00	5371.00	5372.00	5373.00	5377.00	5378.00	5383.00	5391.00
	5402.00	5404.00	5410.00	5411.00	5412.00	5427.00	5435.00	5436.00	5437.00	5438.00	5439.00	5442.00
	5451.00	5452.00	5453.00	5454.00	5455.00	5456.00	5460.00	5464.00	5468.00	5521.00	5522.00	5523.00
	5524.00	5526.00	5530.00	5531.00	5532.00	5533.00	5534.00	5536.00	5538.00	5706.00	5708.00	5733.00
	5735.00	5736.00	5738.00	5739.00	5740.00	5791.00	5792.00	5793.00	5795.00	5796.00	5797.00	5798.00
	5848.00	5860.00										

METROPOLITAN AREA: Dothan, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dale County	205.00	207.00	210.00									
Houston County	406.00	412.00	414.00	415.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dubuque, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dubuque County	1.00											

METROPOLITAN AREA: Duluth-Superior, MN-WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Louis County, MN	12.00	13.00	14.00	16.00	17.00	18.00	19.00	25.00	28.00	32.00	39.00	130.00
Douglas County, WI	201.00	202.00										

METROPOLITAN AREA: Dutchess County, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dutchess County	2201.00	2202.00	2203.00	2204.00	2205.00	2206.00	2207.00	6200.00				

METROPOLITAN AREA: Eau Claire, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eau Claire County	11.01	11.02	12.00									

METROPOLITAN AREA: El Paso, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Paso County	2.05	3.01	4.04	8.00	12.03	14.00	16.00	17.00	18.00	19.00	20.00	21.00
	22.01	22.02	28.00	29.00	30.00	31.00	32.00	35.02	36.02	37.02	39.01	39.02
	39.03	41.03	104.03	105.01	105.02	105.03	105.04					

METROPOLITAN AREA: Elkhart-Goshen, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Elkhart County	26.00	28.00										

METROPOLITAN AREA: Elmira, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chemung County	1.00	6.00	7.00	8.00	10.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Enid, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Garfield County	7.00											

METROPOLITAN AREA: Erie, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Erie County	1.00	3.00	4.00	6.00	7.00	8.00	9.00	12.00	13.00	14.00	15.00	17.00
	18.00	19.00	122.02									

METROPOLITAN AREA: Eugene-Springfield, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lane County	31.02	37.00	38.00	39.00	42.00	48.00						

METROPOLITAN AREA: Evansville-Henderson, IN-KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Vanderburgh County, IN	12.00	13.00	14.00	17.00	18.00	19.00	20.00	21.00	25.00	26.00		
Henderson County, KY	202.00	203.00	204.00									

METROPOLITAN AREA: Fargo-Moorhead, ND-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clay County, MN	203.00	204.00										
Cass County, ND	7.00											

METROPOLITAN AREA: Fayetteville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	1.00	2.00	4.00	10.00	12.00	13.00	35.00					

METROPOLITAN AREA: Fayetteville-Springdale-Rogers, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washington County	107.01	108.00	109.00	111.01								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fitchburg-Leominster, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Worcester County	7105.00	7107.00										

METROPOLITAN AREA: Flagstaff, AZ-UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Coconino County, AZ	8.00	10.00	18.00	9411.00	9422.00	9445.00						

METROPOLITAN AREA: Flint, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Genesee County	2.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00	17.00
	18.00	19.00	20.00	21.00	22.00	23.00	25.00	26.00	28.00	32.00	34.00	38.00
	103.04	122.02										

METROPOLITAN AREA: Florence, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Colbert County	203.00											
Lauderdale County	101.00	102.00	103.00	106.00	107.00							

METROPOLITAN AREA: Florence, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Florence County	7.00	8.00	9.00	10.00	22.01							

METROPOLITAN AREA: Fort Collins-Loveland, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Larimer County	1.00	2.00	5.02	6.00	13.04							

METROPOLITAN AREA: Fort Lauderdale, FL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Broward County	103.04	107.02	303.01	304.01	304.02	305.00	306.00	308.01	408.01	408.02	409.01	409.02
	410.00	411.00	412.00	414.00	415.00	416.00	417.00	425.00	503.03	503.06	503.07	503.08
	507.01	602.07	603.02	603.03	603.04	604.03	705.02	805.00	1004.00	1005.00	1007.00	1008.02
	1103.14											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fort Myers-Cape Coral, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lee County	1.00	3.01	3.02	4.01	5.02	5.04	6.00	11.00				

METROPOLITAN AREA: Fort Pierce-Port St. Lucie, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Martin County	8.00	18.00										
St. Lucie County	1.00	2.00	3.00	4.00	5.00	14.02						

METROPOLITAN AREA: Fort Smith, AR-OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sebastian County, AR	1.00	2.00	3.00	4.00	8.00							

METROPOLITAN AREA: Fort Walton Beach, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Okaloosa County	226.00											

METROPOLITAN AREA: Fort Wayne, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen County	6.00	12.00	13.00	14.00	15.00	16.00	17.00	18.00	20.00	23.00	27.00	28.00
	29.00	35.00	42.00	113.03								

METROPOLITAN AREA: Fort Worth-Arlington, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Johnson County	1308.00	1309.00										
Tarrant County	1002.02	1003.00	1005.01	1009.00	1010.00	1011.00	1014.02	1014.03	1016.00	1017.00	1018.00	1020.00
	1025.00	1029.00	1030.00	1031.00	1033.00	1034.00	1035.00	1036.01	1036.02	1037.01	1037.02	1038.00
	1039.00	1040.00	1045.02	1045.03	1045.05	1046.01	1046.02	1046.03	1046.04	1047.00	1048.02	1052.05
	1058.00	1059.00	1061.02	1062.01	1062.02	1063.00	1065.15	1217.03	1219.02	1222.00	1223.00	1224.00
	1228.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fresno, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fresno County	1.00	2.00	3.00	4.00	5.00	6.00	8.00	9.00	10.00	11.00	12.01	12.02
	13.02	14.05	15.00	20.00	24.00	25.01	25.02	26.01	27.02	28.00	29.02	47.04
	52.02	54.03	65.00	68.01	83.01	83.02						
Madera County	6.01	6.02	8.00	9.00								

METROPOLITAN AREA: Gadsden, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Etowah County	2.00	3.00	7.00	8.00	10.00	13.00	14.00	15.00				

METROPOLITAN AREA: Gainesville, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alachua County	2.00	6.00	8.00	9.01	9.02	15.02	15.03	15.05	19.02			

METROPOLITAN AREA: Galveston-Texas City, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Galveston County	7222.00	7224.00	7240.00	7243.00	7244.00	7245.00	7246.00	7247.00	7251.00	7252.00	7254.00	

METROPOLITAN AREA: Gary, IN PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lake County	102.02	102.03	103.01	103.02	105.00	106.00	107.00	108.00	109.00	110.00	111.00	113.00
	114.00	116.00	117.00	119.00	120.00	121.00	122.00	123.00	127.00	206.00	207.00	218.00
	301.00	302.00	303.00	304.00	310.00							

METROPOLITAN AREA: Goldsboro, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wayne County	14.00	15.00	17.00	18.00								

METROPOLITAN AREA: Grand Forks, ND-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County, MN	202.00											
Grand Forks County, ND	103.00	106.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Grand Junction, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mesa County	2.00	5.00										

METROPOLITAN AREA: Grand Rapids-Muskegon-Holland, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kent County	13.00	14.00	15.00	20.00	21.00	25.00	26.00	28.00	31.00	32.00	36.00	37.00
	38.00	39.00										
Muskegon County	1.00	2.00	3.00	5.00	6.02	11.00	12.00	13.00	14.01	14.02		

METROPOLITAN AREA: Great Falls, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cascade County	5.00	6.00	7.00	8.00								

METROPOLITAN AREA: Greeley, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Weld County	1.00	2.00	5.00	6.00	8.00	10.02						

METROPOLITAN AREA: Green Bay, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brown County	8.00	9.00	10.00	12.00	211.00							

METROPOLITAN AREA: Greensboro--Winston-Salem--High Point, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alamance County	201.01	210.00										
Davidson County	614.00											
Forsyth County	1.00	2.00	3.01	3.02	4.00	5.00	6.00	7.00	8.01	8.02	9.00	15.00
	16.02	17.00	19.01									
Guilford County	106.02	108.01	110.00	111.01	112.00	114.00	127.06	127.07	138.00	139.00	142.00	143.00
	144.08	146.00										
Randolph County	303.02											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Greenville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pitt County	1.00	2.00	7.01	7.02	8.00							

METROPOLITAN AREA: Greenville-Spartanburg-Anderson, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	1.00	4.00	6.00	7.00	8.00							
Greenville County	2.00	4.00	5.00	7.00	8.00	9.00	10.00	13.01	21.04	21.05	21.08	22.01
	23.03	23.04	34.00	35.00								
Pickens County	111.02	112.01										
Spartanburg County	203.01	204.00	205.00	208.00	210.01	217.00						

METROPOLITAN AREA: Hagerstown, MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washington County	4.00	7.00	9.00									

METROPOLITAN AREA: Hamilton-Middletown, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Butler County	3.00	4.00	6.00	7.01	7.02	8.00	101.01	101.03	101.04	128.00	129.00	130.00
	131.00	140.00										

METROPOLITAN AREA: Harrisburg-Lebanon-Carlisle, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	122.00	123.00	131.02	132.00								
Dauphin County	203.00	206.00	207.00	212.00	213.00	214.00						
Lebanon County	3.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Hartford, CT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hartford County	4061.00	4153.00	4156.00	4159.00	4161.00	4162.00	4163.00	4166.00	4171.00	4173.00	5001.00	5002.00
	5003.00	5004.00	5005.00	5009.00	5010.00	5011.00	5012.00	5013.00	5014.00	5015.00	5017.00	5018.00
	5021.00	5024.00	5025.00	5026.00	5027.00	5028.00	5029.00	5030.00	5031.00	5033.00	5034.00	5035.00
	5037.00	5038.00	5041.00	5042.00	5043.00	5044.00	5045.00	5046.00	5047.00	5049.00	5104.00	5106.00
Middlesex County	5415.00	5416.00	5417.00	5418.00								
Tolland County	8812.00	8813.00										
Windham County	8003.00	8006.00										

METROPOLITAN AREA: Hattiesburg, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Forrest County	1.00	4.00	5.00	6.00	9.00	10.00						

METROPOLITAN AREA: Honolulu, HI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Honolulu County	11.00	18.01	36.02	39.00	42.00	51.00	52.00	53.00	54.00	55.00	57.00	58.00
	62.02	63.02	68.03	68.04	75.04	80.01	81.00	86.10	93.00	94.00	95.01	95.05
	97.01	98.01	108.01									

METROPOLITAN AREA: Houma, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lafourche Parish	204.00											
Terrebonne Parish	7.00	9.00	13.00	16.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Houston, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fort Bend County	6749.00	6750.00										
Harris County	1000.00	2102.00	2103.00	2104.00	2105.00	2107.00	2108.00	2109.00	2110.00	2111.00	2112.00	2113.00
	2114.00	2115.00	2116.00	2117.00	2118.00	2119.00	2120.00	2201.00	2202.00	2203.00	2204.00	2205.00
	2206.00	2207.00	2208.00	2209.00	2210.00	2213.00	2214.00	2215.00	2218.00	2219.00	2220.00	2221.00
	2225.00	2226.00	2227.00	2230.00	2301.00	2302.00	2303.00	2304.00	2305.00	2306.00	2307.00	2308.00
	2309.00	2310.00	2311.00	2312.00	2313.00	2315.00	2317.00	2319.00	2327.00	2331.00	2336.00	2337.00
	2401.00	2405.00	2406.00	2545.00	3101.00	3102.00	3104.00	3105.00	3106.00	3107.00	3108.00	3109.00
	3110.00	3111.00	3112.00	3114.00	3115.00	3116.00	3117.00	3118.00	3119.00	3120.00	3122.00	3123.00
	3124.00	3125.00	3127.00	3128.00	3129.00	3130.00	3133.00	3134.00	3135.00	3136.00	3137.00	3138.00
	3202.00	3203.00	3206.00	3215.00	3220.00	3221.00	3223.00	3225.00	3230.00	3231.00	3235.00	3239.00
	3311.00	3312.00	3313.00	3314.00	3316.00	3317.00	3318.00	3319.00	3320.00	3321.00	3322.00	3323.00
	3328.00	3329.00	3334.00	4101.00	4201.00	4205.00	4212.00	4213.00	4214.00	4215.00	4216.00	4222.00
	4231.00	4327.00	4328.00	4330.00	4331.00	4335.00	4526.00	4531.00	5101.00	5102.00	5105.00	5106.00
	5109.00	5206.00	5211.00	5212.00	5214.00	5216.00	5301.00	5303.00	5304.00	5305.00	5306.00	5307.00
	5308.00	5318.00	5319.00	5320.00	5332.00	5333.00	5334.00	5501.00				
Liberty County	7002.00	7006.00										
Montgomery County	6931.00	6934.00										
Waller County	6804.00											

METROPOLITAN AREA: Huntington-Ashland, WV-KY-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boyd County, KY	302.00	303.00	304.00	308.00								
Carter County, KY	9601.00	9604.00										
Lawrence County, OH	503.00	504.00	506.00									
Cabell County, WV	2.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00	16.00
	18.00											
Wayne County, WV	208.00	209.00	210.00									

METROPOLITAN AREA: Huntsville, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Limestone County	205.00	206.00	207.00	210.00								
Madison County	2.01	7.02	8.00	11.00	12.00	16.00	21.00	22.00	24.00	25.01	25.02	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Indianapolis, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County	3.00	5.00	8.00	9.00	10.00	120.00						
Marion County	3226.00	3308.01	3412.00	3416.00	3426.00	3501.00	3503.00	3504.00	3505.00	3507.00	3508.00	3509.00
	3510.00	3511.00	3512.00	3515.00	3516.00	3517.00	3521.00	3523.00	3527.00	3528.00	3531.00	3532.00
	3533.00	3535.00	3536.00	3539.00	3542.00	3544.00	3545.00	3547.00	3548.00	3550.00	3551.00	3556.00
	3557.00	3559.00	3564.00	3569.00	3571.00	3572.00	3573.00	3574.00	3581.00	3601.01	3601.02	3603.02

METROPOLITAN AREA: Iowa City, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Johnson County	6.00	11.00	16.00	21.00								

METROPOLITAN AREA: Jackson, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jackson County	2.00	6.00	7.00	10.00	11.00							

METROPOLITAN AREA: Jackson, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hinds County	7.00	8.00	9.00	10.00	11.00	12.00	16.00	17.00	18.00	19.00	20.00	21.00
	22.00	23.00	24.00	25.00	26.00	27.00	30.00	31.00	32.00	34.00	35.00	38.00
	102.01	108.01	109.02									
Madison County	305.00	307.00										

METROPOLITAN AREA: Jackson, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County	5.00	8.00	9.00	10.00	11.00							

METROPOLITAN AREA: Jacksonville, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Duval County	2.00	3.00	4.00	5.00	10.00	11.00	12.00	13.00	15.00	16.00	17.00	18.00
	19.00	26.00	27.01	27.02	28.01	28.02	29.01	29.02	115.00	116.00	163.00	
St. Johns County	203.00	204.00	210.02									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Jacksonville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Onslow County	19.00	20.00										

METROPOLITAN AREA: Jamestown, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chautauqua County	303.00	305.00	354.00	359.02	9400.00							

METROPOLITAN AREA: Janesville-Beloit, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rock County	1.00	15.00										

METROPOLITAN AREA: Jersey City, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hudson County	17.00	18.00	27.00	30.00	31.00	32.00	33.00	41.02	44.00	46.00	47.00	51.00
	55.00	58.01	159.00	165.00	169.00	170.00	175.00	190.00				

METROPOLITAN AREA: Johnson City-Kingsport-Bristol, TN-VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Carter County, TN	703.00											
Sullivan County, TN	402.00	405.00	406.00									
Washington County, TN	601.00	607.00	609.00									

METROPOLITAN AREA: Johnstown, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cambria County	1.00	2.00	3.00	8.00	10.00	11.00	13.00	14.00				

METROPOLITAN AREA: Jonesboro, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Craighead County	6.01	6.02										

METROPOLITAN AREA: Joplin, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jasper County	110.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Kalamazoo-Battle Creek, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calhoun County	3.00	4.00	5.00	6.00	36.00							
Kalamazoo County	1.00	2.01	2.02	3.00	5.00	6.00	9.00	15.04	15.07	29.03		
Van Buren County	106.00											

METROPOLITAN AREA: Kankakee, IL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kankakee County	110.00	114.00	115.00	116.00	123.00							

METROPOLITAN AREA: Kansas City, MO-KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Leavenworth County, KS	701.00											
Wyandotte County, KS	402.00	403.00	404.00	407.00	408.00	409.00	410.00	411.00	412.00	415.00	417.00	418.00
	419.00	420.01	420.02	421.00	422.00	423.00	424.00	426.00	427.00	428.00	430.00	439.05
	441.04	443.01	451.00									
Clay County, MO	200.00											
Jackson County, MO	3.00	4.00	5.02	7.00	8.00	9.00	10.00	13.00	14.00	15.00	16.00	17.00
	18.00	19.00	20.00	21.00	22.00	23.00	24.00	26.00	27.00	28.02	29.00	30.00
	32.00	33.00	34.00	35.01	35.02	36.02	37.00	38.00	39.00	40.00	41.00	42.00
	45.00	47.00	48.00	50.00	52.00	53.00	54.00	55.00	56.01	56.02	58.01	59.01
	60.00	61.00	62.00	63.00	64.00	65.00	67.00	68.00	76.00	77.00	78.01	78.02
	79.00	80.00	81.00	87.00	88.00	89.00	95.00	96.00	102.01	109.01	109.02	114.05
	116.00	134.05										

METROPOLITAN AREA: Kenosha, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kenosha County	10.00	11.00										

METROPOLITAN AREA: Killeen-Temple, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bell County	207.01	207.02	208.00	209.00	216.02	235.00						

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Knoxville, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	205.00	207.00										
Knox County	1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00
	13.00	14.00	19.00	20.00	21.00	24.00	26.00	28.00	29.00	37.00		
Union County	402.01											

METROPOLITAN AREA: Kokomo, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Howard County	2.00	12.00										

METROPOLITAN AREA: La Crosse, WI-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
La Crosse County, WI	2.00	3.00	4.00	5.00	9.00							

METROPOLITAN AREA: Lafayette, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Acadia Parish	9601.00	9607.00	9609.00									
Lafayette Parish	1.00	2.00	4.00	7.00	8.00	9.00	11.00	13.00				
St. Landry Parish	9601.00	9609.00	9613.00	9614.00	9615.00	9616.00						
St. Martin Parish	209.00											

METROPOLITAN AREA: Lafayette, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tippecanoe County	4.00	6.00	53.00	54.00	55.00	103.00	105.00					

METROPOLITAN AREA: Lake Charles, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calcasieu Parish	1.00	2.00	3.00	4.00	6.00	7.00	12.02	14.00				

METROPOLITAN AREA: Lakeland-Winter Haven, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County	101.00	102.00	109.00	110.00	111.00	112.01	112.02	126.01	131.03	132.00	133.00	136.00
	137.01	143.01	145.01	145.02								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Lancaster, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lancaster County	1.00	4.00	8.00	9.00	14.00	15.00	16.00					

METROPOLITAN AREA: Lansing-East Lansing, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ingham County	2.00	3.00	5.00	6.00	7.00	12.00	13.00	14.00	15.00	19.00	20.00	21.00
	38.02	39.02	41.00	42.00	43.01	43.02	44.02	44.03	44.05			

METROPOLITAN AREA: Laredo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Webb County	3.00	4.00	6.00	7.00	9.02	12.00	13.00	18.05				

METROPOLITAN AREA: Las Cruces, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dona Ana County	9.00	10.00	14.00	17.02	17.04	18.03						

METROPOLITAN AREA: Las Vegas, NV-AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mohave County, AZ	9404.00	9501.00	9504.00	9505.00								
Clark County, NV	3.01	3.02	4.00	5.03	5.04	5.11	5.14	6.00	7.00	8.00	9.00	11.00
	22.01	22.04	24.04	24.05	26.01	34.25	38.00	43.00	44.00	46.00	47.03	47.07
	47.08	47.09	47.10	47.13								

METROPOLITAN AREA: Lawrence, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Douglas County	3.00	4.00	5.02									

METROPOLITAN AREA: Lawrence, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Essex County, MA	2501.00	2502.00	2503.00	2504.00	2505.00	2506.00	2507.00	2509.00	2510.00	2511.00	2512.00	2513.00
	2514.00	2515.00	2516.00	2517.00	2524.00	2601.00	2602.00					

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Lawton, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Comanche County	8.00	11.00	12.00	13.00	15.00	16.00	17.00	19.02				

METROPOLITAN AREA: Lewiston-Auburn, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Androscoggin County	101.00	201.00	203.00	204.00								

METROPOLITAN AREA: Lexington, KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fayette County	1.00	2.00	3.00	4.00	7.00	8.01	8.02	9.00	10.00	11.00	12.00	13.00
	18.00	19.00										
Madison County	102.00	103.00	104.00	105.00								

METROPOLITAN AREA: Lima, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen County	125.00	127.00	128.00	133.00	134.00	136.00	137.00	138.00				

METROPOLITAN AREA: Lincoln, NE MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lancaster County	4.00	5.00	6.00	7.00	8.00	17.00	18.00	19.00	20.00	35.00		

METROPOLITAN AREA: Little Rock-North Little Rock, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Faulkner County	304.03	307.00	309.00									
Pulaski County	1.00	2.00	3.00	4.00	5.00	7.00	8.00	10.00	11.00	12.00	13.00	17.00
	18.00	19.00	25.00	26.00	28.00	29.00	30.00	36.06	40.01			

METROPOLITAN AREA: Longview-Marshall, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Gregg County	11.00	12.00	13.00	14.00	15.00							
Harrison County	204.01	204.02										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Los Angeles-Long Beach, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Los Angeles County	1047.01	1153.02	1174.05	1174.06	1175.10	1175.20	1193.40	1200.30	1201.01	1201.02	1224.10	1232.03
	1232.04	1232.05	1232.06	1234.10	1234.20	1272.20	1275.20	1282.10	1283.03	1343.05	1835.20	1838.10
	1838.20	1864.01	1902.00	1904.00	1905.10	1905.20	1907.00	1908.00	1909.01	1909.02	1911.10	1911.20
	1912.01	1912.03	1912.04	1913.00	1914.10	1914.20	1915.00	1916.10	1916.20	1917.10	1917.20	1918.10
	1918.20	1925.20	1926.10	1926.20	1927.00	1956.00	1957.10	1957.20	1958.02	1971.10	1976.00	1977.00
	1990.00	1991.20	1992.01	1994.00	1997.00	1998.00	1999.00	2012.00	2031.00	2032.00	2033.00	2035.00
	2036.00	2037.10	2037.20	2038.00	2041.20	2042.00	2043.00	2044.10	2044.20	2046.00	2047.00	2049.10
	2051.10	2051.20	2060.10	2060.30	2060.40	2060.50	2062.00	2063.00	2071.00	2073.00	2074.00	2077.10
	2079.00	2080.00	2083.00	2084.00	2085.00	2087.20	2088.00	2089.02	2089.03	2089.04	2091.01	2091.02
	2092.00	2093.00	2094.01	2094.02	2094.03	2095.10	2095.20	2098.10	2098.20	2100.10	2112.00	2113.10
	2113.20	2114.10	2118.02	2119.10	2119.20	2121.00	2122.02	2122.03	2122.04	2123.03	2123.04	2123.05
	2123.06	2124.10	2124.20	2125.00	2126.10	2129.00	2132.01	2132.02	2133.10	2133.20	2134.01	2134.02
	2181.10	2181.20	2182.10	2184.00	2188.00	2189.00	2193.00	2199.00	2211.10	2211.20	2212.20	2213.01
	2213.02	2214.00	2215.00	2216.00	2217.10	2218.10	2218.20	2219.00	2221.00	2222.00	2225.00	2226.00
	2227.00	2240.10	2240.20	2242.00	2243.10	2243.20	2244.10	2244.20	2246.00	2247.00	2260.00	2264.10
	2264.20	2267.00	2270.10	2270.20	2281.00	2282.10	2282.20	2283.10	2283.20	2284.10	2284.20	2285.00
	2286.00	2287.10	2287.20	2288.00	2289.00	2291.00	2292.00	2293.00	2294.10	2294.20	2311.00	2312.10
	2312.20	2313.00	2316.00	2317.10	2317.20	2318.00	2319.00	2321.10	2321.20	2322.00	2324.00	2325.00
	2326.00	2327.00	2328.00	2349.00	2352.02	2361.00	2362.01	2362.02	2371.00	2372.00	2375.00	2376.00
	2377.10	2377.20	2383.10	2383.20	2392.00	2393.10	2393.20	2393.30	2395.00	2396.00	2397.00	2398.00
	2400.10	2400.20	2402.00	2403.00	2404.00	2405.00	2406.00	2407.00	2408.00	2409.00	2410.00	2411.10
	2411.20	2412.00	2413.00	2414.00	2420.00	2421.00	2422.00	2423.00	2426.00	2427.00	2430.00	2431.00
	2653.01	2653.03	2653.04	2653.05	2696.00	2755.20	2911.10	2911.20	2932.02	2945.20	2947.00	2948.10
	2948.20	2948.30	2949.00	2961.00	2962.10	2962.20	2966.00	2971.10	2971.20	3022.01	3025.01	4023.02
	4025.01	4027.02	4028.01	4028.02	4088.00	4328.01	4328.02	4332.00	4333.01	4333.02	4334.01	4334.02
	4334.03	4335.01	4335.02	4339.01	4619.00	4620.00	4823.03	4823.04	4825.03	5041.02	5303.01	5304.00
	5305.00	5309.01	5311.01	5312.01	5312.02	5313.01	5313.02	5315.01	5315.02	5316.02	5316.04	5317.02
	5326.05	5326.06	5327.00	5328.00	5329.00	5330.00	5331.03	5331.04	5331.05	5331.06	5332.01	5335.01
	5335.02	5335.03	5336.01	5340.01	5341.02	5343.01	5344.04	5344.05	5349.00	5350.00	5351.01	5351.02
	5352.00	5353.00	5354.00	5355.01	5356.05	5358.04	5400.00	5402.01	5402.02	5402.03	5404.00	5405.02
	5406.00	5407.00	5414.00	5415.00	5416.03	5416.04	5416.05	5416.06	5421.02	5425.01	5425.02	5426.01
	5426.02	5538.01	5541.01	5702.04	5704.01	5706.01	5706.03	5716.00	5725.00	5728.00	5729.00	5730.01

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Los Angeles-Long Beach, CA PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Los Angeles County (Continued)	5730.02	5732.01	5732.02	5733.00	5746.01	5751.01	5751.02	5751.03	5752.01	5752.02	5753.00	5754.01
	5754.02	5755.00	5758.01	5758.02	5758.03	5759.01	5759.02	5762.00	5763.00	5764.01	5764.02	5764.03
	5765.01	5765.02	5765.03	5769.01	6001.00	6002.01	6002.02	6003.01	6006.02	6011.00	6012.11	6015.01
	6015.02	6017.00	6018.02	6019.00	7011.00	9006.02	9007.04	9008.06	9104.02	9104.03	9105.01	9105.02

METROPOLITAN AREA: Louisville, KY-IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Floyd County, IN	705.00	708.01										
Jefferson County, KY	2.00	3.00	4.00	6.00	10.00	11.00	14.00	15.00	17.00	18.00	21.00	23.00
	24.00	27.00	28.00	30.00	35.00	37.00	41.00	43.01	43.02	49.00	50.00	51.00
	53.00	56.00	59.00	62.00	65.00	66.00	128.02					

METROPOLITAN AREA: Lowell, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Middlesex County, MA	3101.00	3104.00	3107.00	3108.00	3110.00	3111.00	3112.00	3118.00	3119.00	3120.00	3124.00	

METROPOLITAN AREA: Lubbock, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lubbock County	2.02	3.01	3.02	6.03	6.05	6.07	7.00	9.00	10.00	12.00	13.00	17.03
	25.00	104.02										

METROPOLITAN AREA: Lynchburg, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Amherst County	105.02											
Lynchburg city	2.03	4.00	5.00	6.00	7 00	14.00						

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Macon, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bibb County	101.00	103.00	104.00	105.00	106.00	107.00	111.00	112.00	113.00	114.00	115.00	122.00
	123.00	124.00	125.00	127.00	128.00	129.00	130.00					
Houston County	204.00	207.00										
Peach County	402.00	403.02	404.00									

METROPOLITAN AREA: Madison, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dane County	6.00	11.00	12.00	14.01	16.01	16.02	17.01	32.00				

METROPOLITAN AREA: Manchester, NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	4.00	5.00	13.00	14.00	15.00	20.00						

METROPOLITAN AREA: Mansfield, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Richland County	1.00	2.00	3.00	6.00	7.00							

METROPOLITAN AREA: Mayaguez, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cabo Rojo Municipio	8301.00											
Mayaguez Municipio	801.00	802.00	803.00	805.00	806.00	809.00	810.00	811.00	812.00	819.00		
Sabana Grande Municipio	9605.00	9608.00										
San German Municipio	8401.00											

METROPOLITAN AREA: McAllen-Edinburg-Mission, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hidalgo County	205.01	207.23	211.00	213.03	219.01	222.02	225.01	226.00	231.01	237.00	241.01	241.02
	241.03	241.04	242.01	245.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Medford-Ashland, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jackson County	1.00	2.02	2.03	19.00								

METROPOLITAN AREA: Melbourne-Titusville-Palm Bay, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brevard County	607.00	608.00	623.00	626.00	648.00	649.02						

METROPOLITAN AREA: Memphis, TN-AR-MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Crittenden County, AR	301.01	301.02	303.02	304.01	304.02	305.01	305.02	306.00	310.00	311.00		
Shelby County, TN	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	13.00	14.00	15.00
	18.00	19.00	20.00	21.00	22.00	23.00	24.00	28.00	36.00	37.00	38.00	39.00
	40.00	41.00	44.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	53.00	54.00
	55.00	57.00	58.00	59.00	60.00	61.00	62.00	65.00	67.00	68.00	70.00	73.00
	75.00	78.10	78.21	79.00	81.10	82.00	84.00	90.00	101.10	101.20	103.00	104.10
	104.20	105.00	205.21	220.22	222.20	223.10	224.21	224.22				
Tipton County, TN	407.00											

METROPOLITAN AREA: Merced, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Merced County	10.03	10.05	13.01	13.02	14.01	15.02	15.03	16.01	16.02	18.02	19.01	

METROPOLITAN AREA: Miami, FL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Miami-Dade County	2.08	2.10	3.06	4.02	4.03	4.07	4.08	5.03	7.03	8.03	9.03	10.02
	10.03	10.04	10.06	12.03	13.01	14.01	14.02	15.01	15.02	16.01	17.01	17.02
	17.03	18.01	18.02	18.03	19.01	19.03	19.04	20.01	20.03	20.04	22.01	22.02
	23.00	24.01	24.02	25.00	26.00	27.02	28.00	29.00	30.01	30.03	30.04	31.00
	34.00	36.01	36.02	37.01	37.02	39.01	39.05	42.02	44.02	48.00	51.00	52.01
	52.02	53.01	53.02	54.01	54.02	64.01	64.02	66.02	72.00	76.03	83.03	89.04
	93.07	102.06	105.00	106.02	107.02	108.00	109.00	110.01	113.00	114.02		

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Middlesex-Somerset-Hunterdon, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Middlesex County	27.05	40.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	52.00	53.00	54.00
	55.00	56.00	57.00	58.00	59.00	69.00	82.06					
Somerset County	512.00											

METROPOLITAN AREA: Milwaukee-Waukesha, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Milwaukee County	2.01	3.02	11.00	12.00	14.00	18.00	19.00	20.00	21.00	23.00	24.00	25.00
	26.00	28.00	29.00	40.00	41.00	42.00	44.00	45.00	46.00	47.00	48.00	62.00
	63.00	64.00	65.00	66.00	67.00	68.00	69.00	70.00	78.00	80.00	81.00	82.00
	83.00	84.00	85.00	86.00	87.00	88.00	89.00	90.00	91.00	92.00	96.00	97.00
	98.00	99.00	100.00	101.00	102.00	103.00	104.00	105.00	106.00	107.00	108.00	110.00
	112.00	113.00	115.00	116.00	117.00	118.00	119.00	120.00	121.00	122.00	123.00	132.00
	134.00	135.00	136.00	137.00	138.00	139.00	140.00	141.00	145.00	146.00	147.00	148.00
	149.00	150.00	151.00	154.00	155.00	156.00	157.00	158.00	159.00	163.00	164.00	165.00
	166.00	167.00	168.00	169.00	170.00	174.00	175.00	176.00	177.00	178.00	179.00	187.00
	188.00	905.00										
Waukesha County	2027.00											

METROPOLITAN AREA: Minneapolis-St. Paul, MN-WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hennepin County, MN	22.00	27.00	33.00	35.01	38.00	59.01	59.02	68.00	73.01	73.02	77.00	78.01
	78.02	79.00	82.00	83.00	84.00	85.00	1002.00	1005.00	1009.00	1013.00	1014.00	1015.00
	1016.00	1018.00	1020.00	1021.00	1023.00	1026.00	1028.00	1029.00	1031.00	1034.00	1037.00	1039.00
	1041.00	1044.00	1047.00	1048.00	1049.00	1054.00	1056.00	1057.00	1060.00	1062.00	1064.00	1069.00
	1070.00	1071.00	1072.00	1086.00	1088.00	1094.00						
Ramsey County, MN	305.00	310.00	312.00	313.00	314.00	315.00	316.00	317.00	319.00	324.00	325.00	326.00
	327.00	328.00	329.00	330.00	331.00	334.00	335.00	336.00	337.00	344.00	359.00	361.00
	376.02	408.02	420.01									

METROPOLITAN AREA: Missoula, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Missoula County	2.01	3.00	5.00	7.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Mobile, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Baldwin County	106.00											
Mobile County	2.00	4.01	4.02	5.00	6.00	7.01	7.02	10.01	10.02	11.00	12.00	13.02
	14.00	15.01	15.02	16.00	23.01	24.00	26.00	27.00	32.03	32.05	36.06	38.00
	39.01	39.02	40.00	41.00	42.00	43.00	44.00	45.00	46.00	47.00	48.00	49.00
	71.02											

METROPOLITAN AREA: Modesto, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stanislaus County	3.01	8.03	16.01	16.03	16.04	17.00	18.00	21.00	22.00	23.01	23.02	24.00
	31.00	33.00	34.00	38.02	38.03	39.06						

METROPOLITAN AREA: Monmouth-Ocean, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monmouth County	8017.00	8034.00	8056.00	8058.00	8070.03	8070.04	8071.00	8072.00	8073.00	8075.00	8076.00	8099.03
	8100.02											
Ocean County	7152.00	7153.01	7153.02	7154.02	7156.00	7159.00	7200.00	7201.01	7201.02	7201.03	7202.02	7222.00
	7312.01	7312.04	7312.05	7312.06								

METROPOLITAN AREA: Monroe, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ouachita Parish	3.00	6.00	7.00	8.00	9.00	11.00	14.00	15.00	56.00	57.00	106.01	107.00

METROPOLITAN AREA: Montgomery, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Montgomery County	1.00	2.00	3.00	4.00	6.00	7.00	10.00	11.00	12.00	15.00	22.01	22.02
	23.00	24.00	30.00	56.03	61.00							

METROPOLITAN AREA: Muncie, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Delaware County	1.00	2.00	3.00	4.00	6.00	7.00	9.02	10.00	19.01			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Myrtle Beach, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Horry County	506.00	507.00	704.00									

METROPOLITAN AREA: Naples, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Collier County	7.00	112.04	112.05	113.00	114.00							

METROPOLITAN AREA: Nashua, NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	105.00	107.00	108.00									

METROPOLITAN AREA: Nashville, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Davidson County	107.02	114.00	118.00	119.00	123.00	124.00	125.00	126.00	136.00	137.00	138.00	139.00
	140.00	142.00	143.00	144.00	145.00	146.00	148.00	159.00	160.00	161.00	162.00	164.00
	165.00	166.00										
Rutherford County	416.00	419.00										
Sumner County	208.00											
Wilson County	307.00											

METROPOLITAN AREA: Nassau-Suffolk, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Nassau County	4067.00	4068.00	4070.00	4072.01	4078.02	4111.00						
Suffolk County	1224.06	1225.01	1233.01	1233.02	1455.00	1456.03	1580.07	1584.06	1585.02	1591.03	1698.00	1701.01
	1904.01											

METROPOLITAN AREA: New Bedford, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County	6506.00	6507.00	6508.00	6509.00	6511.00	6512.00	6513.00	6517.00	6518.00	6519.00	6525.00	6526.00
	6527.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New Haven-Meriden, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Haven County	1401.00	1402.00	1403.00	1404.00	1405.00	1406.00	1407.00	1408.00	1413.00	1415.00	1416.00	1417.00
	1421.00	1423.00	1424.00	1425.00	1426.02	1701.00	1702.00	1703.00	1710.00	1803.00		

METROPOLITAN AREA: New London-Norwich, CT-RI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New London County, CT	6901.00	6905.00	6967.00									

METROPOLITAN AREA: New Orleans, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson Parish	205.05	206.00	207.00	208.00	209.00	237.00	252.01	257.00	261.00	262.00	268.00	269.00
	273.00	275.02	276.02									
Orleans Parish	2.00	3.00	4.00	6.01	6.02	6.03	6.13	7.01	7.02	8.00	9.01	9.02
	9.03	9.04	11.00	12.00	13.01	13.02	13.03	13.04	14.01	14.02	15.00	16.00
	17.03	17.06	17.14	17.22	17.33	17.36	17.42	19.00	20.00	21.00	22.00	27.00
	28.00	29.00	30.00	31.00	33.05	33.06	34.00	35.00	36.00	39.00	40.00	44.01
	44.02	45.00	48.00	49.00	50.00	58.00	59.00	60.00	63.00	65.00	67.00	68.00
	69.00	70.00	71.00	72.00	75.01	75.02	76.05	80.00	81.01	83.00	85.00	86.00
	87.00	88.00	89.00	91.00	92.00	93.01	93.02	94.00	96.00	97.00	100.00	102.00
	103.00	111.00	121.02	130.00	131.00							
St. Bernard Parish	306.03											
St. James Parish	405.00											
St. John the Baptist Parish	708.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New York, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bronx County	11.00	17.00	20.00	23.00	25.00	27.01	27.02	33.00	35.00	37.00	39.00	41.00
	43.00	44.00	46.00	47.00	48.00	49.00	50.00	52.00	53.02	54.00	56.00	58.00
	59.01	62.00	65.00	67.00	69.00	73.00	75.00	77.00	79.00	85.00	86.00	87.00
	88.00	89.00	91.00	97.00	99.00	102.00	105.00	110.00	115.01	115.02	119.00	121.01
	121.02	123.00	127.01	127.02	129.01	129.02	131.00	133.00	135.00	137.00	139.00	141.00
	143.00	144.00	145.00	147.00	149.00	151.00	153.00	155.00	157.00	161.00	163.00	165.00
	167.00	169.00	171.00	173.00	175.00	177.00	179.00	181.00	189.00	193.00	195.00	197.00
	199.00	201.00	205.00	211.00	213.01	213.02	215.01	215.02	217.01	217.02	219.00	220.00
	221.00	223.00	225.00	227.01	227.02	229.01	229.02	231.00	233.01	235.02	237.01	237.02
	239.00	241.00	243.00	245.00	249.00	251.00	253.00	255.00	258.00	263.00	265.00	271.01
	284.00	317.00	324.00	334.00	338.00	361.00	363.00	365.01	365.02	367.00	369.01	369.02
	371.00	373.00	374.00	375.01	375.02	375.03	377.00	379.00	381.00	383.00	385.00	387.00
	389.00	391.00	393.00	396.00	397.00	399.01	399.02	401.00	403.02	405.00	407.01	419.00
	458.00											
Kings County	20.00	23.00	25.00	29.01	59.00	71.00	85.00	104.00	106.00	112.00	118.00	127.00
	185.01	185.02	216.00	218.00	220.00	221.00	222.00	225.00	226.00	228.00	230.00	232.00
	233.00	234.00	235.00	236.00	237.00	238.00	241.00	243.00	245.00	247.00	251.00	255.00
	259.01	259.02	261.00	263.00	265.00	275.00	277.00	279.00	281.00	283.00	285.02	286.00
	287.00	289.00	293.00	299.00	303.00	307.00	309.00	326.00	328.00	330.00	340.00	342.00
	343.00	347.00	348.02	352.00	357.00	359.00	360.01	360.02	361.00	362.00	363.00	364.00
	365.01	365.02	367.00	369.00	371.00	373.00	375.00	381.00	382.00	385.00	387.00	389.00
	391.00	393.00	395.00	397.00	399.00	401.00	409.00	411.00	413.00	415.00	417.00	419.00
	421.00	423.00	425.00	427.00	429.00	431.00	433.00	435.00	437.00	441.00	447.00	453.00
	455.00	465.00	472.00	480.00	481.00	482.00	489.00	491.00	493.00	505.00	506.00	507.00
	508.00	509.00	510.00	516.00	523.00	525.00	527.00	529.00	531.00	533.00	534.00	535.00
	537.00	539.00	545.00	547.00	572.00	579.00	610.01	874.01	884.00	890.00	892.00	900.00
	902.00	906.00	908.00	910.00	912.00	914.00	916.00	918.00	944.02	982.00	1034.00	1058.00
	1106.00	1110.00	1114.00	1126.00	1128.00	1130.00	1132.00	1134.00	1136.00	1138.00	1140.00	1148.00
	1150.00	1152.00	1154.00	1156.00	1160.00	1166.00	1170.00	1188.00	1190.00	1194.00	1210.00	1214.00
New York County	2.01	6.00	10.02	14.02	16.00	20.00	24.00	25.00	29.00	36.01	41.00	94.00
	117.00	119.00	143.00	156.02	162.00	164.00	168.00	172.01	172.02	178.00	180.00	182.00

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New York, NY PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New York County (Continued)	184.00	186.00	188.00	190.00	192.00	194.00	196.00	197.01	201.02	202.00	204.00	209.01
	209.02	213.01	213.02	217.02	218.00	219.00	220.00	221.01	222.00	223.01	223.02	224.00
	226.00	227.02	228.00	229.00	230.00	231.02	232.00	233.00	234.00	235.01	235.02	237.00
	239.00	240.00	243.01	243.02	245.00	249.00	251.00	261.00	267.00	269.00	277.00	285.00
	289.00	291.00	293.00									
Queens County	25.00	27.00	37.00	43.00	87.00	105.00	107.00	212.00	246.00	250.00	252.00	260.00
	266.00	278.00	377.00	545.00	641.02	766.00	871.00	942.02	952.00	972.01	992.00	1010.01
	1010.02	1032.01	1227.02	1319.00	1567.00							
Richmond County	29.00	133.01	185.00	219.00	319.01							
Rockland County	115.03	121.02										
Westchester County	1.03	2.01	5.00	10.00	11.01	12.00	29.00	31.00	93.00	119.01		

METROPOLITAN AREA: Newark, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Essex County	2.00	3.00	4.00	6.00	7.00	8.00	9.00	10.00	13.00	14.00	15.00	16.00
	17.00	18.00	19.00	20.00	22.01	24.00	25.00	26.00	27.00	28.00	29.00	30.00
	31.00	34.00	35.00	37.00	38.00	39.00	40.00	41.00	42.00	43.00	44.00	45.00
	46.00	48.01	48.02	49.00	50.00	51.00	53.00	54.00	57.00	58.00	62.00	66.00
	67.00	68.00	69.00	74.00	75.01	75.02	77.00	80.00	81.00	82.00	85.00	86.00
	87.00	88.00	89.00	90.00	91.00	92.00	93.00	94.00	95.00	96.00	97.00	98.00
	99.00	103.00	105.00	106.00	107.00	108.00	109.00	111.00	112.00	113.00	116.00	117.00
	118.00	124.00	126.00	131.00	132.00	133.00	178.00	182.00	183.00	184.00	186.00	187.00
	227.00	228.00										
Morris County	456.01											
Union County	302.00	303.00	304.00	305.00	306.00	308.01	310.00	311.00	312.00	313.00	314.00	315.00
	316.00	317.00	319.02	345.00	390.00	393.00						
Warren County	309.00											

METROPOLITAN AREA: Newburgh, NY-PA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Orange County, NY	4.00	5.00	6.00	12.00	14.00	17.00	22.00	150.01	150.02			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Norfolk-Virginia Beach-Newport News, VA-NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
York County, VA	505.00											
Chesapeake city, VA	201.00	202.00	203.00	205.01	205.02	207.00						
Hampton city, VA	106.01	113.00	114.00									
Newport News city, VA	301.00	303.00	304.00	305.00	306.00	308.00	309.00					
Norfolk city, VA	14.00	25.00	26.00	27.00	29.00	34.00	35.01	41.00	42.00	43.00	44.00	46.00
	47.00	48.00	50.00	51.00	52.00	53.00	57.01	58.00	65.01	65.02	67.00	
Portsmouth city, VA	2105.00	2111.00	2114.00	2118.00	2119.00	2120.00	2121.00	2126.00				
Suffolk city, VA	651.00	653.00	654.00	655.00								
Virginia Beach city, VA	442.00	458.10										
Williamsburg city, VA	3702.00											

METROPOLITAN AREA: Oakland, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alameda County	4007.00	4008.00	4009.00	4010.00	4011.00	4013.00	4014.00	4015.00	4016.00	4017.00	4018.00	4021.00
	4022.00	4024.00	4025.00	4026.00	4027.00	4028.00	4029.00	4030.00	4031.00	4033.00	4034.00	4054.00
	4057.00	4058.00	4059.00	4060.00	4061.00	4062.01	4062.02	4063.00	4065.00	4066.00	4070.00	4072.00
	4073.00	4074.00	4075.00	4076.00	4084.00	4085.00	4086.00	4087.00	4088.00	4089.00	4090.00	4091.00
	4092.00	4093.00	4094.00	4095.00	4096.00	4097.00	4101.00	4102.00	4103.00	4204.00	4224.00	4225.00
	4226.00	4227.00	4228.00	4229.00	4232.00	4235.00	4236.02	4240.01	4240.02	4340.00	4375.00	4377.00
Contra Costa County	3050.00	3072.02	3100.00	3120.00	3141.04	3160.00	3280.00	3361.02	3650.02	3672.00	3680.00	3690.01
	3730.00	3750.00	3760.00	3770.00	3790.00	3820.00						

METROPOLITAN AREA: Ocala, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marion County	17.00	18.00	20.02									

METROPOLITAN AREA: Odessa-Midland, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ector County	3.00	7.00	11.00	12.00	14.00	15.00	18.00	19.00				
Midland County	9.00	14.00	15.00	16.00	17.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Oklahoma City, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Canadian County	3004.00											
Cleveland County	2001.00	2002.00	2005.00	2006.01	2007.00	2012.01	2012.02	2012.03				
Logan County	6002.00											
Oklahoma County	1004.00	1005.00	1007.00	1008.00	1010.00	1011.00	1012.00	1013.00	1014.00	1015.00	1024.00	1025.00
	1026.00	1028.00	1030.00	1031.01	1032.00	1033.00	1034.00	1035.00	1036.01	1036.02	1037.00	1038.00
	1039.00	1041.00	1042.00	1043.00	1044.00	1045.00	1046.00	1047.00	1048.00	1049.00	1052.02	1053.00
	1054.00	1055.00	1056.00	1057.00	1058.00	1063.01	1063.02	1069.12	1069.14	1069.15	1070.01	1070.02
	1072.16	1072.18	1072.23	1073.05	1073.06	1079.00	1080.10	1080.11	1082.07	1082.08	1088.03	
Pottawatomie County	5002.00	5003.02										

METROPOLITAN AREA: Olympia, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Thurston County	101.00											

METROPOLITAN AREA: Omaha, NE-IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pottawattamie County, IA	307.00	309.00										
Douglas County, NE	3.00	5.00	6.00	7.00	8.00	11.00	12.00	16.00	19.00	20.00	27.00	29.00
	32.00	39.00	40.00	50.00	51.00	52.00	53.00	54.00	59.01	59.02	60.00	61.01
Sarpy County, NE	103.02											

METROPOLITAN AREA: Orange County, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Orange County	12.01	13.04	116.01	116.02	117.14	117.20	218.13	423.12	626.14	626.26	626.27	626.46
	636.04	636.05	637.01	740.03	743.00	744.03	744.05	744.06	744.07	745.01	746.01	746.02
	748.01	748.02	748.05	748.06	749.01	749.02	750.02	750.03	750.04	751.00	752.02	865.02
	866.01	869.01	873.00	874.03	874.04	874.05	875.01	875.04	878.03	878.06	879.01	890.04
	891.04	891.05	891.06	992.48	992.49	994.02	995.02	995.09	995.10	998.02	999.04	1105.00
	1106.06											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Orlando, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lake County	305.01	306.02										
Orange County	101.00	104.00	105.00	106.00	114.00	115.00	117.01	117.02	119.01	121.00	145.02	146.01
	159.01	165.06	175.01	176.00								
Seminole County	201.01	202.01	204.01	205.00	209.01							

METROPOLITAN AREA: Owensboro, KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Daviess County	2.00	3.00	4.00									

METROPOLITAN AREA: Panama City, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bay County	16.00	17.00	18.00	20.00	22.00							

METROPOLITAN AREA: Parkersburg-Marietta, WV-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wood County, WV	5.00	6.00	7.01									

METROPOLITAN AREA: Pensacola, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Escambia County	1.00	3.00	4.00	6.00	13.00	14.01	15.00	16.00	17.00	18.00	19.00	20.00
	21.00	22.00	40.00									

METROPOLITAN AREA: Peoria-Pekin, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Peoria County	1.00	2.00	3.00	5.00	6.00	7.00	8.00	9.00	12.00	13.00	16.00	18.00
	19.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Philadelphia, PA-NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Burlington County, NJ	7020.00	7021.01	7022.04									
Camden County, NJ	6001.00	6002.00	6003.00	6004.00	6005.00	6007.00	6008.00	6009.00	6010.00	6011.01	6011.02	6012.00
	6013.00	6014.00	6015.00	6016.00	6017.00	6018.00	6019.00	6020.00	6025.01	6082.04	6101.00	6102.00
Gloucester County, NJ	5014.02	5014.04										
Salem County, NJ	203.00	219.00	220.00									
Chester County, PA	3026.00	3054.00	3055.00	3056.00	3109.00							
Delaware County, PA	4004.01	4024.00	4025.00	4029.00	4045.00	4047.00	4048.00	4049.00	4050.00	4051.00	4052.00	4053.00
	4054.00	4056.00	4057.00	4058.00	4063.00	4064.02	4066.00					
Montgomery County, PA	2039.01	2039.02	2088.01	2089.04	2090.00							
Philadelphia County, PA	2.00	5.00	9.00	13.00	14.00	19.00	20.00	21.00	22.00	25.00	27.00	28.00
	29.00	30.00	31.00	32.00	33.00	34.00	35.00	36.00	37.01	37.02	39.01	40.01
	41.01	41.02	44.00	46.00	56.00	62.00	63.00	64.00	65.00	66.00	67.00	69.00
	70.00	71.00	72.00	73.00	74.00	77.00	80.00	81.00	82.00	83.01	83.02	84.00
	85.00	86.00	87.00	88.00	89.00	90.00	91.00	92.00	93.00	94.00	95.00	96.00
	101.00	102.00	103.00	104.00	105.00	106.00	107.00	108.00	109.00	110.00	111.00	112.00
	114.00	117.00	119.00	126.00	127.00	131.00	132.00	133.00	137.00	138.00	139.00	140.00
	141.00	144.00	145.00	146.00	147.00	148.00	149.00	150.00	151.00	152.00	153.00	155.00
	156.00	157.00	159.00	160.00	161.00	162.00	163.00	164.00	165.00	166.00	167.00	168.00
	169.01	169.02	170.00	171.00	172.00	173.00	174.00	175.00	176.01	176.02	177.00	178.00
	179.00	181.00	182.00	185.00	186.00	188.00	189.00	190.00	192.00	193.00	194.00	195.00
	196.00	197.00	198.00	199.00	200.00	201.00	202.00	203.00	204.00	205.00	206.00	239.00
	240.00	241.00	242.00	243.00	244.00	245.00	246.00	247.00	249.00	250.00	252.00	273.00
	275.00	277.00	278.00	279.00	280.00	282.00	283.00	284.00	286.00	287.00	288.00	289.00
	293.00	294.00	295.00	297.00	298.00	299.00	300.00	303.00	304.00	321.00	322.00	327.00
	354.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Phoenix-Mesa, AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Maricopa County	202.02	506.03	608.00	614.00	716.00	822.02	926.00	927.04	927.05	927.11	928.00	929.00
	931.04	1033.04	1033.05	1033.06	1045.01	1046.00	1071.02	1072.01	1086.01	1090.00	1091.00	1092.00
	1096.04	1098.01	1101.00	1102.00	1103.00	1107.01	1112.02	1112.03	1114.01	1115.01	1116.02	1121.00
	1122.01	1122.02	1123.01	1123.02	1125.02	1125.07	1126.01	1126.02	1127.00	1128.00	1129.00	1131.00
	1132.01	1132.02	1132.03	1133.00	1134.00	1135.00	1136.01	1136.02	1137.00	1138.00	1139.00	1140.00
	1141.00	1142.00	1143.01	1143.02	1144.01	1144.02	1145.00	1146.00	1147.01	1147.02	1147.03	1148.00
	1149.00	1150.00	1151.00	1152.00	1153.00	1154.00	1155.00	1156.00	1158.01	1158.02	1159.00	1160.00
	1161.00	1162.03	1166.02	3187.00	3191.01	3191.02	3192.00	3200.02	4213.02	4214.00	4216.02	4220.01
	9407.00	9410.00	9411.00									
Pinal County	4.00	10.00	12.00	15.00	19.00	20.00	9406.00	9411.00	9412.00			

METROPOLITAN AREA: Pine Bluff, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	5.02	10.00	13.00	14.01	17.00	19.01						

METROPOLITAN AREA: Pittsburgh, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allegheny County	103.00	201.00	203.00	305.00	402.00	404.00	405.00	406.00	409.00	501.00	507.00	509.00
	510.00	511.00	603.00	605.00	804.00	902.00	1016.00	1017.00	1113.00	1114.00	1115.00	1201.00
	1203.00	1204.00	1207.00	1208.00	1301.00	1302.00	1303.00	1304.00	1306.00	1504.00	1515.00	1603.00
	1604.00	1606.00	1607.00	1803.00	1809.00	1921.00	2019.00	2108.00	2204.00	2206.00	2304.00	2503.00
	2507.00	2509.00	2609.00	2614.00	2615.00	2620.00	2805.00	2808.00	3101.00	4644.00	4838.00	4867.00
	4869.00	4929.00	5050.00	5100.00	5128.00	5129.00	5138.00	5140.00	5153.00	5509.00	5512.00	5519.00
	5521.00	5523.00	5604.00	5606.00	5610.00	5611.00	5612.00					
Beaver County	6012.00	6015.00	6028.00	6045.00								
Butler County	9023.00	9024.00	9104.00	9105.00								
Fayette County	2607.00	2608.00	2612.00	2618.00	2619.00	2621.00	2623.00	2630.00				
Washington County	7041.00	7546.00	7832.00	7922.00								
Westmoreland County	8001.00	8007.00	8028.00	8054.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Pittsfield, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkshire County	9001.00											

METROPOLITAN AREA: Pocatello, ID MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bannock County	8.00	9.00	16.01	16.03								

METROPOLITAN AREA: Ponce, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guayanilla Municipio	7404.00											
Juana Diaz Municipio	7102.00	7107.00										
Ponce Municipio	702.02	703.00	704.00	708.00	709.00	710.00	713.00	716.02	718.00	719.00	721.01	727.04
Yauco Municipio	7501.01	7502.01	7504.00									

METROPOLITAN AREA: Portland, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	3.00	5.00	6.00	10.00	12.00							

METROPOLITAN AREA: Portland-Vancouver, OR-WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Multnomah County, OR	11.01	21.00	22.01	22.02	23.01	33.01	34.01	34.02	40.01	42.00	49.00	51.00
	52.00	53.00	54.00	55.00	56.00	76.00	83.01	96.06	98.01			
Washington County, OR	332.00											
Clark County, WA	410.05	416.00	424.00	427.00								

METROPOLITAN AREA: Portsmouth-Rochester, NH-ME PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Strafford County, NH	802.01	802.02										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Providence-Fall River-Warwick, RI-MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County, MA	6402.00	6403.00	6409.00	6410.00	6411.00	6412.00	6413.00	6414.00	6420.00			
Providence County, RI	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00
	14.00	16.00	17.00	18.00	19.00	20.00	22.00	25.00	26.00	27.00	29.00	31.00
	36.01	36.02	37.00	108.00	109.00	110.00	111.00	151.00	152.00	161.00	174.00	176.00
	180.00	181.00	183.00									

METROPOLITAN AREA: Provo-Orem, UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Utah County	14.02	16.01	16.02	16.03	17.00	18.01	18.02	19.00	24.00	25.00		

METROPOLITAN AREA: Pueblo, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pueblo County	3.00	6.00	7.00	8.00	10.00	12.00	13.00	14.00	19.00	21.00	23.00	26.00

METROPOLITAN AREA: Racine, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Racine County	1.00	3.00	4.00	5.00	10.01	22.00						

METROPOLITAN AREA: Raleigh-Durham-Chapel Hill, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Durham County	3.01	4.02	5.00	8.01	8.02	9.00	10.01	10.02	11.00	12.01	12.02	13.01
	13.03	13.04	14.00	15.01	15.02	15.03	17.09					
Franklin County	601.00											
Johnston County	403.00	406.00	407.00	414.00								
Orange County	113.00	114.00	116.00	117.00								
Wake County	501.00	506.00	507.00	508.00	509.00	511.00	520.01	522.01	523.01	524.05		

METROPOLITAN AREA: Rapid City, SD MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pennington County	103.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Reading, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berks County	1.00	2.00	3.00	10.00	11.00	12.00	13.00	14.00	17.00	19.00	21.00	22.00
	23.00	25.00	26.00	140.00								

METROPOLITAN AREA: Redding, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Shasta County	101.00	109.00	112.00	120.00	121.00							

METROPOLITAN AREA: Reno, NV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washoe County	1.00	9.00	18.00	19.01	22.03							

METROPOLITAN AREA: Richland-Kennewick-Pasco, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benton County	112.00											
Franklin County	201.00	202.00	204.00									

METROPOLITAN AREA: Richmond-Petersburg, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chesterfield County	1004.05	1004.06										
Goochland County	4003.00											
Henrico County	2008.04	2008.05										
Hopewell city	8203.00	8207.00										
Petersburg city	8101.00	8102.00	8105.00	8106.00	8107.00	8108.00						
Richmond city	103.00	108.00	109.00	110.00	111.00	201.00	202.00	203.00	204.00	205.00	206.00	207.00
	208.00	209.00	210.00	211.00	301.00	302.00	305.00	402.00	403.00	404.00	413.00	414.00
	601.00	602.00	603.00	604.00	607.00	608.00	609.00					

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Riverside-San Bernardino, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Riverside County	303.00	304.00	305.01	305.02	305.03	313.00	402.03	402.04	410.01	411.00	415.00	416.00
	417.04	422.02	422.09	422.10	422.11	425.04	425.05	425.15	425.19	425.20	427.23	428.00
	429.02	429.04	430.01	430.06	433.08	434.01	434.05	435.07	436.00	440.00	441.01	442.00
	443.00	445.07	445.09	445.10	448.06	449.15	452.07	453.01	454.00	455.01	455.02	456.03
	456.04	456.05	457.03	457.04	457.05	457.06	462.00	9401.00				
San Bernardino County	3.01	14.00	15.00	16.00	22.03	28.00	31.00	34.02	37.00	40.00	41.00	42.01
	42.02	47.00	48.00	49.00	50.00	53.00	54.00	55.00	56.00	57.00	58.00	59.00
	62.02	63.02	64.01	64.02	65.00	68.00	69.00	70.00	72.00	74.07	74.08	75.00
	76.01	80.02	94.00	97.10	97.16	98.00	99.01	100.14	100.20	104.11	106.00	107.00
	117.00	9401.00	9405.00									

METROPOLITAN AREA: Roanoke, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Roanoke city	7.00	8.00	9.00	10.00	11.00	12.00	13.00					
Salem city	104.00											

METROPOLITAN AREA: Rochester, MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Olmsted County	1.00	6.00										

METROPOLITAN AREA: Rochester, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Genesee County	9401.00											
Livingston County	304.00	305.00										
Monroe County	2.00	7.00	13.00	15.00	22.00	23.00	24.00	27.00	30.00	32.00	33.00	34.00
	38.03	38.04	39.00	40.00	41.00	46.02	47.01	48.00	49.00	50.00	51.00	52.00
	53.00	55.00	56.00	57.00	59.00	64.00	65.00	66.00	69.00	75.00	79.00	80.00
	81.00	84.00	85.00	87.02	92.00	93.01	93.02	94.00	96.01	96.02	96.03	96.04
	131.03											
Ontario County	517.00	518.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Rockford, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Winnebago County	10.00	11.00	12.00	20.00	24.00	25.00	26.00	27.00	28.00	29.00	31.00	32.00

METROPOLITAN AREA: Rocky Mount, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Edgecombe County	201.00	202.00	204.00									
Nash County	101.00	102.00										

METROPOLITAN AREA: Sacramento, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Dorado County	301.01											
Sacramento County	5.00	6.00	7.00	10.00	11.00	12.00	18.00	20.00	21.00	22.00	27.00	28.00
	32.01	36.00	37.00	41.00	42.02	42.03	43.00	44.01	44.02	45.00	46.01	46.02
	48.01	49.03	49.05	50.02	51.03	52.01	53.00	55.02	62.01	62.02	63.00	64.00
	65.00	66.00	67.02	68.00	69.00	70.01	74.04	74.13	83.00	88.00	89.11	90.07
	91.10											

METROPOLITAN AREA: Saginaw-Bay City-Midland, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bay County	2802.00	2807.00										
Saginaw County	1.00	2.00	4.00	6.00	7.00	8.00	9.00	10.00	11.00	13.00	17.00	18.00

METROPOLITAN AREA: St. Cloud, MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stearns County	1.00	2.00	3.02									

METROPOLITAN AREA: St. Joseph, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buchanan County	10.00	12.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: St. Louis, MO-IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County, IL	4003.00	4005.00	4006.00	4007.00	4009.01	4013.00	4021.00	4024.00				
St. Clair County, IL	5004.00	5005.00	5006.00	5009.00	5011.00	5013.00	5014.00	5021.00	5022.00	5024.01	5025.00	5026.03
	5027.00	5028.00	5029.00	5042.01	5045.00							
St. Louis County, MO	2121.00	2136.00	2139.00	2141.00	2160.00	2161.00	2169.00	2218.00				
St. Louis city, MO	1015.00	1018.00	1052.00	1053.00	1054.00	1055.00	1061.00	1062.00	1063.00	1064.00	1065.00	1066.00
	1067.00	1071.00	1072.00	1074.00	1075.00	1076.00	1082.00	1084.00	1085.00	1096.00	1097.00	1101.00
	1102.00	1103.00	1104.00	1105.00	1111.00	1112.00	1113.00	1114.00	1115.00	1122.00	1123.00	1152.00
	1155.00	1156.00	1157.00	1163.00	1164.00	1165.00	1172.00	1181.00	1184.00	1185.00	1186.00	1191.00
	1193.00	1201.00	1202.00	1203.00	1211.00	1212.00	1213.00	1214.00	1221.00	1224.00	1231.00	1232.00
	1233.00	1241.00	1242.00	1243.00	1246.00	1255.00	1257.00	1266.00	1267.00			

METROPOLITAN AREA: Salem, OR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marion County	2.00	4.00	5.00	7.00	8.00	9.00	10.00	17.01				

METROPOLITAN AREA: Salinas, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monterey County	5.00	6.00	7.00	9.00	13.00	106.02	113.02	141.01	141.02			

METROPOLITAN AREA: Salt Lake City-Ogden, UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Davis County	1256.00											
Salt Lake County	1001.00	1003.02	1007.00	1014.00	1020.00	1021.00	1022.00	1023.00	1024.00	1025.00	1027.00	1029.00
	1115.00											
Weber County	2002.02	2008.00	2009.00	2011.00	2012.00	2013.00	2018.00	2019.00				

METROPOLITAN AREA: San Angelo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tom Green County	4.00	5.00	6.00	7.00	9.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: San Antonio, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bexar County	1101.00	1102.00	1103.00	1105.00	1106.00	1107.00	1108.00	1109.00	1110.00	1205.02	1214.04	1301.00
	1302.00	1303.00	1304.00	1305.00	1306.00	1307.00	1308.00	1309.00	1311.00	1312.00	1402.00	1410.00
	1411.00	1501.00	1503.00	1504.00	1505.01	1505.02	1507.00	1508.00	1511.00	1514.00	1519.00	1520.00
	1601.00	1605.00	1606.00	1607.01	1607.02	1609.00	1610.00	1613.01	1615.01	1616.00	1701.01	1701.02
	1702.00	1703.00	1704.01	1704.02	1705.00	1707.00	1708.00	1709.00	1710.00	1711.00	1712.00	1713.00
	1714.00	1715.00	1716.00	1804.00	1805.04	1808.00	1818.06	1901.00	1903.00	1905.02	1910.04	

METROPOLITAN AREA: San Diego, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Diego County	9.00	16.00	21.00	22.01	22.02	23.01	23.02	24.01	24.02	25.01	26.01	26.02
	27.07	27.08	27.09	27.10	28.01	28.04	29.04	31.11	33.02	33.03	34.03	34.04
	35.01	35.02	36.01	36.02	36.03	39.01	39.02	40.00	41.00	45.01	45.02	46.00
	47.00	48.00	49.00	50.00	51.00	52.00	53.00	56.00	57.00	58.00	62.00	64.00
	65.00	83.39	83.41	83.43	86.00	100.05	100.09	100.12	100.13	100.15	101.12	114.00
	115.00	116.01	116.02	117.00	118.01	118.02	119.01	120.02	125.00	132.05	139.07	144.00
	157.01	157.03	158.01	158.02	159.01	182.00	184.00	190.02	195.01	195.02	202.02	202.07
	202.12											

METROPOLITAN AREA: San Francisco, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marin County	1122.00											
San Francisco County	107.00	113.00	114.00	115.00	117.00	118.00	120.00	121.00	122.00	123.00	124.00	125.00
	161.00	176.01	178.00	179.02	201.00	230.02	231.01	231.02	231.03	234.00	332.01	603.00
	605.02	607.00										
San Mateo County	6102.02	6102.03	6106.01									

METROPOLITAN AREA: San Jose, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Clara County	5008.00	5009.01	5009.02	5010.00	5014.00	5015.01	5015.02	5016.00	5017.00	5019.00	5020.02	5031.05
	5031.10	5031.12	5031.13	5032.13	5032.14	5036.01	5037.06	5037.09	5046.01	5116.06	5116.07	5126.01

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: San Juan-Bayamon, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguas Buenas Municipio	2303.00	2304.00	2305.01									
Barceloneta Municipio	5902.00	5903.00										
Bayamon Municipio	307.00	312.01	320.00									
Canovanas Municipio	1001.01	1001.02	1007.00									
Carolina Municipio	505.03	508.41										
Catano Municipio	202.00	203.00	204.02	204.04								
Comerio Municipio	9517.00	9518.00	9519.00	9520.00	9521.00							
Corozal Municipio	5302.00	5303.00	5306.00									
Fajardo Municipio	1503.01											
Florida Municipio	5801.00											
Guaynabo Municipio	401.01											
Humacao Municipio	1806.00											
Juncos Municipio	5001.00	5004.01										
Las Piedras Municipio	1902.01											
Loiza Municipio	1101.01	1101.02	1102.00	1103.01	1103.02	1104.00	1106.00					
Luquillo Municipio	1401.02	1403.00										
Manati Municipio	5703.00	5704.00	5706.00	5707.00								
Morovis Municipio	9553.00	9554.02	9555.00									
Naguabo Municipio	1702.00	1703.00										
Naranjito Municipio	5202.00	5203.00										
San Juan Municipio	6.00	7.00	13.00	28.00	29.00	34.00	35.01	35.02	36.00	37.00	38.00	42.00
	44.00	45.00	46.00	47.00	48.00	49.00	50.00	51.03	54.02	56.02	61.01	62.00
	82.01	82.02	87.00	90.00								
Toa Baja Municipio	1217.00	1218.01	1221.00	1222.00	1224.00							
Vega Alta Municipio	5501.00											
Vega Baja Municipio	5606.00	5609.00										
Yabucoa Municipio	9507.00	9508.00	9512.00									

METROPOLITAN AREA: San Luis Obispo-Atascadero-Paso Robles, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Luis Obispo County	109.01	109.02	111.01	112.00	114.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Santa Barbara-Santa Maria-Lompoc, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Barbara County	23.04	24.03	24.04	25.00	27.02	29.02	29.03	29.11	29.12			

METROPOLITAN AREA: Santa Cruz-Watsonville, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Cruz County	1007.00	1010.00	1101.00	1103.00	1104.00							

METROPOLITAN AREA: Santa Fe, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Fe County	3.00	10.02	12.02									

METROPOLITAN AREA: Santa Rosa, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sonoma County	1520.00											

METROPOLITAN AREA: Sarasota-Bradenton, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Manatee County	1.03	3.05	3.06	7.03	15.02							
Sarasota County	1.02	2.00	3.00									

METROPOLITAN AREA: Savannah, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chatham County	1.00	3.00	6.01	8.00	11.00	12.00	13.00	15.00	18.00	19.00	20.00	21.00
	22.00	23.00	24.00	25.00	28.00	32.00	43.00	44.00	101.01	106.04		

METROPOLITAN AREA: Scranton--Wilkes-Barre--Hazleton, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbia County	511.00	512.00										
Lackawanna County	1002.00	1003.00										
Luzerne County	2001.00	2005.00	2008.00	2009.00	2010.00	2132.00	2174.00					

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Seattle-Bellevue-Everett, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Island County	9702.00	9707.00	9709.00									
King County	4.01	43.00	52.00	53.01	72.00	73.00	81.00	84.00	85.00	86.00	87.00	90.00
	91.00	92.00	93.00	107.00	112.00	265.00	290.04	305.01				
Snohomish County	402.00	407.00										

METROPOLITAN AREA: Sharon, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mercer County	301.00	302.00	306.00	307.00	308.00							

METROPOLITAN AREA: Sheboygan, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sheboygan County	5.00	6.00										

METROPOLITAN AREA: Sherman-Denison, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Grayson County	2.00	16.01										

METROPOLITAN AREA: Shreveport-Bossier City, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bossier Parish	104.00	113.00										
Caddo Parish	201.00	202.00	204.00	206.00	207.00	208.00	209.00	210.00	211.00	213.00	217.00	218.00
	219.00	221.00	223.00	225.00	232.00	233.00	235.00	236.00	237.00	246.01	246.02	
Webster Parish	317.00	319.00										

METROPOLITAN AREA: Sioux City, IA-NE MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Woodbury County, IA	13.00	15.00	16.00	17.00								

METROPOLITAN AREA: Sioux Falls, SD MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Minnehaha County	7.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: South Bend, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Joseph County	1.00	6.00	10.00	17.00	19.00	20.00	21.00	23.00	27.00	28.00	29.00	

METROPOLITAN AREA: Spokane, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Spokane County	1.00	16.00	24.00	25.00	26.00	30.00	33.00	35.00	36.00	40.00	140.01	

METROPOLITAN AREA: Springfield, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sangamon County	8.00	9.00	13.00	14.00	15.00	16.00	17.00	24.00				

METROPOLITAN AREA: Springfield, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Greene County	1.00	2.00	5.00	7.00	18.00	33.00	55.00					

METROPOLITAN AREA: Springfield, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hampden County	8006.00	8007.00	8008.00	8009.00	8011.01	8011.02	8012.00	8013.00	8014.01	8014.02	8015.02	8018.00
	8019.00	8020.00	8021.00	8022.00	8023.00	8109.01	8114.00	8115.00	8116.00	8117.00	8118.00	8123.00
	8127.02											
Hampshire County	8203.00	8206.00										

METROPOLITAN AREA: Stamford-Norwalk, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	201.00	214.00	215.00	218.02	222.00	223.00	437.00	438.00	440.00	441.00	444.00	445.00

METROPOLITAN AREA: State College, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Centre County	120.00	121.00	122.00	125.00	126.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Steubenville-Weirton, OH-WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County, OH	2.00	4.00	8.00	9.00								

METROPOLITAN AREA: Stockton-Lodi, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Joaquin County	1.00	3.00	4.02	5.00	6.00	7.00	8.00	14.00	16.00	17.00	19.00	20.00
	21.00	22.00	23.00	31.13	33.09	34.04	34.06	34.07	38.03	39.00	44.01	45.00

METROPOLITAN AREA: Sumter, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sumter County	7.00	8.98	11.00	13.00	15.00							

METROPOLITAN AREA: Syracuse, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cayuga County	419.00											
Onondaga County	2.00	5.00	6.00	10.00	13.00	14.00	15.00	16.00	21.00	22.00	23.00	24.00
	30.00	32.00	34.00	35.00	36.01	38.00	39.00	40.00	42.00	43.00	44.00	51.00
	52.00	53.00	54.00	55.00	56.02	58.00	59.00	61.01	61.02			
Oswego County	211.02	216.01	216.02									

METROPOLITAN AREA: Tacoma, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pierce County	610.02	613.00	614.00	616.01	616.02	617.00	622.00	628.01	717.03	717.06	718.05	718.06
	720.00											

METROPOLITAN AREA: Tallahassee, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Leon County	3.03	4.00	5.00	6.00	10.01	11.01	12.00	14.00	19.00	20.01	20.02	21.02

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Tampa-St. Petersburg-Clearwater, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	7.00	12.00	18.00	19.00	21.00	29.00	30.00	31.00	32.00	33.00	34.00	35.00
	36.00	37.00	38.00	39.00	40.00	41.00	42.00	43.00	44.00	50.00	51.01	53.00
	108.03	108.05	108.06	108.07	108.08	124.02	124.03	129.00	139.06			
Pasco County	310.06											
Pinellas County	205.00	206.00	207.00	208.00	209.00	210.00	212.00	213.00	214.00	215.00	216.00	218.00
	256.02	262.00	268.08									

METROPOLITAN AREA: Terre Haute, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Vigo County	1.00	2.00	3.00	5.00	6.00	8.00	19.00					

METROPOLITAN AREA: Texarkana, TX-Texarkana, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Miller County, AR	204.00	205.00	206.00									
Bowie County, TX	104.00	105.00	106.00	108.00								

METROPOLITAN AREA: Toledo, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lucas County	8.00	9.00	12.02	13.02	13.04	14.00	15.00	16.00	17.00	18.00	19.00	20.00
	21.00	22.00	23.00	24.02	25.00	26.00	27.00	28.00	29.00	30.00	31.00	32.00
	33.00	34.00	35.00	36.00	37.00	38.00	40.00	41.00	42.00	43.01	47.01	48.00
	51.00	53.00	54.00	68.00	73.03							
Wood County	217.01	217.02	218.00									

METROPOLITAN AREA: Topeka, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Shawnee County	4.00	5.00	6.00	11.00	31.00	40.00						

METROPOLITAN AREA: Trenton, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mercer County	1.00	2.00	5.00	8.00	9.00	10.00	11.00	14.01	14.02	15.00	16.00	17.00
	18.00	19.00	20.00	21.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Tucson, AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pima County	1.00	3.00	4.00	5.00	9.00	10.00	13.01	13.02	14.00	15.00	21.00	22.00
	23.00	24.00	25.03	26.01	27.01	28.01	28.02	31.01	37.01	37.02	38.01	38.02
	39.02	41.04	41.11	43.20	45.09	51.00	9406.00	9407.00	9408.00			

METROPOLITAN AREA: Tulsa, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Creek County	210.00											
Tulsa County	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	12.00	13.00	21.00
	22.00	23.00	25.00	27.00	46.00	57.00	62.00	67.01	68.01	76.08	79.00	80.01
	91.01	111.00										

METROPOLITAN AREA: Tuscaloosa, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tuscaloosa County	112.00	114.00	116.00	117.01	117.03	118.00	119.00	126.00				

METROPOLITAN AREA: Tyler, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Smith County	1.00	2.01	2.02	3.00	4.00	5.00	7.00					

METROPOLITAN AREA: Utica-Rome, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Herkimer County	111.00											
Oneida County	201.00	203.00	207.01	208.02	208.03	209.00	210.00	211.01	211.02	211.03	212.01	213.01
	213.02	215.00	218.00	220.00	223.00	226.00	229.00					

METROPOLITAN AREA: Vallejo-Fairfield-Napa, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Napa County	2009.00											
Solano County	2507.01	2508.00	2509.00	2510.00	2516.00	2518.02	2525.02	2526.06	2526.07			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Ventura, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ventura County	2.00	5.00	6.00	23.00	24.00	32.01	32.02	35.00	38.00	43.01	45.01	45.03
	46.00	47.04	47.06	50.01	50.02							

METROPOLITAN AREA: Victoria, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Victoria County	3.01											

METROPOLITAN AREA: Vineland-Millville-Bridgeton, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	201.00	203.00	205.01	301.00	401.00							

METROPOLITAN AREA: Visalia-Tulare-Porterville, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tulare County	3.02	5.01	6.00	11.00	16.01	22.02	26.01	28.00	29.01	38.02	40.00	41.01
	42.00	43.00	44.00									

METROPOLITAN AREA: Waco, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McLennan County	1.00	2.00	3.00	4.00	7.00	10.00	12.00	14.00	15.00	19.00	33.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Washington, DC-MD-VA-WV PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
District of Columbia	2.01	18.03	18.04	20.01	21.01	24.00	25.02	28.01	28.02	29.00	30.00	31.00
	32.00	34.00	35.00	36.00	37.00	46.00	47.00	48.01	48.02	49.01	49.02	50.00
	52.02	57.01	58.00	59.00	60.02	64.00	68.01	68.04	71.00	72.00	73.02	73.04
	73.08	74.01	74.03	74.04	74.06	74.07	74.08	74.09	75.02	75.03	75.04	76.01
	76.03	76.05	77.03	77.07	77.08	77.09	78.03	78.04	78.06	78.07	78.08	78.09
	79.01	84.02	85.00	86.00	87.02	88.02	88.03	88.04	89.03	89.04	90.00	91.02
	92.01	92.03	92.04	95.01	96.01	96.02	96.03	96.04	97.00	98.01	98.02	98.03
	98.04	98.06	98.07	98.08	98.09	99.03	99.04	99.05	99.06	99.07		
Charles County, MD	8509.01											
Frederick County, MD	7501.00	7503.00	7509.00									
Montgomery County, MD	7009.04											
Prince George's County, MD	8017.04	8024.04	8025.02	8032.00	8034.01	8035.08	8035.09	8040.01	8043.00	8048.00	8051.01	8056.01
	8056.02	8067.03	8072.00									
Arlington County, VA	1027.00											
Culpeper County, VA	9903.00											
Fairfax County, VA	4215.00	4219.00										
Prince William County, VA	9009.01	9009.03										
Warren County, VA	204.00	205.00										
Fredericksburg city, VA	2.00	4.00	5.00									
Berkeley County, WV	9713.00	9715.00	9716.00	9717.00								
Jefferson County, WV	9724.00											

METROPOLITAN AREA: Waterbury, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Haven County	3501.00	3502.00	3503.00	3504.00	3505.00	3508.00	3512.00	3514.00	3517.00	3522.00		

METROPOLITAN AREA: Waterloo-Cedar Falls, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Black Hawk County	1.00	9.00	17.01	23.02								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Wausau, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marathon County	1.00											

METROPOLITAN AREA: West Palm Beach-Boca Raton, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Palm Beach County	13.01	13.02	14.03	14.04	17.00	19.02	19.09	21.00	22.00	23.00	24.00	26.00
	29.00	40.13	44.02	49.01	51.00	52.02	59.13	61.00	67.00	68.01	80.01	80.02
	81.01	81.02	82.01	82.02	82.03	83.01	83.02					

METROPOLITAN AREA: Wheeling, WV-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Belmont County, OH	115.00	116.00	121.00									
Ohio County, WV	1.00	4.00	7.00	8.00	24.00							

METROPOLITAN AREA: Wichita, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sedgwick County	1.00	4.00	6.00	7.00	8.00	9.00	11.00	18.00	24.00	26.00	36.00	37.00
	65.00	68.00	78.00									

METROPOLITAN AREA: Wichita Falls, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wichita County	101.00	102.00	104.00	111.00	112.00	130.00						

METROPOLITAN AREA: Williamsport, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lycoming County	4.00	8.00										

METROPOLITAN AREA: Wilmington-Newark, DE-MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Castle County, DE	6.01	6.02	7.00	8.00	9.00	16.00	17.00	19.00	20.00	21.00	22.00	23.00
	144.03	145.01	145.02									
Cecil County, MD	304.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Wilmington, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Hanover County	101.00	103.00	105.01	110.00	111.00	113.00	114.00					

METROPOLITAN AREA: Worcester, MA-CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Worcester County, MA	7312.01	7312.02	7313.00	7314.00	7315.00	7316.00	7317.00	7318.00	7319.00	7320.01	7321.00	7324.00
	7325.00	7330.00	7384.00	7421.00	7542.00	7543.00	7572.00	7573.00				

METROPOLITAN AREA: Yakima, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yakima County	1.00	2.00	6.00	15.00	20.01	25.00	27.02					

METROPOLITAN AREA: Yolo, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yolo County	101.01	102.03	105.01	106.02	107.01	107.03						

METROPOLITAN AREA: York, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
York County	1.00	2.00	5.00	7.00	9.00	10.00	11.00	12.00	15.00	16.00		

METROPOLITAN AREA: Youngstown-Warren, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbiana County	9521.00	9523.00										
Mahoning County	8002.00	8004.00	8005.00	8006.00	8007.00	8009.00	8010.00	8016.00	8017.00	8019.00	8020.00	8021.00
	8022.00	8023.00	8024.00	8025.00	8031.00	8034.00	8035.00	8037.00	8040.00	8041.00	8043.00	8044.00
	8103.00											
Trumbull County	9201.00	9205.00	9206.00	9208.00	9212.00	9324.00						

METROPOLITAN AREA: Yuba City, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sutter County	501.02	502.02										
Yuba County	401.00	403.00	404.00									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Yuma, AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yuma County	1.00	3.02	4.01	106.00	114.01	115.01	116.00					

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Alabama

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barbour County	9502.00	9503.00	9504.00	9506.00	9507.00	9509.00						
Bibb County	101.00											
Bullock County	9521.00	9522.00										
Butler County	9529.00	9531.00	9532.00	9534.00								
Choctaw County	9567.00	9570.00										
Clarke County	9577.00	9578.00										
Coffee County	110.00	113.00										
Conecuh County	9604.00	9605.00	9606.00									
Covington County	9621.00	9627.00	9630.00									
Crenshaw County	9634.00											
Dallas County	9964.00	9965.00	9966.00	9968.00	9969.00	9970.00	9971.00	9972.00	9973.00			
Escambia County	9704.00	9706.00										
Greene County	600.00	601.00	602.00									
Hale County	401.00	403.00	404.00									
Henry County	301.00											
Lowndes County	9810.00	9811.00	9812.00									
Macon County	9816.00	9817.00	9818.00	9819.00	9820.00	9821.00	9822.00	9823.00				
Marengo County	9829.00	9831.00	9832.00									
Monroe County	9856.00	9858.00	9860.00									
Perry County	9870.00	9871.00	9872.00									
Pickens County	501.00	503.00	504.00									
Pike County	9889.00	9891.00	9893.00									
Sumter County	9911.00	9912.00	9913.00	9915.00	9916.00							
Talladega County	106.00	118.00										
Wilcox County	9947.00	9948.00	9949.00	9950.00	9951.00							

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Alaska

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bethel Census Area	1.00	3.00										
Dillingham Census Area	1.00											
Kenai Peninsula Borough	1.00											
Nome Census Area	1.00											
Prince of Wales-Outer Ketchikan Census Area	3.00											
Skagway-Hoonah-Angoon Census Area	2.00											
Wade Hampton Census Area	1.00											
Yukon-Koyukuk Census Area	1.00	4.00										

NONMETROPOLITAN PART OF STATE: Arizona

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Apache County	9401.00	9426.00	9427.00	9440.00	9441.00	9442.00	9443.00	9449.00	9451.00			
Cochise County	6.00	8.00	9.00									
Gila County	9402.00	9404.00										
Graham County	9405.00											
Navajo County	9401.00	9403.00	9410.00	9411.00	9423.00	9424.00	9444.00	9445.00	9447.00	9448.00		
Santa Cruz County	9962.00	9964.02										

NONMETROPOLITAN PART OF STATE: Arkansas

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arkansas County	9804.00											
Bradley County	9501.00	9503.00	9505.00									
Chicot County	9802.00	9803.00	9804.00									
Columbia County	9502.00	9505.00										
Cross County	9501.00	9505.00										
Desha County	9501.00	9502.00	9503.00	9504.00								
Garland County	106.00	107.00	115.00									
Hempstead County	9805.00											
Johnson County	9520.00											
Lafayette County	9702.00											
Lee County	9703.00	9704.00										
Lincoln County	9602.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Arkansas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mississippi County	101.00	103.00	110.00									
Monroe County	9501.00	9503.00										
Nevada County	9902.00											
Ouachita County	9506.00											
Phillips County	9801.00	9803.00	9804.00	9805.00	9806.00							
Poinsett County	9903.00	9907.00										
Polk County	9506.00											
Pope County	9514.00											
St. Francis County	9601.00	9604.00	9606.00									
Sevier County	9803.00											
Union County	9509.00	9510.00										
White County	9708.00											
Woodruff County	9901.00	9902.00										

NONMETROPOLITAN PART OF STATE: California

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Del Norte County	1.01											
Humboldt County	1.00	2.00	5.00	10.00	12.00	101.01						
Imperial County	102.00	104.00	107.00	112.02	114.00	115.00	116.00	121.00	123.02	125.00		
Kings County	9.00	11.00	13.00	14.00	15.00	16.01	17.01					
Lake County	7.00	8.00										
Siskiyou County	1.00	7.02										
Trinity County	4.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Colorado

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alamosa County	9817.00											
Conejos County	9746.00	9748.00										
Costilla County	9826.00	9827.00										
Huerfano County	9806.00											
Las Animas County	1.00											
Logan County	9962.00											
Montezuma County	9410.00											
Otero County	9880.00											

NONMETROPOLITAN PART OF STATE: Connecticut

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Litchfield County	3103.00											

NONMETROPOLITAN PART OF STATE: Florida

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbia County	9903.00											
DeSoto County	9803.00											
Hamilton County	9801.00	9802.00	9803.00									
Hardee County	9702.00	9703.00	9704.00									
Hendry County	2.00	3.00	9401.00									
Highlands County	9603.00	9609.00	9612.00	9617.00								
Indian River County	503.02											
Madison County	9903.02											
Okeechobee County	9903.00											
Putnam County	9507.00	9508.00	9514.00									
Taylor County	9503.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Georgia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bacon County	9702.00											
Baker County	9601.00											
Baldwin County	9705.00											
Ben Hill County	9604.00											
Brooks County	9904.00	9905.00										
Bulloch County	9904.01	9904.02										
Burke County	9502.00	9504.00	9507.00	9508.00								
Calhoun County	9502.00											
Candler County	9501.00											
Clay County	9601.00											
Colquitt County	9703.00											
Crisp County	9801.00	9802.00										
Decatur County	9703.00	9704.00	9708.00									
Early County	9902.00	9904.00										
Echols County	9801.00	9802.00										
Emanuel County	9801.00	9803.00	9804.00	9805.00	9806.00							
Evans County	9702.00	9703.00										
Floyd County	5.00	6.00	11.00	15.00	16.00							
Glynn County	7.00	8.00	9.00									
Grady County	9503.00	9504.00										
Greene County	9504.00											
Hall County	8.00	11.00										
Hancock County	9801.00	9802.00										
Jeff Davis County	9602.00											
Jefferson County	9604.00											
Jenkins County	9601.00											
Johnson County	9802.00											
Laurens County	9503.00	9509.00										
Liberty County	106.00											
Lowndes County	105.00	108.00	109.00	110.00	113.01	113.02						
Macon County	9803.00	9804.00										
Marion County	9802.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Georgia (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mitchell County	9803.00	9805.00										
Randolph County	9901.00	9902.00										
Screven County	9702.00											
Seminole County	9802.00											
Sumter County	9503.00											
Talbot County	9601.00											
Taylor County	9503.00											
Terrell County	9803.00	9804.00										
Thomas County	9601.00											
Tift County	9906.00	9907.00										
Toombs County	9701.00	9706.00										
Treutlen County	9601.00	9602.00										
Troup County	9608.00											
Turner County	9702.00											
Ware County	9504.00	9507.00	9508.00									
Warren County	9703.00	9704.00										
Washington County	9503.00	9507.00										
Wheeler County	9801.00											
Wilcox County	9904.00											

NONMETROPOLITAN PART OF STATE: Hawaii

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hawaii County	203.00	204.00	205.00	211.00								
Kalawao County	319.00											
Kauai County	410.00											
Maui County	313.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Idaho

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bingham County	9508.00											
Cassia County	9504.00											
Latah County	51.00	54.00										
Lewis County	9503.00											
Madison County	9503.01	9503.02										
Nez Perce County	9903.00											
Owyhee County	9403.00											

NONMETROPOLITAN PART OF STATE: Illinois

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	4.00	7.00	8.00									
Alexander County	9578.00	9579.00										
Coles County	7.00	8.00										
Jackson County	107.00	108.00	109.00	111.00	112.00	113.00	114.00	115.00				
Jefferson County	509.00	510.00										
Knox County	8.00	9.00										
McDonough County	104.00	105.00	106.00									
Pulaski County	9711.00											
Richland County	9780.00											
Saline County	9555.00											
Vermilion County	1.00	2.00	4.00	6.00	11.00							

NONMETROPOLITAN PART OF STATE: Indiana

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Grant County	2.00											
Henry County	9763.00											
Knox County	9550.00	9553.00	9554.00									
Wayne County	2.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Iowa

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Story County	5.00	7.00	10.00	11.00	13.01							
Wapello County	9605.00											
Webster County	7.00											

NONMETROPOLITAN PART OF STATE: Kansas

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Crawford County	9575.00											
Ellis County	9729.00											
Lyon County	4.00											
Reno County	6.00											
Riley County	3.01	3.02	4.00	5.00	8.01							
Seward County	9660.00											

NONMETROPOLITAN PART OF STATE: Kentucky

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9703.00											
Bell County	9601.00	9602.00	9603.00	9604.00	9605.00	9606.00	9608.00	9609.00	9610.00			
Breathitt County	9801.00	9803.00	9804.00	9805.00	9806.00	9807.00						
Calloway County	103.00											
Casey County	9505.00											
Clay County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00						
Clinton County	9702.00											
Crittenden County	9903.00											
Elliott County	9801.00											
Floyd County	9803.00	9804.00	9805.00	9808.00	9809.00	9810.00						
Hardin County	15.00											
Harlan County	9701.00	9702.00	9703.00	9705.00	9706.00	9709.00	9710.00	9711.00	9712.00			
Hopkins County	9704.00											
Jackson County	9601.00	9602.00	9603.00									
Johnson County	9601.00	9605.00										
Knott County	9601.00	9602.00	9603.00	9604.00	9605.00							
Knox County	9901.00	9902.00	9903.00	9904.00	9905.00	9906.00	9907.00					

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Kentucky (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Laurel County	9701.00											
Lawrence County	9902.00	9903.00	9904.00	9905.00								
Lee County	9501.00	9502.00	9503.00									
Leslie County	9801.00	9802.00	9803.00									
Letcher County	9501.00	9502.00	9503.00	9505.00								
Lewis County	9902.00	9904.00										
McCracken County	301.00	302.00	303.00	304.00	305.00	306.00						
McCreary County	9601.00	9602.00	9603.00	9604.00								
Magoffin County	9701.00	9702.00	9704.00									
Martin County	9501.00	9502.00	9503.00									
Menifee County	9601.00											
Morgan County	9501.00											
Muhlenberg County	9601.00											
Owsley County	9901.00	9902.00										
Perry County	9701.00	9703.00	9705.00	9707.00	9709.00							
Pike County	9903.00	9909.00	9917.00									
Pulaski County	9910.00											
Rockcastle County	9502.00											
Warren County	101.00	102.00	103.00	104.00								
Wayne County	9802.00	9803.00	9804.00	9805.00	9806.00							
Whitley County	9804.00	9806.00	9807.00	9808.00								
Wolfe County	9902.00	9903.00										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Louisiana

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen Parish	9503.00											
Assumption Parish	505.00											
Avoyelles Parish	304.00	306.00	309.00									
Bienville Parish	9703.00											
Catahoula Parish	9802.00											
Concordia Parish	9902.00											
De Soto Parish	9505.00	9506.00										
East Carroll Parish	9901.00	9903.00										
Evangeline Parish	9504.00	9505.00	9506.00									
Franklin Parish	9503.00	9506.00										
Grant Parish	203.00											
Iberia Parish	308.00	309.00	310.00									
Iberville Parish	9525.02											
Jackson Parish	9704.00											
Jefferson Davis Parish	9806.00											
Lincoln Parish	9603.00	9604.00	9608.00	9609.00	9610.00							
Madison Parish	9602.00	9603.00	9604.00									
Morehouse Parish	9504.00	9508.00										
Natchitoches Parish	9904.00	9906.00	9907.00									
Pointe Coupee Parish	9520.00											
Red River Parish	9603.00											
Richland Parish	9705.00											
Sabine Parish	9803.00	9805.00										
St. Mary Parish	407.00	411.00	416.00									
Tangipahoa Parish	9533.00	9536.00	9543.00	9544.00								
Tensas Parish	9802.00	9803.00										
Vermilion Parish	9508.00											
Washington Parish	9503.00	9508.00	9509.00									
Winn Parish	9604.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Maine

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kennebec County	241.02											

NONMETROPOLITAN PART OF STATE: Maryland

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dorchester County	9705.00											
Somerset County	9801.01	9806.00										
Wicomico County	3.00	102.00										

NONMETROPOLITAN PART OF STATE: Massachusetts

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkshire County	9211.00											
Franklin County	413.00											

NONMETROPOLITAN PART OF STATE: Michigan

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chippewa County	9703.00											
Clare County	9812.00											
Houghton County	9903.00	9908.00										
Isabella County	9505.00	9511.00	9512.00									
Marquette County	5.00	6.00	8.00	24.00								
Mecosta County	9605.00	9606.00	9611.00									
Ogemaw County	9507.00											
St. Joseph County	402.00	404.00										

NONMETROPOLITAN PART OF STATE: Minnesota

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Beltrami County	9508.00											
Blue Earth County	9707.00	9711.01										
Cass County	9612.00											
Winona County	9705.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Mississippi

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	3.00	4.00	8.00									
Attala County	606.00											
Bolivar County	9501.00	9502.00	9503.00	9504.00	9507.00							
Calhoun County	9502.00											
Claiborne County	9503.00											
Clarke County	9503.00											
Clay County	9503.00											
Coahoma County	9501.00	9503.00	9506.00	9507.00								
Copiah County	9501.00											
Covington County	9502.00											
Grenada County	9503.00											
Holmes County	9501.00	9502.00	9503.00	9504.00	9505.00							
Humphreys County	9502.00	9503.00										
Issaquena County	9501.00											
Jefferson County	9501.00	9502.00										
Jones County	9506.00	9507.00										
Lafayette County	9503.00											
Lauderdale County	1.00	2.00	4.00	5.00	6.00	7.00						
Leake County	402.00											
Leflore County	9502.00	9503.00	9507.00	9508.00	9509.00							
Lincoln County	9505.00											
Lowndes County	6.00	7.00	8.00	11.00								
Marion County	9503.00											
Monroe County	9504.00	9508.00										
Neshoba County	105.00											
Noxubee County	9502.00	9503.00										
Oktibbeha County	9503.00	9504.00										
Panola County	9502.00											
Pike County	9503.00											
Quitman County	9501.00	9503.00										
Sharkey County	9501.00	9502.00										
Sunflower County	9501.00	9503.00	9504.02	9505.00								

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Mississippi (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tallahatchie County	9502.00	9503.00	9504.00									
Tunica County	9502.00											
Walthall County	9502.00											
Warren County	9503.00											
Washington County	3.00	4.00	6.00	10.00	11.00	12.00	13.00	21.00				
Wayne County	9502.00											
Wilkinson County	9501.00	9502.00										
Yazoo County	9503.00	9505.00										

NONMETROPOLITAN PART OF STATE: Missouri

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9503.00	9505.00	9509.00	9510.00								
Butler County	9505.00	9507.00	9508.00									
Cape Girardeau County	9808.00	9809.00	9810.00	9814.00								
Carter County	9601.00	9602.00										
Cole County	101.00	105.00	106.00									
Dunklin County	9601.00	9604.00	9605.00	9606.00	9610.00							
Howell County	9901.00	9907.00										
Johnson County	9604.00											
Lewis County	9702.00											
Mississippi County	9502.00	9504.00										
New Madrid County	9603.00	9606.00										
Pemiscot County	9702.00	9703.00	9704.00	9706.00								
Pettis County	9806.00											
Phelps County	9904.00											
Ripley County	9702.00											
Scott County	9812.00											
Shannon County	9702.00											
Washington County	9603.00											
Wright County	9904.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Montana

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Big Horn County	9403.00	9406.00	9407.00									
Blaine County	9401.00	9402.00										
Chouteau County	9401.00											
Daniels County	9402.00	9403.00										
Gallatin County	6.00	9.00	11.00									
Glacier County	9401.00	9402.00	9403.00									
Golden Valley County	1.00											
Hill County	403.00	9401.00	9402.00									
Lake County	9405.00											
Lewis and Clark County	9.00											
Lincoln County	5.00											
Phillips County	9402.00											
Pondera County	9403.00											
Ravalli County	8.00											
Roosevelt County	9401.00	9402.00	9404.00									
Rosebud County	9404.00											
Sanders County	9401.00											
Sheridan County	9402.00											
Silver Bow County	1.00											
Valley County	9405.00											

NONMETROPOLITAN PART OF STATE: Nebraska

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buffalo County	9696.00											
Burt County	9401.00											
Keya Paha County	9754.00											
Knox County	9671.00											
Scotts Bluff County	9537.00											
Thurston County	9402.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Nevada

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Elko County	9403.00											
Mineral County	9402.00											

NONMETROPOLITAN PART OF STATE: New Mexico

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chaves County	4.00	5.00	6.00									
Cibola County	9458.00	9459.00	9460.00									
Curry County	1.00	2.02	4.00	5.00								
Grant County	9844.00											
Hidalgo County	9882.00											
Lea County	1.00	2.00	3.00	4.00								
Luna County	2.00	4.00	5.00	6.00								
McKinley County	9402.00	9403.00	9404.00	9434.00	9435.00	9436.00	9437.00	9438.00	9439.00	9453.00	9457.00	9460.00
Otero County	8.00											
Quay County	9586.02											
Rio Arriba County	6.00	9433.00										
Roosevelt County	2.00											
San Juan County	9428.00	9429.00	9430.00	9431.00								
Socorro County	9461.00	9783.02										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: New York

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cattaraugus County	9402.00											
Clinton County	1012.00	1013.00	1016.00									
Columbia County	9912.00											
Cortland County	9906.00	9908.00	9909.00									
Fulton County	9907.00											
Jefferson County	612.00	621.00										
Otsego County	9909.00	9910.00	9911.00									
St. Lawrence County	9908.00	9909.00	9911.00									
Sullivan County	9509.00	9518.00	9519.00									
Tompkins County	1.00	2.00	3.00	4.00	7.00	11.00						
Ulster County	9535.00											

NONMETROPOLITAN PART OF STATE: North Carolina

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anson County	9804.00											
Beaufort County	9903.00	9904.00	9908.00									
Bertie County	9602.00	9603.00	9604.00									
Bladen County	9504.00	9506.00										
Cleveland County	9509.00											
Columbus County	9907.00	9909.00	9912.00									
Craven County	9608.00	9609.00										
Duplin County	9903.00											
Graham County	9803.00											
Granville County	9704.00											
Halifax County	9901.00	9906.00	9908.00	9909.00	9911.00							
Harnett County	701.00	702.00										
Henderson County	9912.00											
Iredell County	602.00	604.00										
Jackson County	9506.00											
Lee County	302.00	303.00										
Lenoir County	102.00	103.00	104.00	105.00	107.00							
Martin County	9706.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: North Carolina (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northampton County	9803.00											
Pasquotank County	9601.00	9603.00										
Perquimans County	9802.00											
Richmond County	9705.00	9706.00	9707.00	9710.00								
Robeson County	9601.00	9603.00	9605.00	9608.00	9611.00							
Rockingham County	402.00											
Scotland County	102.00	103.00										
Surry County	9904.00											
Swain County	9601.00											
Vance County	9605.00	9606.00	9607.00									
Warren County	9504.00											
Washington County	9502.00											
Watauga County	9804.00	9805.00	9806.00									
Wilson County	1.00	2.00	7.00	8.01	8.02							

NONMETROPOLITAN PART OF STATE: North Dakota

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benson County	9401.00	9402.00										
Dunn County	9401.00											
McKenzie County	9401.00											
McLean County	9403.00											
Mercer County	9403.00											
Mountrail County	9402.00											
Richland County	9403.00											
Rolette County	9517.00	9518.00										
Sioux County	9401.00	9402.00	9403.00									

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Ohio

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Athens County	9726.00	9727.00	9728.00	9729.00	9730.00	9731.01	9731.02	9731.03				
Erie County	408.00											
Gallia County	9537.00											
Guernsey County	9776.00											
Meigs County	9644.00											
Muskingum County	9814.00	9821.00										
Pike County	9527.00											
Scioto County	9932.00	9934.00	9935.00	9936.00								
Wayne County	15.00											

NONMETROPOLITAN PART OF STATE: Oklahoma

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9769.00	9770.00										
Bryan County	9962.00	9964.00										
Caddo County	9621.00											
Carter County	9928.00	9931.00										
Cherokee County	9779.00	9780.00	9783.00									
Choctaw County	9969.00	9972.00	9973.00									
Custer County	9606.00											
Delaware County	9761.00											
Grady County	1.00	2.00										
Harmon County	9678.00											
Hughes County	9846.00											
Jackson County	9686.00	9687.00										
Kay County	5.00											
Latimer County	9872.00											
McCurtain County	9982.00	9986.00	9987.00									
McIntosh County	9802.00											
Marshall County	9947.00											
Muskogee County	2.00	3.00	4.00	6.00								
Okfuskee County	9810.00											
Okmulgee County	1.00	2.00										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Oklahoma (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ottawa County	9745.00											
Payne County	102.00	103.00	104.00	105.00	107.00							
Pittsburg County	9862.00	9863.00	9864.00									
Pontotoc County	9891.00											
Pushmataha County	9976.00											
Seminole County	9835.00	9836.00	9838.00									
Stephens County	6.00											
Washington County	2.00	3.00	9.00									

NONMETROPOLITAN PART OF STATE: Oregon

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clatsop County	9503.00											
Jefferson County	9604.00											
Klamath County	9716.00	9717.00	9718.00									
Malheur County	9704.00											
Union County	9707.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Pennsylvania

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	315.01											
Clarion County	9906.00											
Clinton County	9706.00	9707.00										
Crawford County	1116.00											
Franklin County	110.00											
Huntingdon County	9509.00											
Indiana County	9602.00	9610.00	9611.01	9611.02								
Jefferson County	9507.00											
Lawrence County	3.00	4.00	6.00	9.00								
Mc Kean County	4202.00											
Mifflin County	9608.00											
Northumberland County	9616.00	9617.00										
Schuylkill County	6.00											
Venango County	2003.00											

NONMETROPOLITAN PART OF STATE: Rhode Island

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Newport County	405.00	412.00										

NONMETROPOLITAN PART OF STATE: South Carolina

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allendale County	9702.00	9704.00										
Bamberg County	9601.00	9602.00	9603.00									
Barnwell County	9702.00											
Beaufort County	1.00											
Chesterfield County	9506.00	9508.00										
Clarendon County	9605.00	9608.01										
Colleton County	9701.00	9703.00										
Darlington County	106.00	107.00	114.00	115.00	116.00							
Dillon County	9701.00	9704.00										
Georgetown County	9802.00	9806.00										
Greenwood County	9705.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: South Carolina (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hampton County	9801.00	9804.00	9805.00									
Lancaster County	107.00	108.00										
Lee County	9805.00	9806.00										
Marion County	9503.00	9504.00	9506.00									
Marlboro County	9602.00	9605.00										
Newberry County	9505.02											
Orangeburg County	102.00	103.00	104.00	105.00	106.00	111.00	112.00	113.00				
Union County	302.00											
Williamsburg County	9701.00	9705.01	9705.02	9708.00								

NONMETROPOLITAN PART OF STATE: South Dakota

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bennett County	9406.00	9408.00	9410.00	9411.00								
Buffalo County	9401.00											
Charles Mix County	9702.00	9703.00										
Clay County	9656.00											
Corson County	9405.00	9406.00	9407.00	9408.00	9409.00							
Dewey County	9409.00	9413.00	9414.00	9415.00	9416.00							
Hyde County	9401.00											
Jackson County	9401.00	9402.00										
Lyman County	9401.00											
Marshall County	9401.00											
Mellette County	9403.00											
Roberts County	9405.00	9406.00										
Shannon County	9403.00	9404.00	9405.00	9406.00	9407.00							
Todd County	9401.00	9402.00										
Ziebach County	9411.00	9412.00	9414.00	9415.00								

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Tennessee

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bradley County	103.00	104.00	107.00	108.00								
Campbell County	9502.00	9503.00	9506.00	9510.00								
Claiborne County	9703.00	9704.00	9709.00									
Cocke County	9802.00											
Coffee County	9709.00											
Cumberland County	9704.00											
Fentress County	9651.00											
Greene County	901.00											
Grundy County	9550.00	9553.00										
Hamblen County	1003.00											
Hancock County	9601.00	9602.00	9603.00									
Hardin County	9804.00											
Henry County	9693.00											
Jackson County	9604.00											
Lauderdale County	505.02											
Lawrence County	9603.00											
Marshall County	9553.00											
Maury County	105.00											
Overton County	9501.00											
Putnam County	7.00	8.00										
Roane County	305.00											
Scott County	9753.00											
Weakley County	9682.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	9505.00	9507.00										
Angelina County	5.00	6.00										
Aransas County	9504.00											
Atascosa County	9603.00	9605.00										
Bee County	9504.00	9505.00	9506.00									
Brewster County	9504.00											
Brooks County	9502.00											
Brown County	9506.00	9507.00	9508.00									
Camp County	9502.00											
Cherokee County	9504.00	9505.00	9507.00									
Cochran County	9501.00											
Cooke County	9904.00	9905.00										
Crosby County	9502.00	9503.00										
Culberson County	9502.00											
Deaf Smith County	9505.00											
DeWitt County	9702.00											
Dimmit County	9501.00	9502.00	9503.00									
Duval County	9501.00	9503.00	9504.00									
Edwards County	9501.00											
Falls County	9903.00	9904.00										
Floyd County	9506.00											
Frio County	9502.00	9503.00										
Gonzales County	9903.00											
Gray County	9506.00	9507.00	9508.00									
Hale County	9501.00	9502.00										
Hall County	9504.00											
Haskell County	9503.00											
Hill County	9609.00	9610.00										
Hockley County	9504.00											
Houston County	9503.00	9504.00										
Howard County	9503.00	9504.00	9505.00									
Hudspeth County	9501.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hutchinson County	9507.00											
Jasper County	9503.00	9506.00										
Jim Hogg County	9504.00											
Jim Wells County	9502.00	9505.00	9506.00	9507.00								
Karnes County	9703.00	9704.00										
Kleberg County	202.00	203.00										
Knox County	9502.00											
Lamar County	5.00	6.00	8.00									
La Salle County	9501.00	9502.00										
Limestone County	9701.00	9704.00										
Marion County	9503.00	9504.00										
Matagorda County	7301.00	7304.00										
Maverick County	9501.00	9502.01	9502.02	9502.03	9503.00	9504.00	9505.00	9506.01	9506.02			
Menard County	9502.00											
Nacogdoches County	9506.00	9507.00	9508.00	9509.00	9510.00							
Navarro County	9708.00											
Newton County	9503.00											
Nolan County	9503.00	9504.00										
Palo Pinto County	9808.00	9809.00										
Pecos County	9503.00											
Presidio County	9502.00											
Reeves County	9501.00	9502.00	9503.00	9505.00								
Robertson County	9602.00	9605.00										
Runnels County	9502.00											
Starr County	9501.01	9501.02	9501.03	9502.01	9502.02	9504.00	9505.00	9506.00	9507.01	9507.02		
Terrell County	9501.00											
Terry County	9504.00											
Titus County	9506.00											
Uvalde County	9505.00											
Val Verde County	9502.02	9503.00	9504.00	9506.01	9506.02	9507.00						
Walker County	7906.00	7907.00	7908.00									
Washington County	1701.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wharton County	7403.00	7407.00										
Wilbarger County	9505.00											
Willacy County	9503.00	9504.00	9505.00	9507.00								
Zapata County	9502.00	9503.00										
Zavala County	9501.00	9502.00	9503.01	9503.02								

NONMETROPOLITAN PART OF STATE: Utah

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cache County	6.00	7.02	8.00									
Duchesne County	9401.00											
San Juan County	9420.00	9421.00										
Sanpete County	9724.00											
Uintah County	9401.00	9402.00										
Washington County	2713.00											

NONMETROPOLITAN PART OF STATE: Vermont

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rutland County	9631.00											

NONMETROPOLITAN PART OF STATE: Virginia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Accomack County	9904.00											
Buchanan County	9901.00	9902.00	9905.00	9907.00								
Buckingham County	9901.00											
Lee County	9901.00	9903.00	9905.00	9906.00								
Montgomery County	202.00	203.00	204.00	206.00	207.00							
Tazewell County	9905.00											
Wise County	9912.00	9915.00										
Franklin city	902.00											
Harrisonburg city	2.02	3.00										
Martinsville city	2.00	4.00										
Radford city	101.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Washington

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	9504.00											
Asotin County	9804.00											
Chelan County	9610.00											
Clallam County	9801.00											
Cowlitz County	1.00	3.00	5.02	6.01	10.00	11.00						
Grant County	9808.00											
Grays Harbor County	1.00	10.00										
Jefferson County	9501.00											
Kittitas County	9754.01	9755.00	9756.00									
Lewis County	9709.00											
Mason County	9614.00											
Okanogan County	9702.00	9708.00										
Stevens County	9510.00											
Walla Walla County	9204.00	9205.00										
Whitman County	1.00	5.00	6.00									

NONMETROPOLITAN PART OF STATE: West Virginia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barbour County	9656.00											
Boone County	9586.00	9587.00										
Calhoun County	9626.00											
Clay County	9579.00	9580.00	9581.00									
Fayette County	204.00	205.00										
Gilmer County	9678.00											
Greenbrier County	9502.00											
Harrison County	301.00	303.00	316.00	317.00								
Lewis County	9674.00											
Lincoln County	9556.00	9557.00	9558.00									
Logan County	9562.00	9566.00										
McDowell County	9536.00	9537.00	9538.00	9539.00	9540.00	9541.00	9542.00	9543.00	9544.00			
Marion County	201.00	202.00	205.00									
Mercer County	9513.00	9516.00	9519.00	9520.00								

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: West Virginia (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mingo County	9571.00	9572.00	9573.00	9574.00	9575.00	9576.00	9577.00					
Monongalia County	101.00	102.00	103.00	106.00	107.00	109.01						
Nicholas County	9803.00	9805.00										
Raleigh County	102.00											
Roane County	9630.00	9631.00										
Summers County	9505.00	9507.00										
Webster County	9701.00	9702.00	9703.00									
Wyoming County	9529.02	9530.00										

NONMETROPOLITAN PART OF STATE: Wisconsin

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dunn County	9708.00											
Menominee County	9701.00											
Portage County	9604.00											
Vernon County	9602.00											
Walworth County	5.00											

NONMETROPOLITAN PART OF STATE: Wyoming

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	9630.00	9634.00	9635.00									
Fremont County	9401.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF: Puerto Rico

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adjuntas Municipio	9563.00	9564.00	9565.00	9568.00								
Barranquitas Municipio	9524.00											
Ciales Municipio	9559.00											
Coamo Municipio	9543.00											
Guanica Municipio	9609.00	9610.00	9612.00	9613.00	9615.00							
Jayuya Municipio	9561.00											
Lares Municipio	9578.00	9579.00	9581.00	9583.00	9584.00							
Las Marias Municipio	9597.00	9599.00										
Maricao Municipio	9601.00											
Orocovis Municipio	9548.02	9549.01	9549.02									
Patillas Municipio	2901.00											
Salinas Municipio	9527.00											
San Sebastian Municipio	9892.00											
Santa Isabel Municipio	9535.00											
Utuado Municipio	9569.00	9574.00	9575.00									
Vieques Municipio	9501.00	9502.00	9503.00									

NONMETROPOLITAN PART OF: Virgin Islands

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Croix	9702.00	9703.00	9708.00	9709.00	9711.00	9713.00						

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: American Samoa

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9502.00										
Manu'a District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9511.00											

NONMETROPOLITAN PART OF STATE: Guam

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9502.00	9512.00	9513.00	9526.00	9530.00	9539.98	9548.00	9555.00				

NONMETROPOLITAN PART OF STATE: Northern Mariana Islands

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9504.99	9508.00	9511.00	9514.00	9515.00							
Tinian Municipality	9501.00											

[FR Doc. 02–31081 Filed 12–11–02; 8:45 am]

BILLING CODE 4210–62–C

Federal Register

Thursday,
December 12, 2002

Part III

Federal Reserve System

12 CFR Parts 223 and 250

Transactions Between Member Banks and Their Affiliates; Final Rules and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1103]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a final rule (Regulation W) to implement comprehensively sections 23A and 23B of the Federal Reserve Act and provide several new exemptions consistent with the purposes of the statute. The final rule combines statutory restrictions on transactions between a member bank and its affiliates with numerous Board interpretations and exemptions in an effort to simplify compliance with sections 23A and 23B.

DATES: The final rule is effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Michael G. Martinson, Associate Director (202/452–3640), or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Introduction

Sections 23A and 23B of the Federal Reserve Act are important statutory provisions designed to protect against a depository institution suffering losses in transactions with affiliates. They also limit the ability of a depository institution to transfer to its affiliates the subsidy arising from the institution's access to the Federal safety net. Sections 23A and 23B apply, by their terms, to banks that are members of the Federal Reserve System (''member banks''). Other Federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B in the same manner and to the same extent as if they were member banks.

Although sections 23A and 23B each explicitly grant the Board broad authority to issue regulations to administer the section,[1] the Board has never issued a regulation fully implementing either section. Instead, depository institutions seeking guidance on how to comply with the statute have relied on a series of Board interpretations and informal staff guidance. Institutions have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern financial holding companies and the growing complexities of the U.S. financial markets.

On May 11, 2001, the Board issued a proposed Regulation W to implement comprehensively sections 23A and 23B.[2] The Board decided to issue such a rule for several reasons. First, the new regulatory framework established by the Gramm-Leach-Bliley Act (''GLB Act'')[3] emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. In addition, adoption of a comprehensive rule would simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden on banking organizations to the extent consistent with the statute's goals. Finally, issuing a comprehensive proposed rule allowed the public an opportunity to comment on Board and staff interpretations of sections 23A and 23B, many of which were adopted without the benefit of public comment.

Among other things, the GLB Act required the Board to adopt final rules, by May 12, 2001, to address under section 23A credit exposure by a member bank to its affiliates on derivative transactions and intraday credit extensions. The Board issued interim final rules to fulfill this statutory mandate on May 11, 2001 (concurrently with proposed Regulation W). The interim final rules became effective January 1, 2002. The Board also sought public comment as part of the Regulation W rulemaking process on how these types of transactions should be treated under section 23A.

The Board received approximately 120 public comments on the proposed Regulation W and the interim final rules on derivative transactions and intraday extensions of credit. Commenters included 3 Members of Congress, 75 banking organizations, 20 trade associations representing the banking or financial services industry, 5 state banking departments or other governmental agencies, 9 law firms or individuals, and several other organizations. Nearly all the commenters supported the Board's decision to issue Regulation W and the interim rules but opposed or raised concerns about one or more aspects of the regulations.

The Board has carefully reviewed and analyzed the issues raised by commenters and has decided to issue a final Regulation W that is substantially similar to the proposed rule. The Board has modified the proposed rule in many important respects, however, to reflect the concerns of commenters and further analysis by the Board. The final rule supersedes any Board interpretations or staff opinions of sections 23A and 23B that are inconsistent with the rule. In a separate rulemaking concurrent with the issuance of final Regulation W, the Board is rescinding its existing interpretations of and exemptions from section 23A contained in part 250 of title 12 of the Code of Federal Regulations because all such interpretations and exemptions are included within Regulation W.

The Board expects each depository institution with affiliates that is subject to sections 23A and 23B to implement policies and procedures to ensure compliance with the final rule.

Background

As noted above, sections 23A and 23B by their terms limit the risks to a member bank from transactions with affiliates and limit the ability of a member bank to transfer its Federal subsidy to affiliates. Section 23A achieves these goals in four major ways. First, it limits a member bank's ''covered transactions'' with any single ''affiliate'' to no more than 10 percent of the bank's capital stock and surplus, and transactions with all affiliates combined to no more than 20 percent of the bank's capital stock and surplus. ''Covered transactions'' include purchases of assets from an affiliate, extensions of credit to an affiliate, investments in securities issued by an affiliate, guarantees on behalf of an affiliate, and certain other transactions that expose the member bank to an affiliate's credit or investment risk. A member bank's ''affiliates'' include, among other companies, any companies that control the bank, any companies under common control with the bank, and certain investment funds that are advised by the bank or an affiliate of the bank.

Second, the statute requires all transactions between a member bank and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices. Third, the statute prohibits a member bank from

[1] 12 U.S.C. 371c(f), 371c–1(e).

[2] 66 FR 24186, May 11, 2001.

[3] Pub. L. 106–102, 113 Stat. 1338 (1999).

purchasing low-quality assets from its affiliates. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects a member bank by requiring that certain transactions between the bank and its affiliates occur on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies this restriction to any covered transaction (as defined in section 23A) with an affiliate as well as certain other transactions, such as (i) any sale of assets by the member bank to an affiliate; (ii) any payment of money or furnishing of services by the member bank to an affiliate; and (iii) any transaction by the member bank with a third party if an affiliate has a financial interest in the third party or if an affiliate is a participant in the transaction.

Section 23A originally was enacted as part of the Banking Act of 1933, and the restrictions of section 23A applied only to member banks. Since 1933, Congress has amended the statute several times, including a comprehensive revision in 1982.[4] Congress also amended the Federal Deposit Insurance Act (''FDI Act'') in 1966 to apply section 23A to insured nonmember banks in the same manner and to the same extent as if they were member banks.[5] In addition, Congress revised the Home Owners' Loan Act (''HOLA'') in 1989 to apply section 23A to insured savings associations in the same manner and to the same extent as if they were member banks.[6] Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987,[7] and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A. Consequently, sections 23A and 23B now apply to all insured depository institutions and uninsured member banks.

The GLB Act amended the Federal Reserve Act in 1999 so that sections 23A and 23B would apply to transactions between a bank and its ''financial subsidiaries.'' Section 23A, as amended by the GLB Act, defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States. Section 5136A of the Revised Statutes generally defines a financial subsidiary as a subsidiary of an insured depository institution that engages in activities that are not permissible for national banks to engage in directly (unless national banks are authorized by the express terms of a Federal statute to own or control the subsidiary).[8] The GLB Act provides that a financial subsidiary of a bank, unlike most other subsidiaries of a bank, is considered an ''affiliate'' of the bank for purposes of sections 23A and 23B. The GLB Act also establishes certain special rules under section 23A for financial subsidiaries.

Explanation of Final Rule

I. Format of Regulation

Regulation W provides users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B.[9] The regulation restates the statutory definitions, restrictions, and exemptions, and also includes Board interpretations of the sections. Commenters agreed that including the statutory provisions in the rule would make understanding and using the rule easier.

The regulation first provides, in subpart A, a comprehensive glossary of the terms used in the regulation and the statute. The regulation then sets forth, in subpart B, the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, bank-affiliate derivative transactions, and certain bank-affiliate merger and acquisition transactions. Subpart E sets forth available exemptions from certain of the requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of sections 23A and 23B and the rule to U.S. branches and agencies of foreign banks. Subpart H contains the Board's miscellaneous interpretations of the statute.

The regulation also includes examples illustrating how several of the rule's provisions would apply in particular circumstances. The examples included in the rule are considered part of the rule and compliance with an example, to the extent applicable, would constitute compliance with the rule. Each example included in the rule illustrates only the scope and application of the particular topic addressed by the example and does not illustrate any other topic or issue that may arise under the rule.

II. Scope of Regulation

As noted above, although sections 23A and 23B apply by their terms only to member banks, the FDI Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. In order to clarify how sections 23A and 23B applied to each type of bank, the proposed Regulation W applied by its terms to member banks and insured nonmember banks. The Federal Deposit Insurance Corporation (''FDIC'') objected to the scope of the proposed rule and urged the Board to amend the rule so that it would not apply by its terms to insured nonmember banks. The Board has decided to revise the rule to apply by its terms only to member banks. Notwithstanding this restriction of the scope of Regulation W, insured nonmember banks must comply with the rule as if they were member banks.[10]

As noted above, HOLA subjects insured savings associations to sections 23A and 23B as if they were member banks. HOLA also imposes several restrictions on transactions between an insured savings association and certain of its affiliates that are not contained in section 23A [11] and provides the Office of Thrift Supervision (''OTS'') with authority to impose additional restrictions on transactions between an insured savings association and its affiliates.[12] In light of the stricter regulatory regime governing transactions between an insured savings association and its affiliates and in light

[4] Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, § 410, 96 Stat. 1515 (1982) (codified at 12 U.S.C. 371c).

[5] Pub. L. 89–485, § 12(c), 80 Stat. 242 (1966) (codified at 12 U.S.C. 1828(j)).

[6] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, § 301, 103 Stat. 342 (1989) (codified at 12 U.S.C. 1468(a)).

[7] Pub. L. 100–86, § 102, 101 Stat. 552, 564 (1987) (codified at 12 U.S.C. 371c–1).

[8] *See* 12 U.S.C. 24a(g).

[9] The regulation implements sections 23A and 23B of the Federal Reserve Act. The regulation does not contain or implement statutory or regulatory restrictions on transactions between member banks and their affiliates that may be applicable under other provisions of law, including those that may apply to member banks subject to prompt corrective action under section 38 of the FDI Act (12 U.S.C. 1831o).

[10] Accordingly, an insured nonmember bank also may take advantage of Regulation W's exemptions as if it were a member bank.

[11] HOLA prohibits an insured savings association from (i) making loans or extending credit to any affiliate unless that affiliate is engaged solely in activities that the Board has determined to be permissible under section 4(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)); and (ii) investing in securities issued by any affiliate other than shares issued by a subsidiary. 12 U.S.C. 1468(a)(1).

[12] 12 U.S.C. 1468(a)(4).

of a request by the OTS that Regulation W not specifically cover such institutions, the final rule (like the proposed rule) does not apply by its terms to insured savings associations. The Board notes, however, that because insured savings associations are subject to sections 23A and 23B as if they were member banks, insured savings associations must comply with Regulation W as if they were member banks.[13] Moreover, any parallel regulation adopted by the OTS to govern transactions with affiliates must be at least as strict on insured savings associations as Regulation W is on member banks.

III. Definitions—Subpart A

Subpart A of Regulation W sets forth definitions of the terms used in sections 23A and 23B and the rule. Terms that are defined in the regulation as they are defined in the statute generally are not discussed below. Material terms that the Board proposes to define or clarify for purposes of the regulation are discussed below.

A. Definition of Affiliate (§ 223.2)

1. Investment Funds Advised by the Member Bank or an Affiliate of the Member Bank (§ 223.2(a)(6))

Section 23A includes as an affiliate any company that is sponsored and advised by the member bank or any of its affiliates.[14] Section 23A also includes as an affiliate any investment company for which the member bank or its affiliate serves as an investment advisor, as defined in the Investment Company Act of 1940 (''1940 Act'').[15] The proposed regulation included these provisions and also included as an affiliate any investment fund—even if not an investment company for purposes of the 1940 Act—for which the member bank or an affiliate of the bank serves as an investment advisor, if the bank or an affiliate of the bank owns or controls more than 5 percent of any class of voting securities or similar interests of the fund.[16]

A number of commenters expressed opposition to this proposal. According to these commenters, the proposal would violate the careful statutory framework established by Congress for determining which investment funds are affiliates of banks. In addition, these commenters claimed that there is little potential for conflicts of interest, and no evidence of abuse, in transactions between banks and unregistered funds. One commenter urged the Board to deem an unregistered investment fund to be an affiliate of a bank only if the bank or an affiliate controls the fund.

The Board has determined to adopt this proposal. Most investment funds that are advised by a member bank (or an affiliate of a member bank) are affiliates of the bank under section 23A because the funds either are investment companies under the 1940 Act or are sponsored by the member bank (or an affiliate of the member bank). In some instances, however, the member bank or its affiliate may advise but not sponsor an investment fund that is not an investment company under the 1940 Act. Although such a fund would not fit within the statutory definition of affiliate, section 23A also authorizes the Board to determine, by regulation or order, that any company is an affiliate of a member bank if the company has ''a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary.''[17]

The Board believes that the advisory relationship of a member bank or affiliate with an investment fund presents the same potential for conflicts of interest regardless of whether the fund is an investment company under the 1940 Act.[18] An investment fund typically escapes from the definition of investment company under the 1940 Act because it (i) sells interests only to a limited number of investors or only to sophisticated investors; or (ii) invests primarily in financial instruments that are not securities.[19] The Board does not believe that the private nature or investment strategy of a fund should have a substantial effect on the fund's affiliate status under section 23A because these factors do not alter the conflicts of interest presented in the advisory relationship between the member bank or its affiliate and the fund.[20]

2. Financial Subsidiaries (§§ 223.2(a)(8) and 223.3(p))

Congress amended section 23A in 1982 to provide that subsidiaries of a member bank are not affiliates of the bank under the statute. Congress adopted this approach on the premise that subsidiaries of a member bank generally are consolidated with the bank and engage only in those activities that the bank itself could engage in directly, and hence that such a subsidiary was more like a department of the bank than a separate company. In order to prevent evasions of section 23A, the 1982 amendments gave the Board explicit authority to treat as an affiliate of a member bank any subsidiary if the relationship between the bank and the subsidiary could affect transactions between the companies to the detriment of the bank.[21]

In 1997, in light of the expanding powers of subsidiaries of banks, the Board relied on this statutory authority to issue for comment a proposal to extend section 23A to transactions between a member bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly. The Board took no final action on this proposal in light of Congressional consideration of financial modernization legislation. In 1999, the GLB Act authorized banks to own ''financial subsidiaries'' that engage in activities not permissible for the parent bank to conduct directly, such as underwriting and dealing in bank-ineligible securities. The GLB Act also amended section 23A to define a financial subsidiary of a bank as an affiliate of the bank and, thus, subjected transactions between the bank and a financial subsidiary to the limitations of sections 23A and 23B.

Section 23A, as amended by the GLB Act, defines a financial subsidiary as a subsidiary of any bank (state or national) that is engaged in an activity

[13] Accordingly, an insured savings association also may take advantage of Regulation W's exemptions as if it were a member bank.

[14] 12 U.S.C. 371c(b)(1)(D)(i).

[15] 12 U.S.C. 371c(b)(1)(D)(ii).

[16] As noted above, proposed Regulation W applied by its terms to ''banks,'' and the final rule applies by its terms only to member banks. Nevertheless, to make comparisons of the proposed and final rules easier for readers, the remainder of this preamble discusses the proposed rule as if it applied only to member banks.

[17] 12 U.S.C. 371c(b)(1)(E).

[18] In fact, a member bank may face greater risk from the conflicts of interest arising from its relationships with an investment fund that is not registered as an investment company under the 1940 Act because the 1940 Act restricts transactions between a registered investment company and entities affiliated with the company's investment advisor. *See* 15 U.S.C. 80a–17.

[19] The term ''investment company'' in the 1940 Act does not include a company that is owned by qualified persons or by no more than 100 persons, provided that the company does not engage in a public offering of its securities. *See* 15 U.S.C. 80a–3(c)(1), (7). The term also generally does not include investment funds that are engaged primarily in investing in financial instruments other than securities. *See* 15 U.S.C. 80a–3(a)(1).

[20] The Board also believes that investment funds organized outside the United States for which a member bank or affiliate serves as investment advisor are affiliates of the bank for purposes of section 23A. *See* Letter dated July 24, 1990, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Anne B. McMillen. The term ''investment company'' in the 1940 Act does include investment funds organized under the laws of a non-U.S. jurisdiction.

[21] 12 U.S.C. 371c(b)(2)(A).

that is not permissible for *national* banks (other than a subsidiary that Federal law specifically authorizes national banks to control).[22] Proposed Regulation W defined financial subsidiary by repeating the definition of the term in section 23A. The proposed rule also noted that many state banks have authority to engage in activities that would not be permissible for national banks and sought comment on how to apply the section 23A definition of financial subsidiary to state banks. In addition, the proposal requested comment on whether to exempt from the definition of financial subsidiary any subsidiary of a bank that engages solely in agency activities.

a. *Subsidiaries of state banks.*—Commenters offered a wide variety of alternative ways for the Board to apply the statute's definition of financial subsidiary to state banks. One set of commenters (including the Conference of State Bank Supervisors and the American Bankers Association) asked the Board to define a financial subsidiary of a state bank to include only those subsidiaries that are engaged in activities that the parent *state* bank could not engage in directly. Another set of commenters argued that the Board should define a financial subsidiary of a state bank to include only those subsidiaries subject to section 46 of the FDI Act; that is, those subsidiaries that are engaged in *principal* activities that may only be conducted by a national bank through a financial subsidiary (currently, only subsidiaries engaged in underwriting and dealing in bank-ineligible securities). Other commenters advocated for a complete exemption for all subsidiaries of a state bank. Over 30 commenters—the largest number of commenters on any issue raised by the proposed rule—urged the Board to define financial subsidiary to exclude those subsidiaries of state banks that are engaged in grandfathered securities investment activities under section 24(f) of the FDI Act.[23]

The Board believes that the literal terms of section 23A provide that a subsidiary of a state bank that engages in an activity that is not permissible for *national* banks to conduct directly is a financial subsidiary of the state bank (unless Federal law specifically authorizes *national* banks to control such a subsidiary). This conclusion holds regardless of whether the activity (i) is permissible for the state bank to conduct directly; (ii) is an agency or principal activity; (iii) was approved by the FDIC under section 24 of the FDI Act; or (iv) was conducted by the subsidiary before the enactment of the GLB Act.

The final rule defines financial subsidiary in this manner but also contains exemptions for two classes of subsidiaries of state banks. First, the final rule exempts any subsidiary of a state bank that engages in activities that the parent *state* bank may engage in directly under Federal and state law.[24] In the Board's view, if a state bank has authority under applicable law to conduct an activity directly in the bank, section 23A normally should not apply to transactions between the bank and a subsidiary engaged in the activity. In these circumstances, the bank could conduct the activity directly in the bank and fund the activity free of section 23A. The Board is aware of no material supervisory reason to create a disincentive for the bank to conduct such a bank-permissible activity through a subsidiary if the bank has determined—for tax, liability, or other reasons—that the activity is most safely and efficiently conducted through a subsidiary. This approach is consistent with the spirit of the GLB Act and with the Board's 1997 rulemaking on subsidiaries of member banks.

Second, the final rule exempts any subsidiary of a state bank that engages in activities that the subsidiary was legally conducting before issuance of final Regulation W. Among other things, this exemption would remove from the definition of financial subsidiary those subsidiaries of state banks that are engaged in the limited, grandfathered securities investment activities authorized under section 24(f) of the FDI Act. The Board does not believe that this exemption would apply to a significant number of other material subsidiaries of state banks. The exemption would be appropriate, however, so as not to impose a hardship on the existing business operations and structures of state banks.[25]

As noted above, some commenters argued that the only section 23A financial subsidiaries of state banks are those subsidiaries that are subject to section 46 of the FDI Act. The Board does not believe that this argument is convincing. Although section 46 of the FDI Act specifically notes that sections 23A and 23B apply to transactions between a state bank and a section 46 subsidiary, section 46 does not change the definition of financial subsidiary contained in section 23A or, by its terms, limit the coverage of section 23A's financial subsidiary provisions to only section 46 subsidiaries.

Several commenters also argued that the Board should exempt any subsidiary of a state bank (other than a section 46 subsidiary) approved by the FDIC under section 24 of the FDI Act. Section 24 of the FDI Act prevents a subsidiary of an insured state bank from engaging in any principal activity that is not permissible for a subsidiary of a national bank unless (i) the FDIC has made a determination that the activity would pose no significant risk to the Federal deposit insurance funds; and (ii) the state bank remains in compliance with the capital guidelines of its appropriate Federal banking agency.[26] As noted above, the final rule contains an exemption for any subsidiary of a state bank that engages in activities permissible for the parent state bank to conduct directly. Accordingly, the principal effect of granting an exemption for section 24 subsidiaries would be to exempt from section 23A transactions between a state bank and

[22] Specifically, section 23A defines a ''financial subsidiary'' as ''any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States.'' 12 U.S.C. 371c(e)(1). Section 5136A, in turn, defines a financial subsidiary as any company that is controlled by one or more insured depository institutions, *other than* (i) a subsidiary that engages solely in activities that national banks are permitted to engage in directly or (ii) a subsidiary that national banks are specifically authorized to control by the express terms of a Federal statute (other than section 5136A), such as an Edge Act corporation or a SBIC. 12 U.S.C. 24a(g)(3). Section 5136A also generally prohibits a financial subsidiary of a national bank from engaging in insurance underwriting, real estate investment and development, or merchant banking activities. 12 U.S.C. 24a(a)(2).

[23] 12 U.S.C. 1831a(f). Section 24(f) of the FDI Act permits state banks that had lawfully made certain liquid equity investments in 1990–91 to continue to engage in such equity investment activities so long as such equity investments do not exceed an amount equal to the bank's capital.

[24] For purposes of applying this exemption, a state bank may directly engage in an activity under Federal law if Federal law does not prohibit the state bank from directly engaging in the activity. If, on the other hand, Federal law prohibits a state bank from directly engaging in an activity—such as equity investment (see 12 U.S.C. 1831a(c) and (f))—a subsidiary of a state bank that engaged in the activity could not qualify for this exemption.

[25] Neither of these exemptions would be available for any subsidiary of a state bank that engages in principal activities that the GLB Act requires a national bank to conduct in a financial subsidiary, such as underwriting and dealing in bank-ineligible securities. Section 46 of the FDI Act explicitly provides that such subsidiaries of a state bank are to be treated as section 23A affiliates of the bank. 12 U.S.C. 1831w.

The GLB Act authorizes the Board and the Treasury Department to determine jointly, on or after November 12, 2004, that financial subsidiaries may engage in merchant banking activities. GLB Act § 122. If the Board and Treasury were to make such a determination, the merchant banking subsidiaries of banks would be section 23A financial subsidiaries under the final rule.

[26] 12 U.S.C. 1831a(d).

its section 24 subsidiaries engaged in activities the parent bank may not conduct directly. Such subsidiaries would include those engaged in equity investment (which Federal law prohibits insured state banks from engaging in) [27] or real estate investment and development (in those states that do not permit state banks to conduct such activities directly).

Commenters argued that various considerations support granting an exemption for section 24 subsidiaries that conduct activities not permissible for their parent state bank. First, commenters contended that section 24 of the FDI Act and the FDIC's regulations thereunder establish a reasonably comprehensive system for protecting insured state banks that engage, or propose to engage, in principal activities not permissible for national banks. In this regard, the FDIC's section 24 regulations impose restrictions on transactions between a state bank and many types of section 24 subsidiaries (including subsidiaries engaged in real estate investment and development).[28] In addition, the FDIC has approved only a few hundred section 24 subsidiaries since Congress added section 24 to the FDI Act in 1991, and the FDIC has received very few requests under section 24 in the past couple of years. Finally, a large majority of section 24 subsidiaries represent a small part of the capital of their parent state banks, and section 24 subsidiaries have not to date materially affected the safety and soundness of state banks.

The Board believes that there are important reasons, however, not to include in the final rule an exemption for section 24 subsidiaries that engage in activities their parent bank may not conduct directly. First, Congress provided a definition of financial subsidiary in section 23A that, by its terms, covers section 24 subsidiaries.[29] In addition, coverage of section 24 subsidiaries that engage in activities not permissible for their parent bank (and, by definition, activities not permissible for national banks) is consistent with an important purpose of the GLB Act—constraining the ability of a bank to transfer the subsidy arising from the bank's access to the Federal safety net to affiliates engaged in activities that the bank cannot conduct directly.

Furthermore, the activities conducted by many section 24 subsidiaries, including in particular real estate investment and development, increase the risk profile of their parent bank and historically have caused significant losses to the Federal deposit insurance funds.[30] Although section 24 subsidiaries have not to date imperiled their parent banks, banks have been operating in a favorable economic environment since Congress enacted section 24 of the FDI Act. Moreover, the section 24 restrictions imposed by the FDIC are not as comprehensive as those in section 23A [31] and could be removed or relaxed by the FDIC at any time.[32] Furthermore, although the Board could revoke any exemption granted to section 24 subsidiaries if the exemption were to have adverse safety and soundness consequences, such a future revocation may be difficult to effect because it would come at a time when state banks are least able to comply with the requirements of section 23A. For these reasons, the final rule does not contain an exemption for section 24 subsidiaries of a state bank that engage in activities their parent bank may not conduct directly.

b. *Agency subsidiaries of national banks and state banks.*—Section 23A's definition of financial subsidiary does not exclude subsidiaries of banks that are engaged solely in agency activities.[33] As a result, insurance agency subsidiaries of national banks that operate outside a town of 5,000, for example, are financial subsidiaries of their parent banks under the statute.

A large number of commenters urged the Board to exclude subsidiaries engaged in agency activities from the definition of financial subsidiary. The Board has decided to exempt from the definition of financial subsidiary any subsidiary of a national bank or state bank that would be considered a financial subsidiary solely because the subsidiary engages in insurance agency activities that are not permissible for the parent bank. The Federal banking agencies have had significant experience in supervising insurance agency subsidiaries of banks, and such subsidiaries do not pose the kind of threat to bank safety and soundness that section 23A was designed to prevent. In addition, because insurance agency subsidiaries are not capital-intensive, they require little funding from the parent bank and, hence, stand to benefit less from the subsidy implicit in the Federal safety net than would a subsidiary engaged in activities as principal. Under the final rule, therefore, subsidiaries of banks engaged in insurance agency activities or agency activities permissible for the bank to engage in directly are not section 23A financial subsidiaries.

The Board does not believe that it is appropriate at this time to grant an exemption for all subsidiaries engaged exclusively in agency activities because defining what constitutes an agency activity is problematic, and some agency activities involve significant risk. In the unusual circumstance where a subsidiary of a bank conducts a non-insurance agency activity that is not permissible for the bank to conduct directly, the bank may request that the Board grant a specific exemption for the subsidiary.

[27] Federal law generally prohibits insured state banks from making equity investments of a type or in an amount that is not permissible for national banks. *See* 12 U.S.C. 1831a(c) and (f).

[28] *See* 12 CFR 362.4(b)(5) and (d).

[29] Some commenters argued that section 24 subsidiaries engaged in real estate investment and development or equity investment are not section 23A financial subsidiaries because (i) section 23A defines a financial subsidiary as a subsidiary that ''would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes'' and (ii) section 5136A prohibits financial subsidiaries of national banks from engaging in real estate investment and development and merchant banking. The Board finds this argument unpersuasive. Although section 5136A prohibits financial subsidiaries of national banks from engaging in real estate investment and development or equity investment, a subsidiary engaged in such activities would meet the terms of the financial subsidiary definition in section 23A and section 5136A.

[30] As noted above, Congress expressed specific concern in the GLB Act about real estate investment and development by prohibiting the financial subsidiaries of national banks from engaging in these activities. 12 U.S.C. 24a(a)(2). It is also worth noting that, because the final rule includes an exemption for subsidiaries of a state bank engaged in activities that the parent state bank could engage in directly, the principal beneficiaries of a separate exemption for section 24 subsidiaries would be subsidiaries of a state bank engaged in activities that state or Federal law has determined are too risky to be conducted directly in the bank.

[31] The FDIC's restrictions, among other things, do not (i) include a 10 percent quantitative limit on covered transactions between the bank and any single section 24 subsidiary; (ii) restrict the ability of a bank to finance a third party's purchase of assets from a section 24 subsidiary of the bank; or (iii) treat a purchase of assets from a section 24 subsidiary or the issuance of a guarantee or letter of credit on behalf of a section 24 subsidiary as covered transactions.

[32] In many past cases, the FDIC required state banks to deduct from tier 1 capital the full amount of their equity investments in most section 24 subsidiaries (including real estate investment and development subsidiaries). Consistent with the interagency capital rule on nonfinancial equity investments adopted on January 25, 2002, however, the FDIC now requires that state banks deduct from tier 1 capital between 8 percent and 25 percent of an equity investment in most section 24 subsidiaries. *See* 12 CFR part 325, Appendix A, § II.B.6.ii. The FDIC retains authority under the nonfinancial equity investment capital rule to apply a higher capital charge on these investments, but the FDIC has not chosen to do so at this time.

[33] Some commenters argued that agency subsidiaries of state banks cannot be financial subsidiaries under section 23A because (i) the only section 23A financial subsidiaries of state banks are subsidiaries that qualify as financial subsidiaries under section 46 of the FDI Act and (ii) agency subsidiaries cannot qualify as financial subsidiaries under section 46. For the reasons discussed above, the Board does not believe that this argument is convincing.

The Board notes that it retains discretion under section 23A to determine, by regulation or order, that any subsidiary of a member bank (even a subsidiary that qualifies for a regulatory exemption from the definition of financial subsidiary) is an affiliate of the bank if the relationship between the bank and the subsidiary is such that covered transactions between the bank and the subsidiary may be affected by the relationship to the detriment of the bank.[34]

c. *Subsidiaries of thrifts.*—Although section 23A applies by its terms only to member banks, HOLA subjects every thrift to section 23A ''in the same manner and to the same extent as if the [thrift] were a member bank.''[35] As noted above, section 23A defines a financial subsidiary as ''any company that is a subsidiary of a *bank* that would be a financial subsidiary of a national bank.'' Because all ''member banks'' under section 23A are also ''banks'' under section 23A, and because HOLA subjects every thrift to section 23A as if the thrift were a ''member bank,'' one could read the financial subsidiary definition in section 23A as covering any subsidiary of a thrift that would be a financial subsidiary of a national bank.

On the other hand, the OTS argued that thrifts generally are not ''banks'' under section 23A and, hence, that thrifts do not have financial subsidiaries under section 23A. The OTS also pointed out that, although the GLB Act contains explicit and detailed provisions (unrelated to section 23A) regarding financial subsidiaries of national banks and state banks, the GLB Act does not contain any explicit reference to financial subsidiaries of thrifts. In addition, HOLA already contains numerous provisions that protect thrifts in their transactions with subsidiaries. For example, HOLA requires thrifts to deduct from their capital all investments in, and extensions of credit to, any subsidiary engaged in activities that are not permissible for national banks.[36] HOLA also prohibits a thrift from investing more than 3 percent of its assets in service corporation subsidiaries.[37] The Board further notes that there is little empirical evidence to date that subsidiaries of thrifts have had a material adverse effect on the safety or soundness of their parent thrifts since becoming subject to heightened Federal regulation in 1989.

In light of the statutory ambiguities, the protections contained in HOLA, and a request by the OTS that the final rule not treat subsidiaries of thrifts as financial subsidiaries, the final rule does not address financial subsidiaries of thrifts.

3. Companies Held Under Merchant Banking or Insurance Company Investment Authority (§ 223.2(a)(9))

The GLB Act amended the Bank Holding Company Act (''BHC Act'') to permit bank holding companies (''BHCs'') and foreign banks that qualify as financial holding companies (''FHCs'') to engage in merchant banking and insurance company investment activities.[38] If a FHC owns or controls more than 25 percent of a class of voting shares of a company under the merchant banking or insurance company investment authority, the company is an affiliate of any member bank controlled by the FHC by operation of the statutory definitions contained in section 23A. The GLB Act also added paragraph (b)(11) to section 23A, which creates a rebuttable presumption that a company is an affiliate of a member bank for purposes of section 23A if the bank is affiliated with a FHC and the FHC owns or controls 15 percent or more of the equity capital of the company pursuant to the FHC's merchant banking or insurance company investment authority.[39]

The regulation includes within the definition of ''affiliate'' any company subject to this rebuttable presumption. The regulation also provides a definition of equity capital, identifies three situations or ''safe harbors'' where the statute's presumption would be deemed to be rebutted, and clarifies the application of the presumption to private equity funds. The Regulation W provisions that implement the statutory presumption are substantially identical to those contained in the Board's merchant banking rule.[40]

The statute does not provide a definition of equity capital. The regulation defines equity capital roughly in accordance with the GAAP definition of stockholders' equity. Equity capital includes a company's preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock.[41] The definition of equity capital also makes clear that any other account of the company that constitutes equity should be included in the company's equity capital. Accordingly, the Board retains its authority on a case-by-case basis to require a holding company to treat a subordinated debt investment in a company as equity capital of the company for purposes of applying the 15 percent presumption.

The regulation also provides three specific regulatory safe harbors from the 15 percent presumption. These safe harbors apply in situations where the holding company owns or controls more than 15 percent of the total equity of the company under the merchant banking or insurance company investment authority (thereby triggering the statutory presumption) and less than 25 percent of any class of voting securities of the company (thereby not meeting the statutory definition of control). The three situations are substantially identical to those listed in the Board's merchant banking regulation.[42]

The first exemption applies where no director, officer, or employee of the holding company serves as a director (or individual exercising similar functions) of the company. The second exemption applies where an independent third party controls a greater percentage of the equity capital of the company than is controlled by the holding company, and no more than one officer or employee of the holding company serves as a director (or individual exercising similar functions) of the company. The third exemption applies where an independent third party controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors (or individuals exercising similar functions) of the company.[43]

[34] 12 U.S.C. 371c(b)(1)(E) and (b)(2)(A). As discussed below in part III.A.6. of this preamble, § 223.2(a)(12) of the final rule also authorizes the appropriate Federal banking agency for a depository institution to determine by order that a subsidiary of the institution is an affiliate.

[35] 12 U.S.C. 1468(a).

[36] 12 U.S.C. 1464(t)(5); 12 CFR 559.3(j)(2) and part 567.

[37] 12 U.S.C. 1464(c)(4)(B).

[38] GLB Act § 103(a); 12 U.S.C. 1843(k)(4)(H) and (I).

[39] GLB Act § 121(b)(2). As noted above, this rebuttable presumption applies only if the affiliated FHC owns or controls 15 percent or more of the company's equity capital under the new merchant banking or insurance company investment authorities. The Board notes, however, that under existing Board precedents a BHC may not own any shares of a company in reliance on section 4(c)(6) or 4(c)(7) of the BHC Act where the holding company owns or controls, in the aggregate under a combination of authorities, more than 5 percent of any class of voting securities of the company.

[40] *See* 12 CFR 225.176(b).

[41] Although the proposed rule only explicitly included *perpetual* preferred stock in a company's equity capital, the final rule includes all forms of preferred stock. The Board believes that any instrument in the form of equity should be treated as equity capital for purposes of Regulation W.

[42] *See* 12 CFR 225.176(b)(2) and (3).

[43] For purposes of these safe harbors, the rule provides that the term ''holding company'' includes any subsidiary of the holding company, including any subsidiary bank of the holding company. Accordingly, if a director of a subsidiary bank or

Continued

These safe harbors do not require Board review or approval. Moreover, the safe harbors are not intended to be a complete list of circumstances in which the 15 percent presumption may be rebutted. The regulation also provides, consistent with the GLB Act, that a holding company may rebut the presumption with respect to a portfolio company by presenting information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the portfolio company. The Board notes that a company that qualifies as an affiliate under the 15 percent presumption and under another prong of the regulation's definition of affiliate cannot avoid affiliate status through a rebuttal of the 15 percent presumption (either by qualifying for one of the three regulatory safe harbors or by obtaining an ad hoc rebuttal of the presumption from the Board).

A FHC generally is considered to own or control only those shares or other ownership interests that are owned or controlled by itself or by a subsidiary of the holding company. The rule clarifies that, for purposes of applying the presumption of affiliation described above, a FHC that has an investment in a private equity fund (as defined in the Board's merchant banking rule) will not be considered indirectly to own the equity capital of a company in which the fund has invested unless the FHC controls the private equity fund (as described in the Board's merchant banking rule).

4. Partnerships (§ 223.2(a)(4) and (10))

The proposed rule generally deemed partnerships for which the member bank or an affiliate of the bank serves as a general partner to be an affiliate of the bank. Several commenters expressed concern that this interpretation of section 23A would eliminate bank funding of legitimate commercial and community development transactions. This concern of commenters is unwarranted. Although partnerships for which a member bank serves as a general partner are on the section 223.2(a) list of entities that generally are affiliates, such partnerships typically will be excluded from the definition of affiliate in section 223.2(b) as subsidiaries of their parent bank. The Board traditionally has considered the general partner interest in a limited partnership to be a separate class of voting securities of the partnership. Accordingly, a limited partnership would be considered an operating subsidiary of a member bank (that is, a subsidiary of a member bank that is not a section 23A affiliate of the bank) in the typical circumstances where the member bank owns or controls more than 25 percent of the general partner interests in the partnership and the partnership is not a financial subsidiary of the bank.

The final rule amends the proposed rule on general partners in one respect to prevent evasion. The proposed rule defined as an affiliate of a member bank any partnership if the member bank or an affiliate of the bank causes any officer or employee of the bank or affiliate to serve as a general partner of the partnership (unless the partnership is an operating subsidiary of the bank, as discussed above). The final rule expands the proposed rule to provide that a partnership also will be considered an affiliate of the member bank if the bank or an affiliate of the bank causes any *director* of the bank or affiliate to serve as a general partner of the partnership (unless the partnership is an operating subsidiary of the bank).

5. Subsidiaries of Affiliates (§ 223.2(a)(11))

In the proposal, the Board invited public comment on whether to add to the definition of affiliate any company controlled by an investment fund that is an affiliate of the member bank. A few commenters objected to this proposal on the grounds that it would have little section 23A benefit and would require banks to implement complex monitoring and aggregation systems.

The Board has decided to accord affiliate status to any company controlled by an investment fund affiliate of a member bank. The conflicts of interest that exist between a member bank and any investment fund that it or its affiliate advises also would appear to exist between the bank and a portfolio company controlled by the fund. A member bank would have an incentive to provide financial assistance to such a portfolio company in order to enhance the returns of the investment fund affiliate of the bank. As a result, covered transactions between the member bank and such a portfolio company may be affected by the control relationship between the investment fund and the portfolio company to the detriment of the bank.

The Board also has determined, more broadly, to deem an affiliate any company controlled by another affiliate of the member bank. This regulatory position is consistent with the long-standing view of Board staff. Although section 23A by its terms defines as affiliates most subsidiaries of an affiliate of the member bank, there are a few exceptions to the rule. In addition to covering subsidiaries of investment fund affiliates, this action will make clear, for example, that subsidiaries of interlocking directorate affiliates (§ 223.2(a)(4)) and sponsored and advised affiliates (§ 223.2(a)(5)) also are treated as affiliates of the member bank. Again, the control relationship between such statutory affiliates and their subsidiaries may affect covered transactions between the member bank and such subsidiaries to the detriment of the bank.

6. Companies Designated by the Appropriate Federal Banking Agency (§ 223.2(a)(12))

As noted above, section 23A authorizes the Board to determine that any company that has certain relationships with a member bank or an affiliate of the bank is itself an affiliate of the bank. Unlike the proposed rule, final Regulation W provides that these determinations may be made by the Board or by the appropriate Federal banking agency for the relevant depository institution (under authority delegated by the Board). The Board believes that this delegation of authority should enhance the ability of the Federal banking agencies to protect depository institutions in their transactions with associated companies. A depository institution may petition the Board for review of any such affiliate determination made by the institution's appropriate Federal banking agency under the general procedures established by the Board for review of actions taken under delegated authority.[44]

7. Certain Joint Venture Companies (§ 223.2(b)(1)(iii))

As noted above, under the terms of section 23A, subsidiaries of a member bank generally are not treated as affiliates of the bank, even if they would otherwise qualify as affiliates.[45] The statute contains two specific exceptions to this general rule: ''Financial subsidiaries'' of a member bank and ''bank'' subsidiaries of a member bank are treated as affiliates of the parent

nonbank subsidiary of a FHC also serves as a director of a portfolio company, the first safe harbor, for example, would be unavailable.

[44] *See* 12 CFR 265.3.

[45] *See* 12 U.S.C. 371c(b)(1)(A) and (b)(2)(A). Section 23A defines a subsidiary of a specified company as a company that is controlled by the specified company. Under the statute, a company controls another company if the first company owns or controls 25 percent or more of a class of voting securities of the other company, controls the election of a majority of the directors of the other company, or exercises a controlling influence over the policies of the other company. 12 U.S.C. 371c(b)(3) and (4).

bank. As also noted above, the statute provides that the Board may determine that other subsidiaries of a member bank should be treated as affiliates in appropriate circumstances.[46]

Pursuant to this authority, the Board proposed that two additional classes of subsidiaries of a member bank should be treated as affiliates: (i) Certain joint venture companies; and (ii) employee benefit plans. This section of the preamble discusses joint venture companies; the following section addresses employee benefit plans.

First, the proposed regulation provided that any subsidiary of a member bank in which an affiliate of the bank directly owns or controls 25 percent or more of any class of voting securities would be considered an affiliate of the bank. For example, under the proposed rule, a joint venture company that is 50 percent owned by a BHC directly and 50 percent owned by one of its subsidiary member banks, would be treated as an affiliate of the bank.

One commenter objected to this provision in light of the fact that such joint venture companies and their investors are supervised by the Federal banking agencies. The Board does not believe that supervision of the joint venture company or the affiliated investor is sufficient to protect the member bank. Although such a joint venture company qualifies as a subsidiary of the member bank under section 23A because the bank owns more than 25 percent of the company's voting stock, an affiliate's substantial direct interest in the company creates the potential for conflicts of interest that may endanger the bank. The Board notes that, with the limited exception of sister banks, Congress did not exempt entities from the definition of affiliate under section 23A because of their supervisory status.[47]

The Board has determined to modify the joint venture rule in several respects. The proposed rule only treated a subsidiary of a member bank as an affiliate of the bank if one or more *affiliates* of the bank directly owned or controlled *25 percent or more of any class of voting securities* of the joint venture. The final rule, however, treats a subsidiary of a member bank as an affiliate if one or more affiliates of the bank, *or one or more controlling shareholders of the bank*, directly *control* the joint venture. The Board intends this expansion of the joint venture exclusion to cover situations where an affiliate exercises direct control over the joint venture through a manner other than ownership of voting securities (for example, through majority interlock or ownership of nonvoting securities). This expansion also covers situations where a controlling natural person shareholder or group of controlling natural person shareholders of the member bank (who, as natural persons, are not themselves section 23A affiliates of the bank) exercise direct control over the joint venture company.

This regulatory treatment of certain bank-affiliate joint ventures as affiliates does not apply to joint ventures between a member bank and any affiliated insured depository institutions. For example, if two affiliated member banks each own 50 percent of the voting common stock of a company, the company would continue to qualify as a subsidiary and not an affiliate of each bank (despite the fact that an affiliate of each bank owned more than 25 percent of a class of voting securities of the company). Such a special rule for joint ventures between a member bank and affiliated insured depository institutions is consistent with the purpose behind the sister-bank and affiliated-bank exemptions contained in section 23A. The Board does not believe that transactions between a member bank and a company that is wholly owned by the member bank and its affiliated insured depository institutions generally pose material risks to the safety and soundness of the shareholding institutions or to the Federal deposit insurance funds. The Board would retain authority to treat such joint ventures as affiliates under section 23A on a case-by-case basis.

8. Employee Benefit Plans (§ 223.2(b)(1)(iv))

The second proposed regulatory exception to the general rule that subsidiaries of a member bank are not treated as affiliates of the bank relates to employee benefit plans. Board staff traditionally has taken the position that most employee stock option plans, trusts, or similar entities that exist to benefit shareholders, members, officers, directors, or employees of a member bank or its affiliates (''ESOPs'') should be treated as affiliates of the bank for purposes of sections 23A and 23B. In most cases, the ESOP's share ownership or the interlocking management between the ESOP and its associated member bank or BHC exceeds the statutory thresholds for determining that a company is an affiliate. Some institutions have argued, however, that ESOPs should be considered subsidiaries of the member bank and therefore exempt from coverage. The proposed rule provided that the ESOP of a member bank or an affiliate of the bank cannot itself avoid classification as an affiliate of the bank by also qualifying as a subsidiary of the bank.

Although one commenter supported the proposed rule's approach to ESOPs, several commenters objected to the approach. These commenters principally argued that (i) ESOPs are regulated by the Department of Labor and transactions between a bank and an associated ESOP are adequately governed by ERISA; (ii) Congress has expressed support for ESOPs; (iii) regulating bank-ESOP transactions under section 23A would prevent banks from effectively using ESOPs to compensate employees and would put banks at a competitive disadvantage to nonbank firms; and (iv) treating ESOPs as affiliates of their associated bank may prevent some banks from establishing ESOPs because third-party lenders to an ESOP generally require the employer to guarantee the loan and ESOPs often would have no collateral to pledge for the bank guarantee other than unacceptable affiliate-issued securities.

Notwithstanding these considerations, the Board believes that the relationship between a member bank and its or its affiliate's ESOP generally warrants coverage by sections 23A and 23B. In the past, banks have made unsecured loans to their ESOPs or their affiliates' ESOPs or have guaranteed loans to such ESOPs that were made by a third party. These ESOPs, however, generally have no means to repay the loans other than with funds provided by the bank. In addition, the issuance of holding company shares to an ESOP that is funded by a loan from the holding company's subsidiary bank could be used as a vehicle by the bank to provide funds to its parent holding company when the bank is unable to pay dividends or is otherwise restricted in providing funds to its holding company.

9. Securitization Vehicles and Other Special Purpose Entities (''SPEs'')

In the proposal, the Board sought comment on whether additional clarification is necessary in the area of securitizations. The Board specifically requested comment on the question of whether securitization SPEs should in any circumstances be deemed to be affiliates of the member bank involved

[46] 12 U.S.C. 371c(b)(2)(A).

[47] Several other commenters asked that the final rule not exclude joint venture subsidiaries of a bank so long as the bank owns more than 50 percent of the voting securities of the joint venture company. The Board declines to adopt this position because, notwithstanding the bank's controlling voting interest in the subsidiary, the bank's less-than-100 percent interest and the affiliate's substantial direct interest in the company may provide the bank with inappropriate incentives to support the company.

in the securitization. The Board received a significant amount of comment on this issue. Commenters uniformly recommended that the Board not treat SPEs as affiliates of any bank associated with the securitization. Due to the complexities of this issue and the pending proposal by the Financial Accounting Standards Board (''FASB'') on the consolidation of SPEs,[48] the Board is deferring at this time any rulemaking with respect to the relationships between member banks and SPEs.

The Board reminds banking organizations that any company sponsored and advised on a contractual basis by a member bank or an affiliate of the bank is an affiliate of the bank under the express terms of section 23A and the final rule. The legislative history of the statute suggests that such ''sponsored and advised'' companies would include, at a minimum, any company that receives investment advice and administrative services on a contractual basis from a member bank, whose trustees or managers are selected by the bank, and that has a name similar to that of the bank. The Board expects that member banks, at a minimum, would treat companies meeting or substantially meeting these three indicia of sponsorship and advice as affiliates under section 23A.

B. Other Definitions (§ 223.3)

1. Capital Stock and Surplus (§ 223.3(d))

Under section 23A, the quantitative limits on covered transactions are based on the ''capital stock and surplus'' of the member bank.[49] The proposed regulation included a definition of capital stock and surplus that the Board previously adopted as an interpretation of section 23A.[50] Under this definition, capital stock and surplus is the sum of the member bank's tier 1 capital and tier 2 capital and the balance of the bank's allowance for loan and lease losses not included in its tier 2 capital. This definition employs familiar concepts contained in the Federal banking agencies' capital adequacy guidelines,[51] and is consistent with the lending limits applicable to national banks[52] and the Board's Regulation O, which limits lending to a member bank's insiders.[53]

The final rule, consistent with a discussion in the preamble to the proposed rule, alters the definition of capital stock and surplus in one regard. The National Bank Act requires a national bank, ''in determining compliance with applicable capital standards,'' to deduct from its capital the aggregate amount of any outstanding equity investments, including retained earnings, of the bank in all its financial subsidiaries.[54] The FDI Act imposes the same capital deduction requirement on insured state banks that establish financial subsidiaries.[55] In determining compliance with the quantitative limits of section 23A, a bank is required by statute to include in its covered transactions any equity investments (excluding retained earnings) of the bank in its financial subsidiaries. It would be unfair to compel a bank to include such investments in its covered transaction amount (the numerator of the fraction in section 23A's quantitative limits) but to exclude such investments from capital stock and surplus (the denominator of the fraction). Accordingly, the final rule explicitly permits a member bank with a financial subsidiary to add back to its section 23A capital stock and surplus the amount of any investment in a financial subsidiary that counts as a covered transaction and is required to be deducted from the bank's capital for regulatory capital purposes.

2. Control (§ 223.3(g))

Section 23A provides that a company or shareholder shall be deemed to have control over another company if, among other things, such company or shareholder controls in any manner the election of a majority of the ''directors or trustees'' of the other company.[56] Regulation W expands this prong of the control definition to conform it to the control definition contained in the Board's Regulation Y by adding that control also exists when a company or shareholder controls the election of a majority of the ''general partners (or individuals exercising similar functions)'' of another company. This expansion of the control definition is intended to ensure that banking organizations understand that a company or shareholder would be deemed to control another company (including a partnership, limited liability company, or other similar organization) under section 23A if the company or shareholder controls the election of a majority of the principal policymakers of such other company.

The regulation also includes two additional presumptions of control that are similar to presumptions contained in Regulation Y. First, a company will be deemed to control securities, assets, or other ownership interests controlled by any subsidiary of the company.[57] Second, a company that controls instruments (including options and warrants) that are convertible or exercisable, at the option of the holder or owner, into securities, will be deemed to control the securities.[58]

One commenter asked the Board to clarify that a company or person may rebut the convertibility presumption of control. The Board agrees with this position and has amended the final rule to provide that, as under Regulation Y, this presumption is rebuttable. Commenters also suggested that the convertibility presumption should apply only to convertible instruments that are *immediately* convertible, or convertible within a short time frame, into the underlying securities. Consistent with the Board's interpretations of the parallel Regulation Y provision, the Board declines to adopt this approach. Establishment of any kind of regulatory safe harbor for warrants, options, and other convertible instruments that cannot be exercised or converted for some short period of time is likely to facilitate evasion of the presumption. A company or person that wishes to rebut this presumption based on the specific features of a convertible instrument should present their arguments to the Board for a case-by-case decision.

The final rule supplements the control presumptions contained in proposed Regulation W with one additional rebuttable presumption. The final rule provides that a company or shareholder that owns or controls 25 percent or more of the equity capital of another company controls the other company unless the company or shareholder demonstrates otherwise to the Board based on the facts and circumstances of the particular case. This rebuttable presumption is similar to a presumption applied by the Board under the control provisions of the BHC Act.[59] Such a presumption of control is particularly appropriate in the section

[48] FASB Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities, an Interpretation of ARB No. 51* (June 28, 2002).

[49] 12 U.S.C. 371c(a)(1).

[50] *See* 61 FR 19805, May 3, 1996.

[51] *See, e.g.*,12 CFR part 225, appendix A.

[52] 12 CFR 32.2(b).

[53] 12 CFR 215.2(i).

[54] 12 U.S.C. 24a(c)(1).

[55] 12 U.S.C. 1831w(a)(2).

[56] 12 U.S.C. 371c(b)(3)(A)(ii).

[57] *See* 12 CFR 225.2(e)(2)(i).

[58] *See* 12 CFR 225.31(d)(1)(i). The proposed rule referred to ''securities'' (rather than ''instruments'') that are convertible into other securities. The final rule refers more generically to convertible ''instruments'' to clarify that the convertibility presumption applies regardless of whether the right to convert resides in a financial instrument that technically qualifies as a ''security'' under section 23A or the Federal securities laws.

[59] *See, e.g.*, 12 CFR 225.143 (Board Policy Statement on Nonvoting Equity Investments).

23A context because a BHC, for example, may have incentives to divert the resources of a subsidiary bank to any company in which the holding company has a substantial financial interest, regardless of whether the holding company owns any voting securities of the company.

3. Covered Transaction (§ 223.3(h))

The restrictions of section 23A do not apply to every transaction between a member bank and its affiliates. The section only applies to ''covered transactions'' between a member bank and its affiliates. The statute defines a covered transaction as (i) an extension of credit to an affiliate; (ii) a purchase of or investment in securities issued by an affiliate; (iii) a purchase of assets from an affiliate; (iv) the acceptance of securities issued by an affiliate as collateral for an extension of credit to any person; and (v) the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.[60] Among the transactions that generally are not subject to section 23A are dividends paid by a member bank to its holding company, sales of assets by a member bank to an affiliate, an affiliate's purchase of securities issued by a member bank, and many service contracts between a member bank and an affiliate. This section of the preamble discusses whether certain classes of transactions between a member bank and an affiliate are covered transactions for purposes of section 23A.

a. *Confirmation of a letter of credit issued by an affiliate (§ 223.3(h)(5)).*—As noted, section 23A includes as a covered transaction the issuance by a member bank of a letter of credit on behalf of an affiliate. The proposed regulation provided that a member bank's confirmation of a letter of credit issued by an affiliate is also a covered transaction.

One commenter noted staff's traditional position that certain confirmations of a *documentary* letter of credit issued by an affiliate are not covered transactions and asked the Board to clarify that such confirmations would not be treated as covered transactions under Regulation W.[61] The Board has decided to reverse the staff position on this issue and to treat all confirmations of a letter of credit issued by an affiliate as a covered transaction. Under the current law applicable to letters of credit, when a bank confirms a letter of credit, it assumes the risk of the underlying transaction to the same extent as if it had issued the letter of credit.[62] Accordingly, the rule treats confirmations of a letter of credit issued by an affiliate in the same fashion as issuances of a letter of credit on behalf of an affiliate.

b. *Credit enhancements supporting a securities underwriting.*—The Board has confirmed previously and hereby reconfirms that section 23A's definition of guarantee would not include a member bank's issuance of a guarantee in support of securities issued by a third party and underwritten by a securities affiliate of the bank.[63] Such a credit enhancement would not be issued ''on behalf of'' the affiliate. In addition, although the guarantee does provide some benefit to the affiliate (by facilitating the underwriting), this benefit is indirect. Accordingly, the proceeds of the guarantee would not be transferred to the affiliate for purposes of the attribution rule of section 23A.[64] Of course, section 23B would apply to the transaction and, where an affiliate was issuer as well as underwriter, the transaction would be covered by section 23A because the credit enhancement would be on behalf of the affiliate.

c. *Cross-guarantee agreements and cross-affiliate netting arrangements (§ 223.3(h)(5)).*—Board staff has confirmed previously that a cross-guarantee agreement among a member bank, an affiliate, and a nonaffiliate in which the nonaffiliate may use the bank's assets to satisfy the obligations of a defaulting affiliate is a guarantee for purposes of section 23A.[65] The Board believes that such cross-guarantee arrangements among member banks and their affiliates should be subject to the quantitative limits and collateral requirements of section 23A.

Similarly, the Board understands that some member banks have entered into or are contemplating entering into cross-affiliate netting arrangements (''CANAs''). These include arrangements among a member bank, one or more affiliates of the bank, and one or more nonaffiliates of the bank, where a nonaffiliate is permitted to deduct obligations of an affiliate of the bank to the nonaffiliate when settling the nonaffiliate's obligations to the bank. These arrangements also would include agreements where a member bank is required or permitted to add the obligations of an affiliate of the bank to a nonaffiliate when determining the bank's obligations to the nonaffiliate.

These types of CANAs expose a member bank to the credit risk of its affiliates because the bank may become liable for the obligations of its affiliates. Because the exposure of a member bank to an affiliate in such an arrangement resembles closely the exposure of a member bank when it issues a guarantee on behalf of an affiliate, the final rule explicitly includes such arrangements in the definition of covered transaction. Accordingly, the quantitative limits of section 23A would prohibit a member bank from entering into such a CANA to the extent that the netting arrangement does not cap the potential exposure of the bank to the participating affiliate(s).

Several commenters urged the Board to withhold judgment on CANAs until standardized documentation is developed by the industry. These commenters advised that CANAs are of many types and, therefore, that the Board should not adopt a fixed rule for all CANAs. One commenter encouraged the Board to clarify in particular that CANAs that do not make the bank liable for the obligations of its affiliates or otherwise cause any detriment to the bank are not covered transactions. By only addressing the CANAs described above, the rule only treats CANAs as covered transactions in situations where the member bank may become liable for the obligations of its affiliates. The Board intends to monitor industry developments in this area and will revisit this aspect of Regulation W or issue further interpretive guidance on CANAs as warranted.

d. *Keepwell agreements.*—Banking organizations have asked for guidance on the question of whether a ''keepwell'' agreement should be considered a guarantee for purposes of section 23A. In a keepwell agreement between a member bank and an affiliate, the bank typically commits to maintain the capital levels or solvency of the affiliate. The credit risk incurred by the member bank in entering into such a keepwell agreement is similar to the credit risk incurred by a member bank in connection with issuing a guarantee on behalf of an affiliate. As a consequence, keepwell agreements generally should be treated as guarantees for purposes of section 23A and, if unlimited in amount, would be prohibited by the quantitative limits of section 23A.

4. Extension of Credit (§ 223.3(o))

Although section 23A includes a ''loan or extension of credit'' to an affiliate as a covered transaction, the statute does not define these terms. The

[60] 12 U.S.C. 371c(b)(7).

[61] *See* Letter dated May 5, 1981, from Robert E. Mannion, Deputy General Counsel of the Board, to Andrew T. Moore, Jr.; *see also* Letter dated July 17, 1980, from Robert E. Mannion, Deputy General Counsel of the Board, to Baldwin B. Tuttle.

[62] *See* U.C.C. 5–107(2).

[63] *See* 62 FR 45295, Aug. 27, 1997.

[64] *See* 12 U.S.C. 371c(a)(2).

[65] *See* Letter dated Aug. 6, 1993, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Richard Lasner.

regulation defines ''extension of credit'' to an affiliate to mean the making or renewal of a loan to an affiliate, the granting of a line of credit to an affiliate, or the extending of credit to an affiliate in any manner whatsoever, including on an intraday basis. The regulation also provides a nonexhaustive list of transactions that the Board deems to be extensions of credit to an affiliate, including an advance to an affiliate by means of an overdraft, cash item, or otherwise; a lease that is the functional equivalent of an extension of credit to an affiliate;[66] an acquisition of a note or other obligation of an affiliate, including commercial paper or other debt securities issued by an affiliate; and any increase in the amount of, extension of the maturity of, or adjustment in the interest rate term or other material term of an extension of credit to an affiliate.[67] The final rule also includes a sale of Federal funds to an affiliate on the list of examples. This position reflects the long-standing view of the Board about the nature of Federal funds transactions.[68]

In addition to these examples, the final rule specifies that other similar transactions that result in an affiliate owing money to a member bank are extensions of credit by the member bank to the affiliate. This aspect of the definition of extension of credit is consistent with the definition of the same term in Regulation O and would cover, among other things, situations where an affiliate fails to pay on a timely basis for services rendered to the affiliate by the member bank.

As noted, the regulation provides that a member bank's purchase of a debt security issued by an affiliate is an extension of credit by the bank to the affiliate for purposes of section 23A.[69] Several commenters objected to this interpretation of the statute and argued that a purchase of an affiliate's debt securities is a ''purchase of or investment in securities issued by an affiliate'' for purposes of section 23A, and that such a purchase cannot also then be an ''extension of credit'' for purposes of section 23A. Other commenters criticized this position on the grounds that (i) it often would not be feasible (due to negative pledge covenants) for the bank to obtain collateral for the security after the terms of the security are fixed at inception; and (ii) requiring collateral for purchases of debt securities but not for purchases of equity securities is perverse.

The Board does not find any of these objections persuasive. Although the Board is aware that section 23A's definition of covered transaction separately includes a member bank's purchase of securities issued by an affiliate and a member bank's loan to an affiliate, the fact that a holder of debt securities expects repayment of principal upon maturity makes debt securities closely resemble loans for purposes of section 23A and the statute's objective of protecting the member bank. There is nothing in the text or legislative history of section 23A that indicates that a particular transaction may be slotted only into one category of covered transaction.

Although the Board recognizes the incongruities of requiring collateral for debt investments by a member bank in an affiliate but not equity investments by a member bank in an affiliate, this is an unalterable aspect of the statutory framework. The prevalence of these incongruities, moreover, is constrained by the limited ability of member banks to make equity investments. Importantly, the Board's action on this matter removes an incongruity more likely to occur—treating differently under section 23A two transaction forms (loans and debt securities) that are substantially equivalent from a credit risk perspective.

For all these reasons, therefore, Regulation W provides that a member bank that buys debt securities issued by an affiliate has made an extension of credit to an affiliate under section 23A and must collateralize the transaction in accordance with section 23A's collateral requirements. As discussed below, the final rule provides an exemption from the collateral requirements in situations where a member bank purchases an affiliate's debt securities from a third party in a bona fide secondary market transaction.[70]

5. Low-Quality Asset (§ 223.3(v))

Two provisions of section 23A restrict a member bank's ability to engage in transactions with affiliates that involve low-quality assets. First, the statute prohibits a member bank from purchasing a low-quality asset from an affiliate unless the bank performs an independent credit evaluation and commits to purchase the asset before the affiliate acquires the asset.[71] Second, the statute prohibits a member bank from counting a low-quality asset toward section 23A's collateral requirements for credit transactions with an affiliate.[72]

Section 23A defines a low-quality asset to include (i) an asset classified as ''substandard,'' ''doubtful,'' or ''loss,'' or treated as ''other loans especially mentioned,'' in the most recent report of examination or inspection by a Federal or State supervisory agency (a ''classified asset''); (ii) an asset in nonaccrual status; (iii) an asset on which payments are more than thirty days past due; or (iv) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[73] The Board notes that any asset meeting one of the above four criteria, including securities and real property, is a low-quality asset.[74]

The regulation broadens the definition of low-quality asset in three ways. First, the regulation provides that an asset identified by examiners as an ''other transfer risk problem'' (''OTRP'') is a low-quality asset.[75] Such assets represent credits to countries that are not complying with their external debt-service obligations, but are taking positive steps to restore debt service through economic adjustment measures, generally as part of an International Monetary Fund program. Although OTRP assets are not considered classified assets, examiners are instructed to consider these assets in their assessment of a bank's asset quality and capital adequacy.[76]

Second, the regulation reflects the increasing use by financial institutions of their own internal asset classification systems. A 1998 Board study of the 50 largest U.S. banks demonstrated that all use internal loan classifications, and a substantial proportion of such

[66] The Board would consider a full-payout, net lease permissible for a national bank under 12 U.S.C. 24(Seventh) and 12 CFR part 23 to be the functional equivalent of an extension of credit.

[67] A floating-rate loan does not become a new covered transaction whenever there is a change in the relevant index (for example, LIBOR or the member bank's prime rate) from which the loan's interest rate is calculated. If the member bank and the borrower, however, amend the loan agreement to change the interest rate term from ''LIBOR plus 100 basis points'' to ''LIBOR plus 150 basis points,'' the parties have engaged in a new covered transaction.

[68] *See* 12 CFR 250.160.

[69] This position is consistent with the Board's long-standing view. See 37 Federal Reserve Bulletin 960 (1951).

[70] *See* part IV.B.5. of this preamble.

[71] 12 U.S.C. 371c(a)(3).

[72] 12 U.S.C. 371c(c)(3).

[73] 12 U.S.C. 371c(b)(10).

[74] The Federal banking agencies generally consider non-investment grade securities to be classified assets. *See, e.g.,* ''Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks' (May 7, 1979); *Federal Reserve Commercial Bank Examination Manual* § 2020.1. Assets identified by examiners through the Shared National Credit and International Country Exposure Review Committee processes also should be considered classified assets for purposes of section 23A.

[75] No commenter objected to this provision of the proposed rule.

[76] *See Federal Reserve Commercial Bank Examination Manual* § 7040.1.

institutions have relatively advanced internal rating systems.[77] There is considerable variance in how large banks rate performing assets; however, banks are required to use the same categories employed by the Federal banking agencies for rating classified assets.

Because examinations may be twelve months apart—eighteen months for smaller banks—these internal classification systems may cause a bank to regrade an asset long before its next examination. Accordingly, the rule includes within the definition of low-quality asset not only assets classified during the last examination but also assets classified or treated as special mention under the institution's internal classification system (or assets that received an internal rating that is substantially equivalent to classified or special mention in such an internal system).

Several commenters objected to this aspect of the proposed rule. They argued that the statute provides a highly articulated definition of low-quality asset that should not be supplemented by the Board. They also cautioned that the rule would penalize banks with careful internal classification systems and would create perverse incentives for banks to avoid internally classifying bad assets. The Board acknowledges these concerns but believes that the rule is consistent with the text and intent of section 23A and that the supervisory benefits of the rule would outweigh any adverse effects. The purchase by a depository institution from an affiliate of assets that have been internally classified raises potentially significant safety and soundness concerns.

The Board shares the concern of commenters that this provision of the rule may induce companies to avoid or defer reclassification of an asset in order to allow its sale to an affiliated depository institution, but believes that such evasions can be addressed through the examination process. The Board expects companies with internal rating systems to use the systems consistently over time and over similar classes of assets and will view as an evasion of section 23A any company's deferral or alteration of an asset's rating to facilitate sale of the asset to an affiliated institution.

Finally, the proposed rule defined low-quality asset to include foreclosed property designated ''other real estate owned'' (''OREO''), until it is reviewed by an examiner and receives a favorable classification. One commenter criticized this interpretation and represented that OREO is often good collateral collected from a bad borrower. This commenter further advised that a bank should be allowed to purchase OREO from an affiliate if the bank uses the OREO as premises.

The final rule contains an expanded version of the proposed rule's OREO provision. The final rule defines as a low-quality asset any asset (not just real estate) that is acquired in satisfaction of a debt previously contracted (not just through foreclosure) if the asset has not yet been reviewed in an examination or inspection. In the Board's experience, property acquired from a borrower in default is often of such poor quality that its ownership poses the same risk to the bank as a classified loan. In response to the concerns expressed by the commenter, the Board notes that, under the rule, if a particular asset is good collateral taken from a bad borrower, the asset should cease to be a low-quality asset upon examination.

6. Member Bank (§ 223.3(w))

As discussed above, although proposed Regulation W applied by its terms to all ''banks,'' the final rule applies by its terms to all ''member banks.'' Consistent with section 1 of the Federal Reserve Act, the final rule defines ''member bank'' to mean ''any national bank, State bank, banking association, or trust company that is a member of the Federal Reserve System.''

The definition of member bank in the regulation also states that most subsidiaries of a member bank are to be treated as part of the member bank itself for purposes of sections 23A and 23B. The only subsidiaries of a member bank that are excluded from this treatment are financial subsidiaries, insured depository institution subsidiaries, certain joint venture subsidiaries, and ESOPs—companies that are deemed affiliates of the member bank under the regulation. This treatment of subsidiaries reflects the fact that the statute typically does not distinguish between a member bank and its subsidiaries, and all the significant restrictions of the statute apply to actions taken by a member bank ''and its subsidiaries.'' Defining the term ''member bank'' as described above and using the term ''member bank'' wherever the statute says ''member bank and its subsidiaries'' makes the regulation shorter and easier to understand. The definition also should help to remind member banks that certain subsidiaries should not be treated as part of the member bank for purposes of the statute.

7. Obligations of, or Fully Guaranteed as to Principal and Interest by, the United States or Its Agencies (§ 223.3(z))

Section 23A accords special treatment to extensions of credit secured by ''obligations of the United States or its agencies'' or ''obligations fully guaranteed by the United States or its agencies as to principal and interest'' (collectively, ''U.S. government obligations''). First, the statute imposes the lowest collateral requirement, 100 percent of the loan amount, on extensions of credit secured by U.S. government obligations.[78] Second, the statute provides an exemption for extensions of credit fully secured by U.S. government obligations.[79]

The proposed rule did not provide guidance as to what financial instruments qualify as U.S. government obligations. Several commenters asked the Board to clarify that U.S. government obligations for section 23A purposes would include, at a minimum, all the obligations identified in the Board's Regulation A as eligible to serve as collateral for advances by Federal Reserve Banks to member banks under section 13(8) of the Federal Reserve Act.[80] The final rule provides this clarification, which is consistent with staff's long-standing position under section 23A. The final rule also indicates that U.S. government obligations do not include mortgage loans insured by the Federal Housing Administration or the Veterans Administration because the backing of the U.S. government for these loans is not a full and unconditional guarantee of the principal and interest of the underlying mortgage loans. This exclusion also is consistent with staff's traditional interpretation of section 23A.

8. Purchase of Assets (§ 223.3(dd))

The proposed rule defined a purchase of an asset as the acquisition of an asset in exchange for cash or any other consideration, including an assumption of liabilities. The preamble to the proposed rule indicated the Board's view that merging an affiliate with and into a member bank generally would constitute a purchase of assets by the bank from the affiliate. Consistent with

[77] William F. Treacy & Mark S. Carey, *Credit Risk Rating at Large U.S. Banks*, 84 Federal Reserve Bulletin 897 (1998).

[78] 12 U.S.C. 371c(c)(1)(A)(i) and (ii).

[79] 12 U.S.C. 371c(d)(4)(A) and (B).

[80] *See* 12 CFR 201.108(b). Section 13(8) of the Federal Reserve Act authorizes Federal Reserve Banks to make advances to member banks secured by, among other things, U.S. government obligations eligible for purchase by a Federal Reserve Bank under section 14(b) of the Federal Reserve Act. 12 U.S.C. 347. The description of U.S. government obligations in section 14(b) of the Federal Reserve Act is virtually identical to the description of U.S. government obligations in section 23A. *See* 12 U.S.C. 355.

the preamble to the proposed rule, the final rule also provides that the merger of an affiliate into a member bank is a purchase of assets by the bank from the affiliate if the bank assumes any liabilities of an affiliate or pays any other form of consideration in the transaction.

9. Securities (§ 223.3(ff))

Section 23A defines ''securities'' to mean ''stocks, bonds, debentures, notes, or other similar obligations.''[81] Because of the ambiguous nature of this definition, the Board generally has looked to the Federal securities laws for guidance in determining which financial instruments should be considered securities for purposes of section 23A. In light of the similarities between commercial paper and debentures and notes and the countervailing fact that the Securities Exchange Act of 1934 excludes some forms of commercial paper from its definition of security,[82] the regulation clarifies that commercial paper is a security for purposes of section 23A.[83]

One commenter on the proposed rule asked the Board to indicate whether annuities are securities for purposes of section 23A. The Board would consider annuities that are securities for purposes of the Federal securities laws to be securities for purposes of Regulation W.

10. Voting Securities (§ 223.3(jj))

Section 23A uses both the terms ''voting shares'' and ''voting securities.'' To remove ambiguity and enhance regulatory consistency, Regulation W replaces all statutory uses of the term ''voting shares'' with the term ''voting securities'' and defines ''voting securities'' to have the same meaning as ''voting securities'' in Regulation Y.[84]

IV. General Provisions of Section 23A—Subpart B

Subpart B of the regulation sets forth the principal restrictions of section 23A, including the quantitative limits, the safety and soundness requirement, the collateral requirement, and the prohibition on the purchase of low-quality assets. This subpart also includes section 23A's attribution rule, which provides that any transaction with a nonaffiliate will be considered a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate. In addition, subpart B incorporates previous Board and staff interpretations of these provisions, and a few new interpretations of these provisions. These interpretations of the statute are discussed below.

A. Quantitative Limits (§§ 223.11 and 223.12)

Section 23A(a)(1) provides that a member bank may engage in a covered transaction with an affiliate only if, upon consummation of the proposed transaction, the aggregate amount of the bank's covered transactions (i) with any single affiliate would not exceed 10 percent of the bank's capital stock and surplus and (ii) with all affiliates would not exceed 20 percent of the bank's capital stock and surplus.[85] Sections 223.11 and 223.12 of the regulation set forth these quantitative limits. The quantitative limits of Regulation W (consistent with section 23A) only prohibit a member bank from engaging in a *new* covered transaction if the bank would be in excess of the 10 or 20 percent threshold after consummation of the new transaction. The regulation (consistent with section 23A) generally does not require a member bank to unwind existing covered transactions if the bank exceeds the 10 or 20 percent limit because its capital declined or a preexisting covered transaction increased in value.

Section 23A(a)(1)(A) states that a member bank ''may engage in a covered transaction with an affiliate only if * * * in the case of any affiliate,'' the aggregate amount of covered transactions of the bank would not exceed 10 percent of the capital stock and surplus of the bank. The proposed rule interpreted this limitation to prevent a member bank from engaging in a new covered transaction with an affiliate if the aggregate amount of covered transactions between the bank and *any* affiliate (not only the particular affiliate with which the bank proposes to engage in the new covered transaction) would be in excess of 10 percent of the bank's capital stock and surplus after consummation of the new transaction. Several commenters argued that this reading of the 10 percent limit is inconsistent with the statutory language of section 23A and existing bank practices. These commenters urged the Board to interpret the 10 percent limit to prohibit a bank from engaging in a covered transaction with an affiliate only when the aggregate amount of covered transactions between the bank and that affiliate would exceed 10 percent of the bank's capital.

The Board believes that both the interpretation of the 10 percent limit set forth in the proposed rule and the interpretation advocated by commenters are consistent with the statutory language. In light of the numerous other existing safeguards in sections 23A and 23B, including in particular the 20 percent quantitative limit and the collateral requirements, and the other supervisory tools available to the Federal banking agencies, the Board has determined to adopt the interpretation advocated by commenters in the final Regulation W. Notwithstanding this more liberal interpretation of the 10 percent limit, the Board strongly encourages member banks with covered transactions in excess of the 10 percent threshold with any affiliate to reduce those transactions before expanding the scope or extent of the bank's relationships with other affiliates.

Another commenter asked the Board to clarify in section 223.11 that transactions between a bank and a financial subsidiary of the bank are not subject to the 10 percent limit of section 23A. Although proposed Regulation W made this point in the section of the rule relating to financial subsidiaries, the Board agrees that clarity would be enhanced if the final rule also made this point in the section of the rule that sets forth the 10 percent limit. Accordingly, section 223.11 of the final rule states that transactions between a member bank and its financial subsidiary are not subject to the 10 percent limit.

B. Collateral Requirements (§ 223.14)

Section 223.14 of the regulation sets forth the collateral requirements established by section 23A(c) for loans and extensions of credit to an affiliate, and guarantees, acceptances, and letters of credit issued on behalf of an affiliate (collectively, ''credit transactions''). As a general matter, section 23A requires any credit transaction by a member bank with an affiliate to be secured with a statutorily prescribed amount of collateral. The required collateral varies from 100 percent of the value of the credit extended (when the collateral is a deposit account or U.S. government obligations) to 130 percent of the credit extended (when the collateral is stock, leases, or certain other ''real or personal property'').[86]

1. Deposit Account Collateral (§ 223.14(b)(1)(i)(D))

Under section 23A, a member bank may satisfy the collateral requirements

[81] 12 U.S.C. 371c(b)(9).

[82] *See* 15 U.S.C. 78c(a)(10).

[83] As noted above in part III.B.4. of this preamble, the Board considers a member bank's investment in commercial paper issued by an affiliate to be both an investment in securities issued by an affiliate and an extension of credit to an affiliate.

[84] *See* 12 CFR 225.2(q).

[85] 12 U.S.C. 371c(a)(1).

[86] 12 U.S.C. 371c(c)(1).

of the statute by securing a credit transaction with an affiliate with a ''segregated, earmarked deposit account'' maintained with the bank in an amount equal to 100 percent of the credit extended.[87] The proposed regulation clarified that, to satisfy the statute's ''segregated, earmarked'' requirement, the account must exist for the sole purpose of securing the credit extended and be so identified.

Numerous commenters asked the Board to remove this regulatory gloss and explicitly state that banks may satisfy the collateral requirements of section 23A by (i) using a single deposit account to collateralize one or more covered transactions with one or more affiliates or (ii) entering into a cross-collateralization agreement with one or more affiliates under which all of such affiliates' deposit accounts are pledged as collateral for all of such affiliates' credit transactions with the bank. According to these commenters, such collateral arrangements are a common, safe, and efficient means of satisfying the letter and spirit of the collateral requirements of section 23A.

The Board has analyzed the claims of these commenters and has decided not to require a member bank accepting deposit account collateral to establish a separate segregated, earmarked deposit account to secure each covered transaction with an affiliate. The Board recognizes that such a strict reading of the ''segregated, earmarked'' requirement is not required by the statute and would impose a substantial compliance burden on member banks that engage in a significant number of covered transactions with affiliates. Moreover, in some circumstances, using an omnibus deposit account for multiple affiliates and multiple covered transactions may have prudential advantages for the member bank as compared to using separate deposit accounts for each outstanding covered transaction.

Although the final rule does not include the proposed regulatory gloss, the Board expects that member banks that secure covered transactions with omnibus deposit accounts will take steps to ensure that such accounts fully secure the relevant covered transactions. Such steps might include substantial overcollateralization or the use of subaccounts or other recordkeeping devices to match deposits with covered transactions. In addition, as required by the final rule, to obtain full credit for any deposit accounts taken as section 23A collateral, member banks must ensure that they have a perfected, first priority security interest in the accounts.

Several commenters asked the Board to replace the ''segregated, earmarked'' requirement for deposit accounts with a requirement that banks have a perfected, first priority security interest in the accounts. These commenters explained that, although the ''segregated, earmarked'' requirement made sense before the adoption of revised Article 9 of the Uniform Commercial Code, the revised Article 9 has rendered segregation and earmarking of a deposit account legally irrelevant to ensuring that a bank has a perfected, first priority security interest in the account. Despite the revisions to Article 9, the final rule maintains the ''segregated, earmarked'' requirement because it is required by the plain language of section 23A and because segregating and earmarking deposit account collateral is a prudent practice even under revised Article 9.

2. Ineligible Collateral (§ 223.14(c))

The purpose of section 23A's collateral requirements is to ensure that member banks that engage in credit transactions with affiliates have legal recourse, in the event of affiliate default, to tangible assets with a value at least equal to the amount of the credit extended. The statute recognizes that certain types of assets are not appropriate to serve as collateral for credit transactions with an affiliate. In particular, the statute provides that low-quality assets and securities issued by an affiliate are not eligible collateral for such covered transactions.[88]

The proposed rule provided that intangible assets (as defined by generally accepted accounting principles (''GAAP'')), including servicing assets, are not acceptable collateral to secure credit transactions with an affiliate. Several commenters supported the proposed rule's categorical exclusion of intangible assets. A larger number of commenters argued, however, that banks should be permitted to use certain intangible assets as section 23A collateral, in particular assets, such as servicing assets and purchased credit card relationships, that count as capital under the Board's capital adequacy guidelines.

The final rule retains the categorical exclusion of intangible assets.[89] In the Board's view, intangible assets are particularly hard to value, and a member bank may have significant difficulty in collecting and selling such assets in a reasonable period of time. The Board believes that these reasons justify the exclusion of intangible assets from the types of collateral eligible to satisfy the requirements of section 23A. The Board notes that the identifiable intangible assets that are not deducted from capital under the capital adequacy guidelines (namely, servicing assets and purchased credit card relationships) are limited quantitatively in the extent to which they count as capital.[90] The Board is willing to consider requests, on a case-by-case basis, to permit particular types of intangible assets to serve as section 23A collateral, and has amended the proposed rule to allow for such *ad hoc* exceptions to the categorical exclusion.

In addition, the proposed rule provided that guarantees and letters of credit are not eligible collateral for section 23A purposes. Several commenters argued that the rule should permit banks to satisfy the collateral requirements of section 23A with letters of credit. These commenters stated that letters of credit are less likely to fluctuate in value than many other types of eligible section 23A collateral, represent senior claims on banks, are not subject to an automatic stay in bankruptcy, involve lower administrative costs than most other types of collateral, convey an immediate right to cash rather than a possibly illiquid piece of collateral, and are recognized under the net capital rule of the Securities and Exchange Commission (''SEC''). Other commenters argued that banks should be allowed to use guarantees to comply with section 23A's collateral requirements. These commenters noted that the Board's capital adequacy guidelines recognize the value of guarantees as a credit risk mitigation device.

The final rule continues to provide that guarantees and letters of credit are not acceptable section 23A collateral.[91] Letters of credit and guarantees are not balance sheet assets under GAAP and, accordingly, would not constitute ''real or personal property'' under section

[87] 12 U.S.C. 371c(c)(1)(A)(iv).

[88] 12 U.S.C. 371c(c)(3) and (4)

[89] The final rule, however, does not define intangible assets by reference to GAAP. Upon further review, the Board has determined that the GAAP definition of intangible asset may be underinclusive for section 23A purposes. If a member bank has doubts as to whether a particular asset is an intangible asset, the bank should consult with Board staff.

[90] *See* 12 CFR part 225, appendix A, § II.B.1.d–e.

[91] The final rule also provides that instruments ''similar'' to guarantees and letters of credit are ineligible collateral. For example, in the Board's view, a member bank cannot satisfy section 23A's collateral requirements by purchasing credit protection in the form of a credit default swap referencing the affiliate's obligation.

23A. Moreover, section 23A(c) requires that credit transactions with an affiliate be ''secured'' by collateral. A credit transaction between a member bank and an affiliate supported only by a guarantee or letter of credit from a third party would not appear to meet the statutory requirement that the credit transaction be secured by collateral. Of course, the Board could grant an exemption that would permit guarantees or letters of credit to count as collateral or to serve as a replacement for collateral. The Board has decided not to do so at this time because guarantees and letters of credit often are subject to material adverse change clauses and other covenants that allow the issuer of the guarantee or letter of credit to deny coverage. Moreover, in the Board's view, there is a particularly significant risk, highlighted by recent events, that a member bank may have difficulty collecting on a guarantee or letter of credit provided by a nonaffiliate on behalf of an affiliate of the bank.

As noted above, section 23A prohibits a member bank from accepting securities issued by an affiliate as collateral for an extension of credit to an affiliate. The proposed rule clarified that securities issued by the member bank itself also are not eligible collateral to secure a credit transaction with an affiliate. Most commenters supported the exclusion of bank-issued equity securities but urged the Board to permit banks to take their own debt securities as section 23A collateral. These commenters pointed out that bank deposits (another form of bank liability) count as a preferred form of collateral under section 23A and that selling or retiring bank-issued debt securities would provide real benefit to the bank upon foreclosure.

The Board has determined to modify the proposed rule to address these comments. Under the final rule, equity securities issued by the lending member bank, and debt securities issued by the lending member bank that count as regulatory capital of the bank, are not eligible collateral under section 23A. If a member bank were forced to foreclose on a credit transaction with an affiliate secured by such securities, the bank may be unwilling to liquidate the collateral promptly to recover on the credit transaction because the sale might depress the price of the bank's outstanding securities or result in a change in control of the bank. In addition, to the extent that a member bank is unable or unwilling to sell such securities acquired through foreclosure, the transaction would likely result in a reduction in the bank's capital, thereby offsetting any potential benefit provided by the collateral.

3. Perfection and Priority (§ 223.14(d))

To ensure that a member bank has good access to the assets serving as collateral for its credit transactions with affiliates, the final regulation provides (as did the proposed rule) that a member bank's security interest in any collateral required by section 23A must be perfected in accordance with applicable law. This requirement is consistent with court decisions on the issue [92] and ensures that the member bank has the legal right to realize on the collateral in case of default, including a default resulting from the affiliate's insolvency or liquidation. Commenters supported this provision.

For similar reasons, the final rule requires (as did the proposed rule) that a member bank either obtain a first priority security interest in the required collateral or deduct from the amount of collateral obtained by the bank the lesser of (i) the amount of any security interests in the collateral that are senior to that obtained by the bank or (ii) the amount of any credits secured by the collateral that are senior to that of the bank. For example, if a member bank lends $100 to an affiliate and takes as collateral a second lien on a parcel of real estate worth $200, the arrangement would only satisfy the collateral requirements of section 23A if the affiliate owed the holder of the first lien $70 or less (a credit transaction secured by real estate must be secured at 130 percent of the amount of the transaction). Commenters also supported this provision. At the request of a commenter, the final rule includes an example of how to compute the section 23A collateral value of a junior lien.

4. Unused Portion of an Extension of Credit (§ 223.14(f)(2))

Section 23A requires that the ''amount'' of an extension of credit be secured by the statutorily prescribed levels of collateral. Board staff traditionally has advised that a member bank that provides a line of credit to an affiliate must secure the full amount of the line of credit throughout the life of the credit. That is, staff has not viewed section 23A as permitting a member bank to satisfy the collateral requirements of the statute by securing only the portion of a credit line that has been drawn down by the affiliate. In an acknowledgment that this treatment may be too strict for some lines of credit, the proposed rule provided that the collateral requirements of section 23A would not apply to the unused portion of an extension of credit to an affiliate so long as the member bank does not have any legal obligation to advance additional funds under the credit facility until the affiliate has posted the amount of collateral required by the statute with respect to the entire used portion of the extension of credit.[93] In such credit arrangements, securing the unused portion of the credit line is unnecessary from a safety and soundness perspective because the affiliate cannot require the member bank to advance additional funds without posting the additional collateral required by section 23A.

Numerous commenters endorsed this provision of the proposed rule, and the final rule maintains the provision.[94] The Board notes that, if a member bank voluntarily advances additional funds under such a credit arrangement without obtaining the additional collateral required under section 23A to secure the entire used amount (despite its lack of legal obligation to make such an advance), the Board would view this action as a violation of the collateral requirements of the statute.

5. Purchasing Affiliate Debt Securities in the Secondary Market (§ 223.14(f)(3))

As described above, the rule treats a member bank's investment in the debt securities of an affiliate as an extension of credit by the bank to the affiliate that is subject to section 23A's collateral requirements. In the preamble to the proposed rule, the Board sought comment on whether the rule should permit member banks in certain circumstances to purchase debt securities issued by an affiliate without satisfying the collateral requirements of section 23A. In particular, the Board invited comment on whether it should require section 23A collateralization in circumstances where a member bank purchases an affiliate's debt securities (i) from a third party in a *bona fide* secondary market transaction or (ii) pursuant to a registered public offering document or a private placement memorandum in an offering in which the affiliate receives significant participation from third parties. A large number of commenters expressed

[92] *See Fitzpatrick* v. *FDIC,* 765 F.2d 569 (6th Cir. 1985).

[93] This proposed treatment would not apply to guarantees, acceptances, and letters of credit issued on behalf of an affiliate, which must be fully collateralized at inception.

[94] The final rule uses the terms ''used'' and ''unused'' in place of the proposed rule's ''drawn'' and ''undrawn'' to conform to more standard regulatory usage. *See, e.g.,* Schedule RC–L to the bank Call Report.

support for the first of the proposed exemptions; only a few commenters advocated for (and one commenter criticized) the second proposed exemption.

The Board has decided to adopt the first of the two exemptions described above. When a member bank buys an affiliate's debt securities in a bona fide secondary market transaction, the risk that the purchase is designed to shore up an ailing affiliate is reduced. Moreover, any purchase of affiliate debt securities that qualifies for this exemption would remain subject to the quantitative limits of section 23A and the market terms requirement of section 23B. In analyzing a member bank's good faith under this exemption, the Board would expect examiners to look at the time elapsed between the original issuance of the affiliate's debt securities and the bank's purchase, the existence of any relevant agreements or relationships between the bank and the third party seller of the affiliate's debt securities, any history of bank financing of the affiliate, and any other relevant information.

C. Prohibition on the Purchase of Low-Quality Assets (§ 223.15)

Section 223.15 of the regulation restates the statute's general prohibition on the purchase by a member bank of low-quality assets from an affiliate.[95] Several commenters on the proposed rule argued that the Board should exempt a bank's purchase of low-quality assets from an insured sister bank. These commenters stated that the cross-guarantee provisions in section 5(e) of the FDI Act eradicate any concern about low-quality asset transactions between sister banks.[96]

The Board has consulted with the other Federal banking agencies on this matter and has determined not to grant the requested exemption for several reasons. First, when Congress added the sister-bank exemption to section 23A in 1982, it specifically and affirmatively left sister banks subject to the prohibition on the purchase of low-quality assets.[97] When Congress added the cross-guarantee provisions to the FDI Act in 1989, it did not amend the sister-bank exemption in section 23A to permit a member bank to buy low-quality assets from a sister bank. In light of such evidence of Congressional intent, the Board should not exempt a member bank's purchase of low-quality assets from a sister bank in the absence of compelling evidence that the exemption would be in the public interest.

The Board does not believe that such compelling evidence exists. Importantly, the FDI Act's cross-guarantee provisions would only assist the FDIC to recoup losses in the event of the failure of a sister bank, and would not ensure that sister banks continue to operate in a safe and sound manner as going concerns. Moreover, the FDI Act's cross-guarantee provisions would not apply to all sets of section 23A sister banks. For example, the cross-guarantee provisions would not apply to section 23A sister banks if the sister banks were not subsidiaries of a BHC or a thrift holding company.[98] Finally, the cross-guarantee provisions would not prevent sister banks from using the requested exemption to transfer low-quality assets back and forth among themselves to escape examination.

The proposed rule provided an exception, based on a long-standing staff interpretation, to the general prohibition on purchasing low-quality assets from an affiliate.[99] The exception allowed a member bank that purchased a loan participation from an affiliate to renew its participation in the loan, or provide additional funding under the existing participation, even if the underlying loan had become a low-quality asset, so long as certain criteria were met. The proposed rule provided this exception because these renewals or additional credit extensions may enable both the affiliate and the participating member bank to avoid or minimize potential losses. It would be inconsistent with the purposes of section 23A to bar a member bank from using sound banking judgment to take the necessary steps (consistent with the criteria established in the rule) to protect itself from harm in such a situation.

Under the proposed rule, the exception was available only if the underlying loan was not a low-quality asset at the time the member bank purchased its participation and the proposed transaction would not increase the member bank's proportional share of the credit facility. The member bank also had to obtain the prior approval of its board of directors for the transaction and provide its appropriate Federal banking agency with 20 days' prior notice of the transaction.

Commenters expressed support for preserving this exemption in Regulation W but asked the Board to soften three of the conditions to the exemption. Several commenters argued for the removal of the ''no increase in the bank's share'' requirement on the ground that lead banks involved in a credit restructuring often are required to repurchase participations previously sold to smaller banks, thereby increasing their proportionate share of the problem credit. Another commenter recommended that banks be allowed to increase their share of a problem credit by 5–10 percent.

Commenters also criticized the board of directors' approval requirement on the grounds that it is time consuming and that renewals of problem credits are not sufficiently important to require board-level attention in most cases. Commenters offered several alternatives, including approval by an executive committee of the bank's board of directors, approval by senior bank management, approval under the bank's normal approval process for restructuring problem credits, and approval by bank management under policies adopted by the bank's board of directors.

Moreover, commenters expressed significant opposition to the 20 days' prior notice requirement. They asked the Board to remove the requirement or replace it with an after-the-fact notice requirement. According to these commenters, speed is often of the essence in workout situations, and there is no evidence that this exemption has been abused by banks in the nearly twenty years that it has been available.

Under proposed Regulation W, this restructuring exemption only applied when a member bank renewed a participation in a loan originated by an affiliated *depository institution.* Some commenters expressed a view that the exemption should be expanded to permit a bank to renew a participation in a loan originated by any affiliate (not just an affiliated depository institution). According to these commenters, such an expansion of the exemption would enhance a bank's ability to protect itself from troubled borrowers by restructuring loans.

In response to these comments, the Board has decided to revise the rule in several respects. First, the final rule contains a 20 days' post-consummation notice requirement in replacement of the proposed rule's 20 days' prior notice requirement. Second, the final rule permits a member bank to increase its proportionate share in a restructured loan by 5 percent (or by a higher percentage with the prior approval of

[95] 12 U.S.C. 371c(a)(3). Section 23A does not prohibit an affiliate from donating a low-quality asset to a member bank, so long as the bank provides no consideration for the asset.

[96] *See* 12 U.S.C. 1815(e).

[97] See 12 U.S.C. 371c(d)(1).

[98] *See* 12 U.S.C. 1813(w), 1815(e)(1) and (9), and 1841(c)(2).

[99] See Letter dated Aug. 10, 1984, from Michael Bradfield, General Counsel of the Board, to Margie Goris.

the bank's appropriate Federal banking agency). Third, the final rule expands the scope of the exemption to include renewals of participations in loans originated by any affiliate of the member bank (not just affiliated depository institutions). Fourth, the final rule softens the board of directors' prior approval requirement as follows. For renewals of loans originated by a nondepository affiliate of the member bank, the renewals must be approved, consistent with current practice, by the entire board of directors of the bank. For renewals of loans originated by depository institution affiliates of the member bank, however, the rule provides several different ways to comply with the requirement. The member bank may obtain the prior approval of the entire board of directors, of an executive committee of the board of directors, or of selected senior management officials (so long as, in the case of approvals by management officials, the board of directors of the member bank establishes policies and procedures for such renewals, any approvals by bank management are consistent with such policies and procedures, and the board of directors periodically reviews the policies and procedures and any approvals by management). The Board believes that the conditions to the exemption contained in the final rule should be sufficient to ensure that any exempted problem loan restructurings do not pose a safety and soundness risk to the member bank.

D. Attribution Rule (§ 223.16)

Section 23A provides that any transaction between a member bank and any person is deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.[100] For example, a member bank's loan to a customer for the purpose of purchasing securities from the inventory of a broker-dealer affiliate of the bank would be a covered transaction under section 23A. This ''attribution rule'' was included in section 23A to prevent a member bank from evading the restrictions in the section by using intermediaries and to limit the exposure that a member bank has to customers of affiliates of the bank. The proposed regulation restated this provision and provided several exemptions from the attribution rule.

1. In General

Commenters offered a few general suggestions on the scope of section 23A's attribution rule. Several commenters recommended that the Board include a ''bona fide, ordinary course transactions'' exemption to the attribution rule, similar to the exemption that the Board adopted in Regulation O.[101] In addition, a number of commenters contended that the attribution rule should not apply to transactions where the bank does not know, or have reason to know, that the proceeds are transferred to or used for the benefit of an affiliate. Some of these commenters argued that the purpose of the attribution rule is to prevent sham transactions, not to prevent an affiliate from receiving unintended or accidental benefits from bank action. A few commenters even asked the Board to remove all the particular exemptions from the attribution rule included in Regulation W because, in the view of these commenters, the exemptions create the negative implication that all other transactions with third parties in which money flows to an affiliate are covered.

The Board has decided not to include any such general exemptions from the scope of the attribution rule in final Regulation W. The Board considers an exemption for transactions where the member bank does not know, or have reason to know, that the proceeds will flow to an affiliate as too broad in light of the important place of section 23A in the bank regulatory framework. The Board is not willing to make the applicability of the attribution rule contingent in all cases on subjective factors such as a member bank's knowledge of the purpose of a transaction or on such ambiguous, though objective, factors such as a member bank's reason to know of the purpose of a transaction.

The Board also does not believe that a Regulation O-like exemption, for transactions by a member bank with a third party the proceeds of which are used by the third party in a bona fide transaction to acquire goods or services from an affiliate of the member bank, would be appropriate in the context of section 23A. Regulation O's exemption meshes well into that rule's underlying statutory scheme because sections 22(g) and 22(h) of the Federal Reserve Act do not generally cover asset purchases from an insider; section 23A, on the other hand, generally does restrict asset purchases from an affiliate. Moreover, Regulation O's exemption reflects an underlying policy concern not to discourage qualified business owners from serving as management officials of banks. This sort of concern is not present in the section 23A context.

2. Agency and Riskless Principal Transactions (§ 223.16(b) and (c)(1–2))

Concurrently with proposed Regulation W, the Board issued a final interpretation that exempted from section 23A a loan from a member bank to a nonaffiliate who uses the loan proceeds to purchase securities from a broker-dealer affiliate of the bank acting exclusively as a riskless principal.[102] Proposed Regulation W also included this exemption and sought additional public comment on its terms. Numerous commenters recommended extending the riskless principal exemption to include assets other than securities and selling affiliates other than broker-dealers. These commenters did not provide specific information to the Board about other asset classes that are routinely purchased and sold on a riskless principal basis. In light of this absence of evidence, the Board declines at this time to expand the riskless principal exemption to include other assets or other affiliates.

Unlike the final interpretation and proposed Regulation W, final Regulation W contains a definition of ''acting exclusively as a riskless principal.'' The definition generally tracks language in Regulation Y and provides that, for purposes of Regulation W, a company acts exclusively as a riskless principal if the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security in a secondary market transaction for its own account to offset a contemporaneous sale to (or purchase from) the customer.[103]

Several commenters stated that Regulation W should clarify that a loan from a bank to a nonaffiliate who uses the loan proceeds to purchase assets through an affiliate of the bank acting solely as an agent is not subject to the attribution rule. Concurrently with the issuance of proposed Regulation W, the Board issued a final interpretation of section 23A confirming, with some conditions, this view.[104] The Board has decided to include this interpretation within the text of Regulation W to advance the goal of making the regulation a single, comprehensive source for the Board's views on sections 23A and 23B.

The final rule clarifies one of the conditions to both the agency and riskless principal exemptions. Under the final interpretations adopted in May

[100] 12 U.S.C. 371c(a)(2).

[101] *See* 12 CFR 215.3(f).

[102] 66 FR 24226, May 11, 2001.

[103] *See* 12 CFR 225.28(b)(7)(ii).

[104] 66 FR 24226, May 11, 2001.

2001, neither of these exemptions was available to a member bank if the asset purchased by the nonaffiliate was sold ''out of the inventory of'' any affiliate of the bank. The Board is concerned that users of the regulation may read the ''out of the inventory'' language so narrowly as to allow a member bank to use these exemptions in situations where the asset purchased by the nonaffiliate was sold as principal by an affiliate of the bank that did not have an inventory of the sold asset. Whether the selling affiliate has accumulated an inventory of the asset sold to the nonaffiliate is not important from section 23A's perspective; what matters is whether the asset purchased by the nonaffiliate was sold as principal by an affiliate of the member bank. The final rule replaces the ''out of the inventory'' standard with an ''as principal'' standard to remove this ambiguity. Accordingly, under the final rule, these two exemptions are not available if the asset purchased by the nonaffiliate was sold as principal (other than as riskless principal) by an affiliate of the member bank.

3. Preexisting Lines of Credit (§ 223.16(c)(3))

Concurrently with proposed Regulation W, the Board issued a final interpretation that exempted from section 23A an extension of credit by a member bank to a nonaffiliate who uses the credit to purchase securities underwritten by or otherwise sold as principal by a broker-dealer affiliate of the bank, if the extension of credit is made pursuant to a preexisting line of credit not entered into in contemplation of transactions with an affiliate of the bank.[105] Proposed Regulation W also included this exemption and sought additional public comment on its terms. Commenters requested that the Board expand the exemption to cover purchases of any asset from any affiliate. In the view of these commenters, an extension of credit pursuant to a general purpose, preexisting line of credit should be exempt from the attribution rule regardless of the type of asset being purchased by the customer. Final Regulation W's version of this exemption is substantially identical to the one contained in the May 2001 final interpretation (and proposed Regulation W). The Board may expand the exemption in the future, however, after it acquires additional supervisory experience with its use.

[105] 66 FR 24226, May 11, 2001.

4. General Purpose Credit Cards (§ 223.16(c)(4))

a. *Proposed rule and public comments.*—Section 23A's attribution rule, by its terms, covers an extension of credit by a member bank to an individual who uses the proceeds to purchase a product or service from an affiliate of the bank. Proposed Regulation W exempted from the attribution rule an extension of credit by a member bank to a nonaffiliate pursuant to a general purpose credit card in such a situation. The proposed rule defined a general purpose credit card as a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the bank (such as a Visa card or Mastercard) if less than 25 percent of the aggregate amount of purchases with the card are purchases from an affiliate of the bank.[106] Under the proposed rule, extensions of credit to unaffiliated borrowers pursuant to special purpose credit cards (that is, credit cards that may only be used or are substantially used to buy goods from an affiliate of the member bank) remained subject to the attribution rule.[107]

The Board proposed this exemption because the funding benefit received by the member bank's affiliate from the use of general purpose credit cards by unaffiliated borrowers is likely to be minimal, and a member bank's decision to issue a general purpose credit card (and make loans pursuant to such a credit card) to an unaffiliated borrower likely would be based on independent credit standards unrelated to any possible affiliate transaction.

Commenters strongly supported inclusion of an exemption for extensions of credit to nonaffiliates pursuant to a general purpose credit card, but a large number of commenters criticized the rule's definition of general purpose credit card.[108] These commenters contended that the 25 percent limit in the definition of general purpose credit card would impose substantial monitoring and recordkeeping burden on banks. Some of these commenters also alleged that the limit is not needed for safety and soundness given that the card must be widely accepted by merchants and given the virtual impossibility of a bank using credit card transactions to assist a troubled affiliate. These commenters argued that the possibility that customers may use a widely accepted credit card to buy goods from a nonaffiliate should ensure that credit is granted on market terms, and pointed out that credit card transactions expose the bank to the credit risk of thousands or millions of individual unaffiliated credit card customers and do not directly expose the bank to the credit risk of any affiliate.

Several commenters made suggestions about how the Board should modify, or clarify the application of, the quantitative limit in the definition of general purpose credit card. A couple of commenters believed that the rule should raise the 25 percent limit to 50 percent. In addition, several commenters asked the Board to provide banks with a cure period if they exceed the limit and requested that the Board provide guidance as to whether banks must do continuous or only periodic compliance checks with the limit.

b. *Final Rule.*—The Board continues to believe that the definition of general purpose credit card should include the 25 percent limit. If more than 25 percent of the purchases effected through a credit card are purchases of products and services from affiliates of the card-issuing bank, the bank has significant incentives to relax its credit underwriting standards to facilitate the sale of goods and services by its affiliates. The Board believes that a limit should be placed on the ability of a bank to use the Federal safety net to subsidize the financing of the sales activities of affiliates of the bank.

The final rule contains several adjustments to ease the burden of complying with the general purpose credit card exemption. First, the final rule provides several different methods for a member bank to demonstrate that its credit card meets the 25 percent test. For a member bank that has no commercial affiliates (other than those permitted for a FHC under section 4 of the BHC Act), the bank would be deemed to satisfy the 25 percent test if the bank has no reason to believe that it would fail the test.[109] Such a member

[106] The proposed rule also required that a general purpose credit card be eligible for use to purchase products or services from nonaffiliates of the card-issuing bank. The Board has deleted this requirement from the final rule because of its redundance on the ''widely accepted'' condition.

[107] As noted above, most special purpose credit card banks comply with section 23A by selling their receivables or establishing a segregated, earmarked deposit account to collateralize their receivables at the end of each day.

[108] Many commenters urged the Board to expand the exemption for general purpose credit cards to cover other forms of general revolving consumer debt, including home equity lines of credit, overdraft lines on checking accounts, and margin loans.

[109] A member bank could use this method of complying with the 25 percent test even if, for example, the bank's FHC controls, under section 4(a)(2), 4(c)(2), or 4(k)(4)(H) of the BHC Act, several companies engaged in nonfinancial activities.

bank would not be obligated to establish systems to verify strict, ongoing compliance with the 25 percent test. For a member bank that has commercial affiliates (beyond those permitted for a FHC under section 4 of the BHC Act), the bank would be deemed to satisfy the 25 percent test if (i) the bank establishes systems to verify compliance with the 25 percent test on an ongoing basis and periodically validates its compliance with the test; or (ii) the bank presents information to the Board demonstrating that its card would comply with the 25 percent test.[110]

The final rule adopts a stricter compliance standard for member banks with commercial affiliates because banks with commercial affiliates typically are the banks whose credit cards are used substantially to purchase goods or services from affiliates. The Board believes that the stricter standard for member banks with commercial affiliates will help constrain the mixing of banking and commerce by limiting the ability of such banks to use the Federal safety net to subsidize the commercial activities of their affiliates.

Second, the final rule provides member banks that fall out of compliance with the 25 percent test a three-month grace period to return to compliance before extensions of credit under the card become covered transactions. Third, the final rule gives member banks that are required to validate their ongoing compliance with the 25 percent test a fixed method, time frames, and examples for computing compliance.

The Board does not expect that member banks whose cards fail to meet the terms of the general purpose credit card exemption would be compelled to discontinue the cards. Most banks that issue special purpose credit cards historically have complied with section 23A by selling their credit card receivables to an affiliate at the end of each day.[111] Under such arrangements, which also would be permissible under final Regulation W, the bank does not provide continuous financing for its commercial affiliates; rather, it obtains funding from outside sources on a daily basis for its affiliate-related credits. Member banks that issue VISA cards and Mastercards that fail to satisfy the 25 percent test would be able to use the same mechanisms to comply with section 23A as do banks that currently issue special purpose credit cards.

V. Valuation and Timing Principles Under Section 23A—Subpart C

Subpart C of the regulation sets forth the rules that member banks must use to calculate the value of covered transactions for purposes of determining compliance with the quantitative limits and collateral requirements of section 23A. This subpart also sets forth several rules that member banks must employ to determine when a transaction becomes or ceases to be a covered transaction.

A. Credit Transactions With an Affiliate (§ 223.21)

1. Valuation (§ 223.21(a))

The proposed regulation provided generally that a credit transaction between a member bank and an affiliate initially must be valued at the amount of funds provided by the member bank to, or on behalf of, the affiliate plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate. The final rule supplements the proposed rule by providing that the section 23A value of a credit transaction between a member bank and an affiliate is the *greater* of (i) the principal amount of the credit transaction; (ii) the amount owed by the affiliate to the member bank under the credit transaction; or (iii) the result produced by application of the formula set forth in the proposed rule.

The first prong of the final rule's valuation formula for credit transactions (''the principal amount of the credit transaction'') likely would determine the valuation of a transaction in which a member bank purchased a zero-coupon note issued by an affiliate. The Board believes that a member bank should value such an extension of credit at the principal, or face, amount of the note (that is, the amount that the affiliate ultimately must pay to the bank) rather than the amount of funds initially advanced by the bank. For example, assume a member bank purchased from an affiliate for $50 a 10-year zero-coupon note issued by the affiliate with a face amount of $100. The proposed rule's valuation formula permitted the member bank to value this transaction at $50—the amount provided to the affiliate by the bank in the transaction. The final rule requires the member bank to value this transaction at $100.

The second prong of the final rule's valuation formula for credit transactions (''the amount owed by the affiliate'') likely would determine the valuation of a transaction in which an affiliate fails to pay a member bank when due a fee for services rendered by the bank to the affiliate. This prong of the valuation formula is not intended to include within section 23A's quantitative limits, however, items such as accrued interest not yet due on a member bank's loan to an affiliate or credit exposure of a member bank to an affiliate on a derivative transaction that is not the functional equivalent of a credit transaction (unless and until the affiliate defaults in making a required payment to the bank on a settlement date).

Member banks will be able to determine the section 23A value for most credit transactions under the third prong of the rule's valuation formula. Under this prong, for example, a $100 term loan is a $100 covered transaction, a $300 revolving credit facility is a $300 covered transaction (regardless of how much of the facility the affiliate has drawn down), and a guarantee backstopping a $500 debt issuance of the affiliate is a $500 covered transaction.[112] Several commenters contended that the unused portion of a line of credit should not count toward the quantitative limits of section 23A, especially not if the bank is only conditionally obligated to advance additional funds. In the Board's view, the entire amount (both the used and unused portions) of a line of credit or other loan commitment counts toward a member bank's quantitative limits under section 23A regardless of whether the line of credit contains a ''material adverse change'' clause or any other provision that is intended to relieve the bank of its funding obligation under certain conditions. This position is consistent with the treatment of commitments under the Board's capital adequacy guidelines and is particularly appropriate in the section 23A context because of the risk that a member bank may not use every contractual escape hatch available to avoid funding a troubled affiliate.[113]

Under section 23A and the regulation, a member bank has made an extension of credit to an affiliate if the bank purchases from a third party a loan previously made to an affiliate of the bank. The rule provides a different valuation formula for these indirect credit transactions. For these credit transactions, the member bank must value the transaction at the price paid by the bank for the loan plus any

[110] One way that a member bank could demonstrate that its card would comply with the 25 percent test would be to show that the total sales of the bank's affiliates are less than 25 percent of the total purchases by cardholders.

[111] As discussed below, the Board has not historically treated intraday credit extensions as covered transactions under section 23A. Section 223.42(l) of the final Regulation W provides a fairly comprehensive exemption for intraday extensions of credit.

[112] These examples are included in the text of the final rule.

[113] *See* 12 CFR part 225, appendix A, § III.D.2.

additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the credit agreement.

For example, if a member bank pays a third party $90 for a $100 term loan that the third party previously made to an affiliate of the bank (because, for example, the loan was at a fixed rate and has declined in value due to a rise in the general level of interest rates), the covered transaction amount is $90 rather than $100.[114] The lower covered transaction amount reflects the fact that the member bank's maximum loss on the transaction is $90 rather than the original principal amount of the loan. For another example, if a member bank pays a third party $70 for a $100 line of credit to an affiliate of which $70 had been drawn down by the affiliate, the covered transaction amount would be $100 (the $70 purchase price paid by the bank for the credit plus the remaining $30 that the bank could be required to lend under the credit line).

Although a member bank's purchase of, or investment in, a debt security issued by an affiliate is considered an extension of credit to an affiliate under the regulation, these transactions are not valued like other extensions of credit. The valuation rules for purchases of, and investments in, the debt securities of an affiliate are set forth in section 223.23 of the rule, which is discussed below in part IV.C. of this preamble.

2. Timing (§ 223.21(b)(1))

The proposed regulation also made clear that a member bank has entered into a credit transaction with an affiliate at the time *during the day* that the bank becomes legally obligated to make the extension of credit to, or issue the guarantee, acceptance, or letter of credit on behalf of, the affiliate. This timing rule represented a departure from the industry practice of complying with section 23A only with respect to overnight positions. This timing rule also clarified that a covered transaction occurs at the moment that the member bank executes a legally valid, binding, and enforceable credit agreement or guarantee, and does not occur only when a member bank funds a credit facility or makes payment on a guarantee.

Many commenters objected that forcing banks to keep track of extensions of credit to an affiliate on an intraday basis would present serious compliance burdens for banks. These commenters believed that banks would have little trouble ensuring that credit transactions satisfy the collateral requirements of section 23A or the market terms requirement of section 23B at the intraday time of the transactions. According to these commenters, however, banks currently record loans and measure loan exposures at the end of each business day, and requiring intraday loan amount tracking would impose a significant cost on banks.

The Board has decided to retain proposed Regulation W's general timing rule for credit transactions. The burden of the timing rule should be significantly mitigated, however, by the exemption for intraday extensions of credit in section 223.42(l) of the regulation.[115] The Board further notes that the burden of the timing rule should be lessened by the fact that Regulation W, consistent with section 23A, only requires a member bank to compute compliance with its quantitative limits when the bank is about to engage in a new covered transaction. Accordingly, Regulation W does not require a member bank to compute compliance with the rule's quantitative limits on a continuous basis.

3. Credit Transactions With Nonaffiliates That Become Affiliates (§ 223.21(b)(2))

Banks sometimes lend money to, or issue guarantees on behalf of, unaffiliated companies that later become affiliates of the bank. The proposed regulation provided that credit transactions with a nonaffiliate become covered transactions at the time that the nonaffiliate becomes an affiliate of the member bank. Specifically, the proposed rule required that a member bank (i) ensure that any such credit transaction satisfies the collateral requirements of section 23A promptly after the nonaffiliate becomes an affiliate; and (ii) include the amount of any such transaction in the aggregate amount of the bank's covered transactions for purposes of determining whether any *future* covered transactions would comply with the quantitative limits of section 23A. The proposal did not require a member bank to reduce the amount of its covered transactions with any affiliate at the time the nonaffiliate becomes an affiliate.[116]

Many commenters criticized this approach. They contended that loans to a nonaffiliate that later becomes an affiliate should be eternally exempt from the quantitative limits and collateral requirements of section 23A because the loans were made on arm's-length terms at inception and the terms of the loans would not change when the nonaffiliate becomes an affiliate. Several of these commenters argued that the proposed rule's approach to these loans is highly burdensome, especially for banking organizations that have a significant equity investment business (where new companies are constantly becoming, and ceasing to be, 15 percent-owned portfolio company affiliates). According to these commenters, banks currently treat these loans as grandfathered, and the proposed rule's approach would put banks and their merchant banking affiliates at a serious disadvantage to nonregulated lenders and their venture firm affiliates. Other commenters contended that the ''prompt'' collateral requirement would be burdensome because it may be difficult to obtain collateral if the new affiliate is less than wholly owned or has other debt outstanding with negative pledge covenants.

The Board continues to subscribe to the general approach of the proposed rule in these situations. Although commenters may be correct in asserting that transactions with a nonaffiliate would be on market terms and would stay on market terms after the nonaffiliate becomes an affiliate, section 23A requires more than that covered transactions with affiliates be on market terms. Section 23A supplements the market terms requirement of section 23B with, among other things, quantitative limits and collateral requirements. If the Board did not treat credit transactions with a nonaffiliate as covered transactions at the time that the nonaffiliate becomes an affiliate, a member bank could incur uncollateralized exposure to affiliates well beyond the 20 percent aggregate quantitative limit in section 23A.[117]

[114] The final rule includes this example of the valuation of indirect credit transactions.

[115] As discussed in more detail below in part VII.L. of this preamble, however, the intraday credit exemption generally applies only to extensions of credit that a member bank expects to be repaid, sold, or terminated by the end of its U.S. business day. Hence, the final rule generally requires a member bank to ensure its intraday compliance with section 23A when making a loan to an affiliate during the day that the bank expects to remain outstanding and on its books overnight.

[116] The proposed rule also set forth a stricter set of compliance rules, which are discussed below, for situations in which a member bank entered into a credit transaction with a nonaffiliate ''in contemplation of'' the nonaffiliate becoming an affiliate.

[117] Although the lending limits applicable to national and State member banks would apply to these credit transactions at inception, these lending limits permit loans to a single corporate group in amounts up to 50 percent of the bank's capital stock and surplus. 12 CFR 32.5(d). The lending limits also would cease to apply to these credit transactions

Continued

The Board agrees, however, that relief from the collateral requirements of section 23A would be appropriate in certain circumstances. Accordingly, the final rule exempts credit transactions from the collateral requirement in situations where the member bank entered into the transaction with the nonaffiliate at least one year before the nonaffiliate became an affiliate of the bank. In such circumstances, it is unlikely that the member bank engaged in the transaction with the nonaffiliate in anticipation of the nonaffiliate becoming an affiliate of the bank. The Board advises member banks, however, that such transactions must comply with the market terms requirement of section 23B.

As noted above, in cases where the member bank entered into the credit transaction with the nonaffiliate ''in contemplation of'' the nonaffiliate becoming an affiliate of the bank, the proposed rule imposed a more strict set of requirements. In these cases, the proposed rule required the member bank, at or before the time the nonaffiliate becomes an affiliate, (i) to ensure compliance with the collateral requirements of section 23A and (ii) to reduce the aggregate amount of its covered transactions with affiliates if necessary so as not to exceed the quantitative limits of section 23A.

Although commenters did not object to the proposed rule's stricter approach to ''in contemplation'' transactions, some commenters argued that the ''in contemplation'' standard in the rule is too vague. Several of these commenters believed the ''in contemplation'' standard should be replaced with a more objective standard that focuses on whether the nonaffiliate has entered into a binding agreement under the terms of which the nonaffiliate would become an affiliate or whether there has been a publicly announced transaction in which the nonaffiliate would become an affiliate. Other commenters contended that the Board should clarify that a transaction will be deemed ''in contemplation of'' a nonaffiliate becoming an affiliate only if the bank personnel involved in approving the transaction were aware of negotiations concerning the nonaffiliate's future affiliation with the bank. According to these commenters, any other formulation would require a banking organization to disseminate broadly throughout the firm prospective merger information (in contravention of good securities law compliance policies).

The Board does not believe that the above-described circumstances constitute a complete set of the situations in which a member bank might make a loan to a nonaffiliate ''in contemplation of'' the nonaffiliate becoming an affiliate of the bank. To provide some clarity to banking organizations, however, the final rule specifies that a transaction between a member bank and a nonaffiliate is presumed to be ''in contemplation of'' the nonaffiliate becoming an affiliate if the bank enters into the transaction with the nonaffiliate after the execution of, or commencement of negotiations designed to result in, an agreement under the terms of which the nonaffiliate would become an affiliate.

The exemption from the collateral requirements discussed above does not apply to ''in contemplation'' transactions. If a member bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the bank must ensure that the transaction complies with the collateral requirements of the rule at the time the nonaffiliate becomes an affiliate (regardless of whether a year elapsed between the inception of the credit transaction and the nonaffiliate becoming an affiliate).

B. Asset Purchases From an Affiliate (§ 223.22)

Regulation W provides that a purchase of assets by a member bank from an affiliate initially must be valued at the total amount of consideration given by the bank in exchange for the asset. This consideration can take any form, and the regulation makes clear that it would include an assumption of liabilities by the member bank. The regulation also indicates that an asset purchase remains a covered transaction for a member bank for as long as the bank holds the asset, and that the value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP and are reflected on the bank's financial statements.

The final rule, like the proposed rule, also clarifies that certain asset purchases by a member bank from an affiliate are not valued in accordance with the general asset purchase valuation formula. First, if the member bank buys from one affiliate a loan to a second affiliate, the bank must value the transaction as a credit transaction with the second affiliate under section 223.21 of the final rule.[118] Second, if the member bank buys from one affiliate a security issued by a second affiliate, the bank must value the transaction as an investment in securities issued by the second affiliate under section 223.23 of the final rule.[119] Third, if the member bank engages in a constructive asset purchase described in section 223.31 of the final rule, the bank must value the transaction under that section.[120]

The final rule (*unlike* the proposed rule) also sets forth a special valuation rule for a member bank's purchase of a line of credit or loan commitment from an affiliate. A member bank initially must value such asset purchases at the purchase price paid by the bank for the asset plus any additional amounts that the bank is obligated to provide under the credit facility.[121] The Board has crafted this special valuation rule to ensure that there are limits on the amount of risk a company can shift to an affiliated bank. Without the rule, a company would be able to transfer substantial amounts of unfunded obligations to an affiliated bank in a manner that barely affected the bank's quantitative limits under section 23A.

Under the regulation, in contrast with credit transactions, an asset purchase from a nonaffiliate that later becomes an affiliate generally does not become a covered transaction for the purchasing member bank. If a member bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, however, the asset purchase becomes a covered transaction at the time the nonaffiliate becomes an affiliate. In addition, the member bank must ensure that the aggregate amount of the bank's covered transactions (including any such asset purchase from the nonaffiliate) would not exceed the quantitative limits of section 23A at the time the nonaffiliate becomes an affiliate.

The regulation provides several examples designed to assist member banks in valuing purchases of assets from an affiliate.

after the nonaffiliate becomes an affiliate. 12 CFR 32.1(c)(1).

[118] The valuation rule for credit transactions is discussed above in part V.A. of this preamble.

[119] The purchase by a member bank of a security issued by an affiliate is discussed below in part V.C. of this preamble.

[120] These transactions are discussed below in part VI.A. of this preamble.

[121] A member bank would not be required to include unfunded, but committed, amounts in the value of the covered transaction if (i) the credit facility being transferred from the affiliate to the bank is unconditionally cancelable (without cause) at any time by the bank; and (ii) the bank makes a separate credit decision before each drawing under the facility.

Several commenters requested confirmation that if a bank receives an encumbered asset from an affiliate, it is not forever a covered transaction in the amount of the encumbrance. The Board has modified an example in the regulation to clarify that a member bank's receipt of an encumbered asset from an affiliate ceases to be a covered transaction when, for example, the bank sells the asset.

C. Purchases of and Investments in Securities Issued by an Affiliate (§ 223.23)

Section 23A includes as a covered transaction a member bank's purchase of, or investment in, securities issued by an affiliate. Proposed Regulation W required a member bank to value a purchase of, or investment in, securities issued by an affiliate (other than a financial subsidiary of the bank) [122] at the *greater* of the bank's purchase price or carrying value of the securities.[123] Under the rule, a member bank that paid no consideration in exchange for affiliate securities would nevertheless have to value the covered transaction at no less than the bank's carrying value of the securities.[124] In addition, under the rule, if the member bank's carrying value of the affiliate securities increased or decreased after the bank's initial investment (due to profits or losses at the affiliate), the amount of the bank's covered transaction would increase or decrease to reflect the bank's changing financial exposure to the affiliate, but could not decline below the amount paid by the bank for the securities.

A number of commenters objected to this valuation formula and offered alternatives. Several commenters argued that investments in an affiliate's securities should be valued at the *lower* of purchase price or carrying value. Under this formula, a contribution of affiliate securities to a bank would be valued at zero, and the bank would be permitted without limit to reduce the covered transaction amount for a purchase of affiliate securities as the value of the securities declined. These commenters justified their formula's treatment of bank investments in a declining affiliate by pointing out that a bank's capital would be reduced to reflect the decline in value of the affiliate's securities and by noting that their approach more accurately reflects the bank's actual remaining financial exposure to the affiliate.

Under the commenters' proposed formula, a bank's section 23A value for an investment in affiliate securities also would *not* increase as the value of the securities increased. These commenters argued that an increase in the value of an investment does not create additional risk of loss for the investor and that there is no justification for restricting section 23A lending as an affiliate increases in financial strength. One of these commenters contended that the proposed regulation's valuation rule is inconsistent in increasing the section 23A value of an investment as the affiliate prospers but not decreasing the section 23A value of the investment as the affiliate declines.

Other commenters argued that investments in an affiliate's securities always should be valued at the purchase price or, at a minimum, that a contribution of affiliate securities initially should be valued at zero.

The Board has determined to adopt the valuation rule contained in the proposed regulation. The Board continues to believe that several important considerations support the general carrying value approach of this valuation rule. First, the approach is consistent with GAAP, which would require a bank to reflect its investment in securities issued by an affiliate at carrying value throughout the life of the investment, even if the bank paid no consideration for the securities. Second, the approach is supported by the terms of the statute, which defines both a ''purchase of'' *and* an ''investment in'' securities issued by an affiliate as a covered transaction. The statute's ''investment in'' language indicates that Congress was concerned with a member bank's continuing exposure to an affiliate through an ongoing investment in the affiliate's securities.

Third, amendments to section 23A made by the GLB Act support the approach. The GLB Act defines a financial subsidiary of a bank as an affiliate of the bank, but specifically provides that the section 23A value of a bank's investment in securities issued by a financial subsidiary does *not* include retained earnings of the subsidiary. The negative implication from this provision is that the section 23A value of a bank's investment in *other* affiliates *includes* the affiliates' retained earnings, which would be reflected in the bank's carrying value of the investment under the rule.

Finally, the carrying value approach is consistent with the purposes of section 23A—limiting the financial exposure of banks to their affiliates and promoting safety and soundness. The valuation rule requires a member bank to revalue upwards the amount of an investment in affiliate securities only when the bank's exposure to the affiliate increases (as reflected on the bank's financial statements) and the bank's capital increases to reflect the higher value of the investment. In these circumstances, the valuation rule merely reflects the member bank's greater financial exposure to the affiliate and enhances safety and soundness by reducing the bank's ability to engage in additional transactions with an affiliate as the bank's exposure to that affiliate increases.

As noted above, this valuation rule also provides that the covered transaction amount of a member bank's investment in affiliate securities can be no less than the purchase price paid by the bank for the securities, even if the carrying value of the securities declines below the purchase price. Although this aspect of the valuation rule is not consistent with GAAP, using the member bank's purchase price for the securities as a floor for valuing the covered transaction is appropriate for several reasons. First, it ensures that the amount of the covered transaction never falls below the amount of funds actually transferred by the member bank to the affiliate in connection with the investment. In addition, the purchase price floor limits the ability of a member bank to provide additional funding to an affiliate as the affiliate approaches insolvency. If the regulation were to value investments in securities issued by an affiliate strictly at carrying value, then the member bank could lend more funds to the affiliate as the affiliate's financial condition worsened. As the affiliate declined, the member bank's carrying value of the affiliate's securities would decline, the section 23A value of the bank's investment likely would decline, and, consequently, the bank would be able to provide additional funding to the affiliate under section 23A. This type of increasing support for an affiliate in distress is precisely what section 23A was intended to restrict.

The regulation provides several examples designed to assist member banks in valuing purchases of and investments in securities issued by an affiliate.

[122] The valuation rule for investments in securities issued by a financial subsidiary is discussed below in part VI.B.2. of this preamble.

[123] Staff traditionally advised member banks to value a purchase of securities issued by an affiliate at the purchase price paid by the bank for the securities.

[124] Carrying value refers to the amount at which the securities are carried on the GAAP financial statements of the member bank.

D. Posting Securities Issued by an Affiliate as Collateral (§ 223.24)

1. General Valuation Rule (§ 223.24(a) and (b))

Section 23A defines as a covered transaction a member bank's acceptance of securities issued by an affiliate as collateral for a loan or extension of credit to any person or company.[125] This type of covered transaction has two classes: one in which the only collateral for the loan is affiliate securities; and another in which the loan is secured by a combination of affiliate securities and other collateral. Section 23A does not explain how these different types of covered transactions should be valued for purposes of determining compliance with the quantitative limits of the statute.

As a general rule, Regulation W values covered transactions of the first class, where the credit extension is secured exclusively by affiliate securities, at the full amount of the extension of credit. This approach reflects the difficulty of measuring the actual value of typically untraded and illiquid affiliate securities, and conservatively assumes that the value of the securities is equal to the full value of the loan that the securities collateralize. This position also reflects the traditional advice given by Board staff on this issue. Regulation W contains an exception to the general rule where the affiliate securities held as collateral have a ready market. In that case, the transaction may be valued at the fair market value of the affiliate securities. The exception grants relief from staff's traditional position in those circumstances where the value of the affiliate securities is independently verifiable by reference to transactions occurring in a liquid market.[126]

Regulation W values covered transactions of the second class, where the credit extension is secured by affiliate securities and other collateral, at the *lesser* of (i) the total value of the extension of credit minus the fair market value of the other collateral or (ii) the fair market value of the affiliate securities (if the securities have a ready market). Until 1999, staff advised member banks to value this class of covered transactions at the total amount of the extension of credit. In January 1999, the staff modified its position on mixed collateral loans to permit member banks to value these transactions in a manner similar to the rule.[127]

The Board believes that where a loan is secured by securities of an affiliate and other collateral, it is reasonable to reflect the fair market value of the other collateral in determining whether, and to what extent, the loan should count toward the member bank's section 23A quantitative limits. Under the rule's method of calculation for mixed-collateral loans, if a loan is fully secured by nonaffiliate collateral with a fair market value that equals or exceeds the loan amount, then the loan would not be included in the member bank's quantitative limits for purposes of section 23A.[128] If the loan is not fully secured by other collateral, then the maximum amount that the member bank must count against its quantitative limits is the difference between the full amount of the loan and the fair market value of the nonaffiliate collateral.

The approach taken in Regulation W, however, is different from that of the 1999 interpretation in two respects. First, although the 1999 interpretation allowed member banks to use the fair market value of the affiliate securities as an upper limit on the value of the transaction regardless of the liquidity of the affiliate securities, the regulation only allows member banks to use the value of the affiliate securities as an upper limit if the affiliate securities have a ready market. The Board is concerned that a member bank could understate the market value of affiliate securities that do not have a ready market in order to shrink the size of the covered transaction. Second, the regulation's ready market requirement replaces an implicit condition of the 1999 interpretation that only a small amount of the total collateral could be affiliate securities. The valuation rule in Regulation W applies regardless of the amount of affiliate collateral.[129]

Commenters did not criticize the proposed rule's general valuation formulas for these covered transactions, and the general formulas contained in the final rule are substantially identical to those in the proposal. Commenters did, however, suggest several new exemptions for this type of covered transaction: (i) Transactions in which the affiliate securities serving as collateral meet the (d)(6) exemption and (ii) transactions in which the affiliate securities serving as collateral represent less than 50 percent of the total collateral. The final rule does not include either of these suggested exemptions. In the Board's view, a loan by a member bank that is secured by affiliate securities could be used to provide indirect financing to an affiliate and exposes the bank (albeit secondarily) to the credit risk of an affiliate regardless of whether the affiliate securities are traded in a liquid market or constitute a minority of the total collateral for the loan.

2. Exemption for Shares Issued by an Affiliated Mutual Fund (§ 223.24(c))

In connection with the proposed rule, the Board specifically sought comment on whether to exempt from section 23A loans to third parties secured by affiliate-issued mutual fund shares. A large number of commenters advocated granting this exemption and offered the following principal arguments in support of their position: (i) The bank is not funding an affiliate in these transactions; (ii) although section 23A includes as a covered transaction a loan to a third party collateralized by affiliate securities, the purpose of including this covered transaction was to prevent evasion, and evasion is implausible when the collateral taken by the bank is affiliate-issued mutual funds; (iii) tracking these loans can be very burdensome as many of the loans are small and the value of the mutual fund collateral changes daily; (iv) the assets of an affiliated mutual fund generally are shares of nonaffiliates, which could otherwise serve as collateral for the loan without creating a covered transaction under section 23A; and (v) mutual funds

[125] 12 U.S.C. 371c(b)(7)(D). This covered transaction only arises when the member bank's loan is to a nonaffiliate. Under section 23A, the securities issued by an affiliate are not acceptable collateral for a loan or extension of credit to any affiliate. *See* 12 U.S.C. 371c(c)(4). Moreover, if the proceeds of a loan that is secured by an affiliate's securities are transferred to an affiliate by the unaffiliated borrower (for example, to purchase assets or securities from the inventory of an affiliate), the loan should be treated as a loan to the affiliate. The loan must then be secured with collateral in an amount and of a type that meets the requirements of section 23A for loans by a member bank to an affiliate.

[126] In either case, the transaction must comply with section 23B; that is, the member bank must obtain the same amount of affiliate securities as collateral on the credit extension that the bank would obtain if the collateral were not affiliate securities.

[127] *See* Letter dated January 21, 1999, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Bruce Moland. This letter set forth an opinion of Board staff that, for purposes of applying the quantitative limits in section 23A, such mixed-collateral loans should be valued at the lesser of (i) the total amount of the loan less the fair market value of nonaffiliate collateral (if any) or (ii) the fair market value of the affiliate's securities that are used as collateral.

[128] The Board notes, however, that section 23A requires a loan by a member bank that is secured with any amount of an affiliate's securities to be consistent with safe and sound banking practices. 12 U.S.C. 371c(a)(4).

[129] One commenter asked for clarification that a member bank may use the higher of the two valuation options for these transactions if, for example, the bank does not have the procedures and systems in place to verify the fair market value of affiliate securities. The Board has adjusted the language of the rule to clarify that a member bank may choose to use the higher valuation option.

are highly regulated, their shares are highly liquid and can only be purchased at their daily net asset value, and mutual funds are required by law to have boards of directors that are largely independent of the bank and its affiliates.

In the proposal, the Board asked for comment on five potential conditions to the availability of this exemption: (i) The borrower does not use the proceeds of the loan to purchase shares of the affiliated mutual fund; (ii) the borrower is not an executive officer of the member bank or its affiliates; (iii) the price of the mutual fund shares is quoted routinely in a widely disseminated news source; (iv) the shares of the mutual fund are widely held by the public; and (v) the member bank and its affiliates do not own in the aggregate more than 5 percent of the shares of the mutual fund. A few commenters recommended that the Board drop all five of these conditions. Other commenters specifically endorsed or specifically objected to particular conditions.

One commenter supported the use of proceeds condition, but other commenters objected to the condition because the use of loan proceeds is hard to monitor and control. Several commenters expressed opposition to the executive officer condition. Many of them noted that Regulation O already comprehensively regulates bank lending to executive officers. A number of other commenters expressed a willingness to support the condition if it were modified to cover only executive officers that are subject to Regulation O restrictions.

A few commenters supported the pricing mechanism condition. One commenter opposed the condition on the grounds that major newspapers only report on large mutual funds, and even small mutual funds are liquid (and must redeem shares upon request at all times) and have prices quoted on internet sites and in other news sources. Several commenters asked the Board to widen this condition to explicitly permit mutual fund price quotes to be obtained from Morningstar, Lipper, Bloomberg, fund supermarket websites, or any other unaffiliated, real-time, electronic pricing system.

Some commenters expressly supported the widely held condition. Several other commenters criticized the condition. These commenters noted that the daily redemption requirement to which mutual funds are subject should satisfy any liquidity concerns that the Board may have. They advised that concentrated ownership of a fund would not adversely impact the fund's liquidity or the reliability of pricing information.

One commenter supported the 5 percent ownership limit condition. Many commenters opposed the condition, largely because of its purported redundance on the widely held condition. Some of these commenters asked the Board to replace the 5 percent condition with a ''no control'' condition.

The Board has decided to include in the final rule an exemption for extensions of credit by a member bank that are secured by shares of an affiliated mutual fund. To qualify for the exemption, the transaction must meet several conditions. First, to ensure that the affiliate collateral is liquid and trades at a fair price, the affiliated mutual fund must be an open-end investment company that is registered with the SEC under the 1940 Act. Second, to ensure that the member bank can easily establish and monitor the value of the affiliate collateral, the affiliated mutual fund's shares serving as collateral for the extension of credit must have a publicly available market price. Third, to reduce the member bank's incentives to use these extensions of credit as a mechanism to support the affiliated mutual fund, the member bank and its affiliates must not own more than 5 percent of the fund's shares (excluding certain shares held in a fiduciary capacity). Finally, the proceeds of the extension of credit must not be used to purchase the affiliated mutual fund's shares serving as collateral or otherwise used to benefit an affiliate. In such circumstances, the member bank's extension of credit would be covered by section 23A's attribution rule.

Instead of creating a separate exemption for these transactions in subpart E of the rule, the Board has decided to effect this exemption by adjusting the valuation rule for extensions of credit secured by affiliate-issued securities. Inserting the exemption into the valuation rule for this type of covered transaction will enable users of the regulation to determine more easily the non-exempt covered transaction amount for loans secured in part by affiliate-issued securities and in part by other collateral. The final rule effects the exemption by providing that an affiliated mutual fund's shares that meet the above-mentioned criteria do not count as affiliate-issued securities for purposes of the valuation rule for extensions of credit secured by affiliate-issued securities.

VI. Other Requirements Under Section 23A—Subpart D

Subpart D of the rule provides guidance to banking organizations on three issues under section 23A: (i) Merger and acquisition transactions between a member bank and an affiliate; (ii) financial subsidiaries of a member bank; and (iii) derivative transactions between a member bank and an affiliate.

A. Merger and Acquisition Transactions Between a Member Bank and an Affiliate (§ 223.31)

1. The General Rule (§ 223.31(a–c))

As noted above, section 23A includes a member bank's purchase of assets from an affiliate and a member bank's purchase of, or investment in, securities issued by an affiliate within the definition of covered transaction. In the past, the Board has been required to apply these provisions to transactions where a member bank directly or indirectly acquires an affiliate. There are three principal methods by which a member bank acquires an affiliate. The first method is where a member bank directly purchases or otherwise acquires the affiliate's assets and assumes the affiliate's liabilities. In this case, the transaction is treated as a purchase of assets, and the covered transaction amount is equal to the amount of any separate consideration paid by the member bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.

The second method is where a member bank acquires an affiliate by merger. Because a merger with an affiliate generally results in the member bank acquiring all the assets of the affiliate and assuming all the liabilities of the affiliate, this transaction is effectively equivalent to the purchase and assumption transaction described in the previous paragraph. Accordingly, the merger transaction also is treated as a purchase of assets, and the covered transaction amount is again equal to the amount of any separate consideration paid by the member bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.[130]

The third method involves the contribution or sale of a controlling block of an affiliate's shares to a member bank. The Board previously has treated these transactions as a purchase of assets covered by section 23A if the member bank paid consideration for the shares or the affiliate whose shares were

[130] As noted above, section 223.3(dd) of the final rule makes explicit the Board's view that these merger transactions generally involve the purchase of assets by a member bank from an affiliate.

contributed to the member bank had liabilities to any affiliate of the bank.[131]

The proposed rule did not alter the treatment of the first two types of transaction described above. The proposed rule did set forth, however, a new treatment for the third type of transaction. The proposed rule provided that the acquisition by a member bank of securities issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of assets from an affiliate if (i) as a result of the transaction, the company becomes an operating subsidiary of the bank; and (ii) the company has liabilities, or the bank gives cash or any other consideration in exchange for the securities. The proposed rule also provided that these transactions must be valued initially at the sum of (i) the total amount of consideration given by the member bank in exchange for the securities; and (ii) the total liabilities of the company whose securities have been acquired by the member bank. In effect, the proposed rule required member banks to treat such share donations and purchases in the same manner as if the member bank had purchased the assets of the transferred company at a purchase price equal to the liabilities of the transferred company (plus any separate consideration paid by the bank for the shares).

A number of commenters objected to this approach. Many of them complained that the approach would prevent banks from efficiently reorganizing their operations and, therefore, would put BHCs at a competitive disadvantage to other less regulated companies. These commenters also contended that the approach ignores the reality of the corporate limited liability shield.

Some of these commenters simply asserted that the rule should not treat a donation of shares as a covered transaction because the bank is obtaining an asset (shares) at no cost. Other commenters offered a variety of alternative formulas for valuing these transactions. The principal alternatives offered were to value these covered transactions at (i) the purchase price paid by the bank for the shares plus any liabilities of the transferred company minus the value of the assets of the transferred company (as verified by an independent third party); (ii) the purchase price paid by the bank for the shares; (iii) the GAAP net worth of the transferred company; or (iv) the purchase price paid by the bank for the shares plus any liabilities owed by the transferred company to affiliates of the bank (staff's traditional approach).

For the following reasons, the Board is adopting a valuation rule for these transactions that is substantially identical to the formula set forth in the proposed rule.[132] Regulation W's treatment of these transactions is consistent with the approach that section 23A takes on subsidiaries of member banks and with economic and marketplace realities. Section 23A treats member banks and their operating subsidiaries as a single unit. Transactions between a member bank and its operating subsidiaries are not treated as covered transactions between a member bank and an affiliate under section 23A; rather, they are treated as transactions entirely inside the member bank. Similarly, a transaction between a member bank's operating subsidiary and an affiliate of the member bank is treated as a covered transaction between the member bank itself and an affiliate under section 23A. Ignoring the separate corporate form of operating subsidiaries of member banks and treating the assets and liabilities of operating subsidiaries of member banks as assets and liabilities of the member bank itself is, therefore, consistent with the structure of section 23A. Accordingly, under section 23A, these share transfers in which an affiliate of a member bank becomes an operating subsidiary of the bank are properly viewed as a purchase of an affiliate's assets and an assumption of an affiliate's liabilities by the bank.[133]

Regulation W's treatment of affiliate share transfers is also consistent with the Board's supervisory experience. The Board has found that banks often operate their consolidated organizations—because of capital requirements, financial reporting requirements, and reputational risk concerns—as if the assets and liabilities of subsidiaries were assets and liabilities of the bank itself. Banks often attempt to shore up their subsidiaries in times of financial stress, despite the limited liability inhering in the corporate form. Accordingly, the rule treats the assets and liabilities of an operating subsidiary of a member bank as assets and liabilities of the bank itself for purposes of section 23A.[134]

The rule only imposes asset purchase treatment on affiliate share transfers where the company whose shares are being transferred to the member bank was an affiliate of the bank before the transfer. If the transferred company were not an affiliate before the transfer, it would not be appropriate to treat the share transfer as a purchase of assets *from an affiliate.* Similarly, the rule only requires asset purchase treatment for affiliate share transfers where the transferred company becomes a subsidiary and not an affiliate of the member bank through the transfer. If the transferred company were not a subsidiary of the member bank after the transfer (because, for example, the bank acquired less than 25 percent of a class of voting securities of the company) or if the company were an affiliate of the member bank after the transfer (because, for example, the bank's holding company continued to own 25 percent or more of a class of voting securities of the company or because the company became a financial subsidiary of the bank after the transfer), the Board does not believe it would be appropriate to treat the liabilities of the company as the liabilities of the bank for purposes of section 23A. In those circumstances, section 23A would not treat the member bank and the transferred company as a single unit.

[131] *See, e.g.,* Letter dated June 11, 1999, from Robert deV. Frierson, Associate Secretary of the Board, to Mr. Robert L. Anderson. The Board adopted this view of these internal reorganizations principally because the transactions often were motivated by funding problems at the transferred affiliate or the member bank's parent holding company and by a desire to use the bank's resources to alleviate those funding needs. Soon after consummating such reorganizations, bank funds typically were used to pay down liabilities that the transferred company had to the parent holding company of the member bank.

[132] The final rule differs from the proposed rule in one small respect. The final rule explicitly addresses situations in which the assets of the transferred company include securities issued by an affiliate, extensions of credit to an affiliate, or other covered transactions. In these situations, the final rule clarifies that a member bank initially must value these transactions at the greater of (i) the purchase price paid by the bank for the shares of the transferred company plus the total liabilities of the transferred company; or (ii) the total value of all covered transactions acquired by the bank as a result of the transaction. For example, assume the transferred company has $100 of assets ($25 of which are loans to an affiliate) and $40 of liabilities. Upon donation of the company's shares to the member bank, the bank would have a $40 covered transaction. If $45 of the transferred company's assets are loans to an affiliate, however, the member bank would have a $45 covered transaction upon donation of the company's shares to the bank.

[133] One commenter contended that the rule's approach to these reorganization transactions unfairly counts 100 percent of the liabilities of the transferred company even if only 25 percent of the shares of the company are transferred. As noted above, this outcome is consistent with the structure of section 23A, which treats 25-percent-owned operating subsidiaries as part of the member bank itself.

[134] Because a member bank usually can merge a subsidiary into itself, transferring all the shares of an affiliate to a member bank often is functionally equivalent to a transaction in which the bank directly acquires the assets and assumes the liabilities of the affiliate. As noted above, in a direct acquisition of assets and assumption of liabilities, the covered transaction amount would be equal to the total amount of liabilities assumed by the member bank.

One commenter speculated that this approach to affiliate share transfers would create an eternal covered transaction. Under the rule, affiliate share transfers are deemed to be an asset purchase by the member bank from an affiliate and would diminish over time in the same manner as any other asset purchase. That is, the amount of the covered transaction would decline over time as the assets of the transferred company were sold or amortized. The amount of the covered transaction would not decline over time, however, as the member bank paid off the liabilities of the transferred company. A valuation example in the final rule will help to explain how the covered transaction amount of these affiliate share transfers winds down over time.

Another commenter asked the Board to clarify that a BHC could reduce the covered transaction amount for an affiliate share transfer by making a cash contribution to the transferee bank in the amount of the liabilities of the transferred company. The Board agrees that an affiliate share transfer would not be a covered transaction if, in addition to receiving the affiliate shares, the transferee member bank received a cash contribution equal to the amount of the liabilities of the transferred company. In this situation, the member bank should not be deemed to have ''purchased'' the assets of the transferred company.

The Board notes that a member bank that proposes to purchase assets from an affiliate as part of an internal corporate reorganization of a banking organization (including in a transaction that is treated as a purchase of assets under section 223.31 of the rule) may qualify for a regulatory or case-by-case exemption from section 23A. Section 223.41(d) of the final rule sets forth a general regulatory exemption for these covered transactions, and part VII.C. of this preamble discusses both the general regulatory exemption and the Board's practice of granting case-by-case exemptions for these covered transactions. In addition, section 223.31(d) of the final rule, which is discussed in the following section of the preamble, provides an exemption for certain step transactions that are treated as asset purchases under section 223.31(a) of the rule.

2. Step Transaction Exemption (§ 223.31(d–e))

The proposed regulation also contained a regulatory exemption for certain merger and acquisition transactions that result in the transfer of an affiliate to a member bank. Section 223.31(d) of the proposed rule provided an exemption from the requirements of section 23A (other than the safety and soundness requirement) for transactions in which, for example, a BHC acquires the stock of an unaffiliated company and, immediately after consummation of the acquisition, transfers the shares of the acquired company to the holding company's subsidiary member bank. Although these transactions technically would be treated as an asset purchase by a member bank from an affiliate—and the member bank would be required to value the covered transaction at the total amount of the liabilities of the acquired company (plus any separate consideration paid by the bank for the company)—the Board believed that it would be inappropriate to require a member bank to count these transactions toward its section 23A quantitative limits. If the member bank had acquired the target company directly, there would have been no covered transaction, and the mere fact that the bank's holding company owned the target company for a moment in time does not change the fundamental nature of the transaction.

Consequently, the proposed regulation exempted these ''step'' transactions under certain conditions. First, the member bank had to acquire the target company immediately after the company became an affiliate (by being acquired by the bank's holding company, for example). Second, the member bank had to acquire the entire ownership position in the target company that its holding company acquired. Finally, the entire transaction had to comply with the market terms requirement of section 23B.

Many commenters objected to the immediate transfer requirement, mostly on the basis that a BHC may want to hold the target company at the holding company level for some time for tax, business line integration, or regulatory approval reasons. Some commenters advised that the immediate transfer requirement could be replaced with a requirement that the target company be acquired by the BHC ''in contemplation of'' being put under the bank. Other commenters recommended that the immediate transfer requirement be replaced with a 3-month, 6-month, or 1-year requirement.

As noted in the preamble to the proposed rule, to the extent that the member bank acquires the target company some time after the company becomes an affiliate, the transaction looks less like a single transaction in which the bank acquires the target company and more like two separate transactions, the latter of which involves the bank acquiring assets from an affiliate. Nevertheless, in order to provide banking organizations with a reasonable amount of time to address legal, tax, and business issues relating to an acquisition, the Board has decided to permit member banks to avail themselves of the step transaction exemption if they acquire the target company within three months after the target company becomes an affiliate (so long as the appropriate Federal banking agency for the bank has approved the longer time period). To protect the transferee member bank from a decline in the financial condition or asset quality of the target company during the time that the acquired company is an affiliate of the bank, the final rule adds two conditions to the applicability of the step transaction exemption. First, a member bank must notify its appropriate Federal banking agency and the Board, at or before the time that the target company becomes an affiliate of the bank, of its intent ultimately to acquire the target company. Second, there must be no material change in the business or financial condition of the target company during the time between when the company becomes an affiliate of the member bank and the bank's receipt of the company.

Several commenters also objected to the ''bank must acquire all of the target company'' requirement. These commenters alleged that there are legitimate business, regulatory, and tax reasons to distribute a target company's assets and subsidiaries to various bank and nonbank subsidiaries of the holding company. Some of these commenters advocated replacing the 100 percent requirement with a 25–50 percent requirement. The Board has decided to keep the 100 percent requirement in order to prevent a holding company from keeping the good subsidiaries of the target company and transferring the bad subsidiaries of the target company to the holding company's subsidiary member bank.

Of course, if a banking organization fails to meet the terms of the step transaction exemption, the organization may be able to satisfy the conditions of Regulation W's internal corporate reorganization exemption or may be able to obtain a case-by-case exemption from the Board.

B. Financial Subsidiaries (§ 223.32)

As noted above, the GLB Act amended section 23A to treat a financial subsidiary of a bank as an affiliate of the bank and to establish several special rules that apply to transactions with financial subsidiaries. The regulation combines all of the special rules that apply to transactions with financial subsidiaries in a single section.

1. Applicability of the 10 Percent Quantitative Limit to Transactions With a Financial Subsidiary (§ 223.32(a))

First, consistent with the GLB Act, the regulation provides that the 10 percent quantitative limit in section 23A does not apply with respect to covered transactions between a member bank and any individual financial subsidiary of the bank. Accordingly, a member bank's aggregate amount of covered transactions with any individual financial subsidiary of the bank may exceed 10 percent of the bank's capital stock and surplus.[135] A member bank's covered transactions with its financial subsidiaries, however, are subject to the 20 percent quantitative limit in section 23A. Thus, a member bank may not engage in a covered transaction with any affiliate (including a financial subsidiary) if the bank's aggregate amount of covered transactions with all affiliates (including financial subsidiaries) would exceed 20 percent of the bank's capital stock and surplus.

The Board notes that the exemption from the 10 percent limit for investments by a member bank in its *own* financial subsidiary does not apply to investments by a member bank in the financial subsidiary of an affiliated depository institution. Although the financial subsidiary of an affiliated depository institution is an affiliate of the member bank for purposes of sections 23A and 23B, the GLB Act states that only ''covered transactions between a bank and any individual financial subsidiary *of the bank*'' are not subject to the 10 percent limit in section 23A.[136] Accordingly, a member bank may not engage in a covered transaction with the financial subsidiary of an affiliated depository institution if the aggregate amount of the member bank's covered transactions with that financial subsidiary would exceed 10 percent of the bank's capital stock and surplus.

2. Valuation of Investments in Securities Issued by a Financial Subsidiary (§ 223.32(b))

Because financial subsidiaries of a member bank are considered affiliates of the bank for purposes of section 23A, a member bank's purchases of and investments in the securities of its financial subsidiary are covered transactions under the statute. The GLB Act further provides that a member bank's investment in its own financial subsidiary, for purposes of section 23A, shall not include the retained earnings of the financial subsidiary.[137] In light of this statutory provision, the regulation contains a special valuation rule for investments by a member bank in the securities of its own financial subsidiary.[138] Such investments must be valued at the greater of (i) the price paid by the member bank for the securities; or (ii) the carrying value of the securities on the financial statements of the member bank (determined in accordance with GAAP but without reflecting the bank's pro rata share of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities).[139]

This valuation rule differs from the general valuation rule for investments in securities issued by an affiliate only in that the financial subsidiary rule requires, consistent with the GLB Act, that the carrying value of the investment be computed without consideration of the retained earnings or losses of the financial subsidiary since the time of the member bank's investment. As a result of this rule, the covered transaction amount for a member bank's investment in securities issued by its financial subsidiary generally would not increase after it was made except in the event that the member bank made an additional capital contribution to the subsidiary or purchased additional securities of the subsidiary.

The regulation provides several examples designed to assist member banks in valuing investments in securities issued by a financial subsidiary.

One commenter criticized this valuation rule and asserted that a donation of shares of a financial subsidiary to a bank should never have a section 23A value. For the reasons discussed above in part V.C. of this preamble, the Board does not believe that such an approach to valuation would be consistent with the purposes and structure of section 23A.

3. Anti-Evasion Rules (§ 223.32(c))

Section 23A generally applies only to transactions between a member bank and an affiliate of the bank and transactions between a member bank and a third party where some benefit of the transaction accrues to an affiliate of the bank. The statute generally does not apply to transactions between two affiliates. The GLB Act establishes two special anti-evasion rules, however, that govern transactions between a financial subsidiary of a member bank and another affiliate of the bank.[140] First, the GLB Act provides that any purchase of, or investment in, securities issued by a member bank's financial subsidiary by an affiliate of the bank will be deemed to be a purchase of, or investment in, such securities by the bank itself. Second, the GLB Act authorizes the Board to deem an extension of credit made by a member bank's affiliate to any financial subsidiary of the bank to be an extension of credit by the bank to the financial subsidiary, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act. The regulation incorporates both of these provisions.

In the proposed regulation, the Board exercised its authority under the second anti-evasion rule by stating that an extension of credit to a financial subsidiary of a member bank by an affiliate of the bank would be treated as an extension of credit by the bank itself to the financial subsidiary if the extension of credit is treated as regulatory capital of the financial subsidiary. An example of the kind of credit extension covered by this provision would be a subordinated loan to a financial subsidiary that is a securities broker-dealer where the loan is treated as capital of the subsidiary under the SEC's net capital rules. Although several commenters opposed this provision of the proposed rule, and argued that it would impede a BHC's ability to serve as a source of strength for a subsidiary bank, the Board has decided to retain this provision in the final rule. The Board believes that treating such an extension of credit as a covered transaction is appropriate because the extension of credit by the affiliate has a similar effect on the subsidiary's regulatory capital as an equity investment by the affiliate, which is treated as a covered transaction by the terms of the GLB Act (as described above). The Board notes that the final rule generally does not prevent a BHC

[135] As noted above, in response to the request of a commenter, section 223.11 of the final rule also indicates that covered transactions between a member bank and its financial subsidiary are exempt from the 10 percent limit.

[136] 12 U.S.C. 371c(e)(3)(A) (emphasis added).

[137] GLB Act § 121(b)(1) (codified at 12 U.S.C. 371c(e)(3)(B)).

[138] Consistent with the GLB Act, the special valuation formula in Regulation W for investments by a member bank in its own financial subsidiary does not apply to investments by a member bank in a financial subsidiary of an affiliated depository institution. Such investments must be valued using the general valuation formula set forth in section 223.23 of the final rule for investments in securities issued by an affiliate and, further, may trigger the anti-evasion rule contained in section 223.32(c)(1) of the rule.

[139] The regulation also makes clear that if a financial subsidiary is consolidated with its parent member bank under GAAP, the carrying value of the bank's investment in the financial subsidiary shall be determined based on parent-only financial statements of the bank.

[140] GLB Act § 121(b)(1) (codified at 12 U.S.C. 371c(e)(4)).

or other affiliate of a member bank from providing financial support to a financial subsidiary of the bank in the form of a senior or secured loan.

One commenter asked the Board to determine that loans from an affiliate to a financial subsidiary of a member bank that count as regulatory capital of the financial subsidiary are treated as investments in the equity securities of an affiliate rather than loans to an affiliate, or to otherwise exempt such transactions from the collateral requirements of section 23A. According to this commenter, such a determination would be consistent with the reason for extending the GLB Act's anti-evasion principle to cover these loans—that the loans are equivalent to equity investments. The Board disagrees with this comment and believes that such loans by an affiliate to a member bank's financial subsidiary should be treated, consistent with the GLB Act's anti-evasion provisions, as if they were made by the member bank itself. If the member bank itself had made a subordinated loan counting as regulatory capital to its financial subsidiary, the loan would be subject to the quantitative limits and collateral requirements of section 23A as an extension of credit. Accordingly, under the final rule, such a loan by an affiliate of the member bank to the financial subsidiary also would be subject to the quantitative limits and collateral requirements of section 23A as an extension of credit.

In addition, the proposed regulation provided an exception to the anti-evasion rules for transactions between a member bank's financial subsidiary and another affiliate if the other affiliate were itself a depository institution subject to section 23A. The exception would have avoided treating certain transactions as covered transactions both for the parent member bank of the financial subsidiary and for the other affiliated depository institution. After further analysis, the Board has decided to remove this proposed exception to the anti-evasion rule because the exception also would have allowed the financial subsidiary of a member bank to obtain funding from the entire banking organization in amounts that exceeded 20 percent of the parent bank's capital and surplus. Congress designed the anti-evasion rules to prevent a bank from funding its financial subsidiaries by paying dividends to its parent and having its parent, directly or indirectly, reinvest the funds into the financial subsidiary of the bank. The potential for such ''round-tripping'' exists whether or not the parent routes such funding flows to a subsidiary bank's financial subsidiary through a sister depository institution of the bank.

The Board may find certain other extensions of credit by an affiliate to a financial subsidiary to be covered transactions under section 23A on a case-by-case basis.

C. Derivative Transactions (§ 223.33)

1. Background

Derivative transactions between a bank and its affiliates generally arise either from the risk management needs of the bank or the affiliate. Transactions arising from the bank's needs typically arise when a bank enters into a swap or other derivative contract with a customer but chooses not to hedge directly the market risk generated by the derivative contract or is unable to hedge the risk directly because the bank is not authorized to hold the hedging asset. In order to manage the market risk, the bank may have an affiliate acquire the hedging asset. The bank would then do a ''bridging'' derivative transaction between itself and the affiliate maintaining the hedge.

Other derivative transactions between a bank and its affiliate are affiliate-driven. A bank's affiliate may enter into an interest-rate or foreign-exchange derivative with the bank in order to accomplish the asset-liability management goals of the affiliate. For example, a BHC may hold a substantial amount of floating-rate assets but issue fixed-rate debt securities to obtain cheaper funding. The BHC may then enter into a fixed-to-floating interest-rate swap with its subsidiary bank to reduce the holding company's interest-rate risk.

Banks and their affiliates that seek to enter into derivative transactions for hedging (or risk-taking) purposes could enter into the desired derivatives with unaffiliated companies. Banks and their affiliates often choose to use each other as their derivative counterparties, however, in order to maximize the profits of and manage risks within the consolidated financial group.

2. Actions Already Taken by the Board

As noted above, the GLB Act required the Board to adopt, by May 12, 2001, a final rule to address as covered transactions under section 23A the credit exposure arising from derivative transactions between member banks and their affiliates (''bank-affiliate derivatives'').[141] Determining the appropriate treatment for bank-affiliate derivatives under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the statutory deadline in the GLB Act, the Board took the following two steps on May 11, 2001, to address under section 23A the credit exposure arising from bank-affiliate derivatives.

First, the Board published an interim final rule (concurrently with proposed Regulation W) that subjected bank-affiliate derivatives to the market terms requirement of section 23B. Accordingly, the interim rule required each member bank to (i) have in place credit limits on its derivatives exposure to affiliates that are at least as strict as the credit limits the bank imposes on unaffiliated companies that are engaged in similar businesses and are substantially equivalent in size and credit quality; (ii) monitor derivatives exposure to affiliates in a manner that is at least as rigorous as it uses to monitor derivatives exposure to comparable unaffiliated companies; and (iii) price, and require collateral in, derivative transactions with affiliates in a way that is at least as favorable to the bank as the way the bank prices, or requires collateral in, derivatives with comparable unaffiliated companies.

The interim rule also required, under section 23A, that a member bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's derivative transactions with affiliates. The policies and procedures, at a minimum, had to provide for monitoring and controlling the credit exposure arising from the member bank's derivative transactions with affiliates and ensuring that the bank's derivative transactions with affiliates complied with section 23B. The interim final rule had a delayed effective date of January 1, 2002.

The second step that the Board took to address credit exposure on bank-affiliate derivatives under section 23A was to ask for public comment in the preamble to proposed Regulation W on a set of questions regarding the appropriate treatment of these transactions under section 23A, including whether to subject the transactions to the quantitative limits and collateral requirements of the statute. The preamble made clear that the Board would not take additional steps to address bank-affiliate

[141] At the time of enactment of the GLB Act, the Board had not ruled on whether derivatives between a member bank and an affiliate were covered transactions under section 23A or subject to the market terms requirement of section 23B. Although industry practice generally treated bank-affiliate derivatives as subject to section 23B, industry practice did not treat bank-affiliate derivatives as subject to section 23A.

derivatives without seeking further public comment on a concrete proposal.

3. Public Comments

About 16 commenters wrote in support of the interim rule approach to bank-affiliate derivatives. One commenter argued, however, that the interim rule was ineffective and insufficiently detailed to satisfy the GLB Act requirement that the Board issue a final rule addressing bank-affiliate derivatives as covered transactions. Another commenter objected to the interim rule on a different ground, arguing that, as long as a BHC manages derivatives credit risk effectively, each subsidiary bank of the BHC should not be required to have separate policies and procedures on bank-affiliate derivatives.

Commenters uniformly argued against subjecting bank-affiliate derivatives to the quantitative limits and collateral requirements of section 23A. The principal arguments advanced by commenters were that (i) derivatives do not fit within any of the five categories of covered transaction in section 23A; (ii) section 23B and the well-developed risk management practices in the institutional derivatives market are sufficient protection to banks; (iii) derivatives generally are not entered into for funding purposes; and (iv) covering derivatives under section 23A would be burdensome and may reduce the ability of a banking organization to centralize its risk management in the unit(s) best able to bear the risk.

4. Current Actions

The Board is not prepared at this time to subject credit exposure arising from bank-affiliate derivatives to all the requirements of section 23A. The Board continues to collect information regarding the derivatives practices of banks and believes that more time is needed to determine whether the general approach of the interim rule on bank-affiliate derivatives will suffice to prevent banks from incurring problematic levels of credit exposure to affiliates in these transactions.

Federal Reserve examiners recently conducted a limited survey of a number of large banking organizations to ascertain their compliance with the Board's interim rule on bank-affiliate derivatives.[142] The survey suggested that reliance on bank-designed policies and procedures, section 23B, and active examiner supervision to regulate bank-affiliate derivatives is appropriate and should be continued. The Board expects member banks to comply strictly with section 23B in their derivative transactions with affiliates. In this regard, the Board reminds member banks that section 23B requires a member bank to treat an affiliate no better than a *similarly situated* nonaffiliate. Section 23B generally does not allow a member bank to use with an affiliate the terms and conditions it uses with its most creditworthy unaffiliated customer (unless the bank can demonstrate that the affiliate is of comparable creditworthiness as the bank's most creditworthy unaffiliated customer). Instead, section 23B requires that an affiliate be treated comparably (with respect to terms, conditions, and credit limits) to the majority of third-party customers engaged in the same business, and having comparable credit quality and size, as the affiliate. Because a bank generally has the strongest credit rating within a holding company, the Board generally would not expect an affiliate to obtain better terms and conditions from a member bank than the member bank receives from its major unaffiliated counterparties. In addition, the Board notes that market terms for derivatives among major financial institutions generally include daily marks to market and two-way collateralization above a relatively small exposure threshold.

The Board also is taking two additional regulatory steps at this time to address bank-affiliate derivatives.

a. *Covering derivatives that are the functional equivalent of a guarantee.* First, the Board is incorporating into Regulation W the Board's previously expressed view that credit derivatives between a member bank and a nonaffiliate in which the bank protects the nonaffiliate from a default on, or decline in value of, an obligation of an affiliate of the bank are covered transactions under section 23A. In the preamble to proposed Regulation W, the Board stated that such derivative transactions are guarantees by a member bank on behalf of an affiliate (and, hence, covered transactions) under section 23A.

A number of commenters discussed the appropriate treatment of these derivatives under section 23A. A few commenters supported treating these derivatives as a guarantee on behalf of an affiliate under section 23A. Several other commenters argued that the Board should not treat these derivatives as section 23A guarantees if the bank has hedged its exposure to the affiliate with a third party. Some commenters also expressed the view that the rule should not treat these derivatives as section 23A guarantees if the affiliate's obligations represent a small portion of the reference assets for the credit derivative.

The final Regulation W provides that these credit derivatives are covered transactions under section 23A and gives several examples.[143] Consistent with the Board's traditional views on hedging under section 23A, the rule does not allow a member bank to reduce its covered transaction amount for these derivatives to reflect hedging positions established by the bank with third parties. In addition, the Board does not agree with commenters that an exception to the rule should be created for a credit derivative in which affiliate obligations represent a small portion of the reference assets underlying the credit derivative. The Board intends to interpret this provision of the rule, however, so as to treat such a credit derivative as a covered transaction only to the extent that the derivative provides credit protection with respect to obligations of an affiliate of the member bank.

b. *Including the interim rule in Regulation W.* Second, in order to consolidate all the Board's views on sections 23A and 23B into one place, the Board is incorporating the provisions of the separate interim final rule on bank-affiliate derivatives into Regulation W. Under Regulation W, therefore, each member bank that engages in bank-affiliate derivatives must (i) have policies and procedures to monitor and control the bank's credit exposure to affiliates in derivative transactions (including by imposing appropriate credit limits, mark-to-market requirements, and collateral requirements); and (ii) ensure that its derivative transactions with affiliates comply with section 23B.

5. Future Actions

The Board expects to issue, in the near future, a proposed rule that would invite public comment on how to treat as covered transactions under section 23A certain derivatives that are the functional equivalent of a loan by a member bank to an affiliate or the functional equivalent of an asset purchase by a member bank from an affiliate. Although the Board has not yet adopted a rule that explicitly addresses these types of derivatives under section 23A, the Board will treat as a covered transaction, as appropriate on a case-by-case basis, any derivative between a

[142] Federal Reserve examiners also surveyed these same banking organizations to assess their compliance with the Board's interim rule on intraday credit. The results of this survey are discussed below in part VII.L. of this preamble.

[143] In most instances, the covered transaction amount for such a credit derivative would be the notional principal amount of the derivative.

member bank and an affiliate that is entered into for the purpose of evading the requirements of section 23A.

VII. Exemptions—Subpart E

Section 23A exempts several types of transactions from the statute's quantitative and collateral requirements and other types of transactions from the statute's quantitative, collateral, and low-quality asset requirements.[144] The regulation sets forth the statutory exemptions, clarifies certain of these exemptions, and exempts a number of additional types of transactions. The clarifications and additional exemptions are discussed below.

The Board reserves the right to revoke or modify any additional exemption granted by the Board in Regulation W if the Board finds that the exemption is resulting in unsafe or unsound banking practices. The Board also reserves the right to terminate the eligibility of a particular member bank to use any such exemption if the bank's use of the exemption is resulting in unsafe or unsound banking practices.

A. Sister-Bank Exemption (§ 223.41(a) and (b))

Section 23A(d)(1) exempts any transaction between a member bank and a ''bank'' if the member bank controls 80 percent or more of the voting securities of the bank, the bank controls 80 percent or more of the voting securities of the member bank, or a company controls 80 percent or more of the voting securities of both the member bank and the bank.[145] Section 23A states that the term ''bank'' includes ''any State bank, national bank, banking association, and trust company,'' and other Federal law provides that an insured savings association should be treated as a ''bank'' for purposes of the sister-bank exemption.[146] Section 23A also provides the Board with authority to issue definitions consistent with the section as may be necessary to carry out the purposes of the section and to prevent evasions thereof.[147] In addition, the statute provides that covered transactions between sister banks must be consistent with safe and sound banking practices.[148]

The proposed rule clarified that the sister-bank exemption generally applies only to transactions between insured depository institutions. Although one commenter wrote in support of this restriction of the sister-bank exemption, many other commenters objected to this action. The protestants argued that restricting the sister-bank exemption to insured depository institutions is inconsistent with the statutory language and the primary purpose behind the exemption, which focused not on the insured status of the sister depository institutions but on the regulated status of the institutions. In addition, several of these commenters expressed the view that the Board does not have rulemaking authority to restrict the sister-bank exemption to insured depository institutions.

The final rule continues to restrict the availability of the sister-bank exemption to insured depository institutions.[149] In the view of the Board, this restriction is consistent with the legislative intent behind the exemption, which was to permit the flow of funds from one insured depository institution to another insured depository institution. In this regard, the Board notes that, under the cross-guarantee provisions of the FDI Act, an insured depository institution is generally liable for any loss incurred by the FDIC in connection with the default of a commonly controlled insured depository institution.[150] Moreover, without such an interpretation of the sister-bank exemption, a member bank would be able to engage in unlimited covered transactions with certain uninsured depository affiliates. Permitting a member bank to provide an unlimited amount of funding to an uninsured depository affiliate would facilitate an unsafe and unsound banking practice and would contravene one of the principal purposes of the statute—protecting the deposit insurance funds from loss.[151]

A number of commenters contended that, if the final rule restricts the availability of the sister-bank exemption to insured depository institutions, the rule also should confirm that an uninsured depository institution subsidiary of a member bank would be considered an operating subsidiary (and not an affiliate) of the bank. According to these commenters, there is no compelling reason under section 23A to treat an uninsured depository institution subsidiary of a member bank any differently than other uninsured subsidiaries (for example, mortgage lending or investment advisory subsidiaries) of the bank. The Board agrees with this position and has revised the rule's definition of affiliate generally to exclude uninsured depository institution subsidiaries of a member bank. Accordingly, under the final rule, covered transactions between a member bank and a parent uninsured depository institution or a commonly controlled uninsured depository institution generally would be subject to section 23A whereas covered transactions between a member bank and a subsidiary uninsured depository institution would not be subject to section 23A.

B. Purchases of Loans on a Nonrecourse Basis (§ 223.41(c))

Under section 23A(d)(6), a member bank may purchase loans on a nonrecourse basis from an affiliated ''bank'' exempt from section 23A, even if the transaction does not qualify for the sister-bank exemption.[152] The rule clarifies that the scope of this exemption parallels that of the sister-bank exemption by stating that this exemption applies only to a member bank's purchase of a loan from an affiliated *insured* depository institution.

Section 23A(d)(6) also exempts the purchase from an affiliate of assets that have a readily identifiable market quotation. This exemption is set forth separately in the regulation for purposes of clarity and is discussed in detail below in part VII.F. of this preamble.

C. Internal Corporate Reorganizations (§ 223.41(d))

The Board has granted numerous section 23A exemptions, on a case-by-case basis, for asset purchases by a bank from an affiliate that are part of a one-time internal corporate reorganization of a banking organization.[153] The Board typically has approved such exemptions only if certain conditions are met, including (i) the bank's parent holding

[144] 12 U.S.C. 371c(d).

[145] The sister-bank exemption in section 23A does not allow a member bank to avoid any restrictions on sister-bank transactions that may apply to the bank under the prompt corrective action framework set forth in section 38 of the FDI Act (12 U.S.C. 1831o) and regulations adopted thereunder by the bank's appropriate Federal banking agency.

[146] 12 U.S.C. 371c(b)(5), 1468(a)(2).

[147] 12 U.S.C. 371c(f)(1).

[148] 12 U.S.C. 371c(a)(4).

[149] For reasons of verbal economy, the final rule uses the term ''depository institution'' rather than ''insured depository institution'' to signify the set of institutions eligible for the sister-bank exemption (and for certain other purposes). The final rule defines ''depository institution,'' however, to mean an ''insured depository institution'' as defined in the FDI Act.

[150] *See* 12 U.S.C. 1815(e).

[151] As noted above, a member bank and its operating subsidiaries are considered a single unit for purposes of section 23A. Accordingly, under the statute and the regulation, transactions between a member bank (or its operating subsidiary) and the operating subsidiary of a sister insured depository institution generally qualify for the sister-bank exemption. A few commenters suggested that the proposed rule was ambiguous on this point. The Board has amended the final rule's definition of ''depository institution'' to eliminate any such ambiguity.

[152] 12 U.S.C. 371c(d)(6).

[153] *See, e.g., Travelers Group Inc. and Citicorp,* 84 Federal Reserve Bulletin 985, 1013–14 (1998) and Letter dated November 14, 1996, from William W. Wiles, Secretary of the Board, to John Byam.

company provides certain assurances concerning the quality of the transferred assets; (ii) the disinterested directors of the bank approve the transaction in advance; (iii) the transfer does not include any low-quality assets; and (iv) the bank's appropriate Federal banking agency and the FDIC inform the Board that they have no objection to the transaction.

Several commenters requested that the Board include such an exemption in the final rule, and the Board has done so. Under this exemption, a member bank would be permitted to purchase assets (other than low-quality assets) from an affiliate (including in connection with an affiliate share transfer that section 223.31 of the rule treats as a purchase of assets) exempt from the quantitative limits of section 23A if the following conditions are met.

First, the asset purchase must be part of an internal corporate reorganization of a holding company that involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate. Stated another way, the asset purchase must not be part of a series of periodic, ordinary course asset transfers from an affiliate to a member bank. Second, the member bank's holding company must provide the Board with contemporaneous notice of the transaction and must commit to the Board to make the bank whole, for a period of two years, for any transferred assets that become low-quality assets.[154] Third, a majority of the member bank's directors must review and approve the transaction before consummation. Fourth, the section 23A value of the covered transaction must be less than 10 percent of the member bank's capital stock and surplus (or up to 25 percent of the bank's capital stock and surplus with the prior approval of the bank's appropriate Federal banking agency). Fifth, the member bank's holding company and all its subsidiary depository institutions must be well capitalized and well managed and must remain well capitalized upon consummation of the transaction.

Although these criteria are stricter than what the Board traditionally has applied in connection with its case-by-case exemptions for asset purchases, the heightened strictness is appropriate in exchange for the flexibility that the regulatory exemption grants member banks. Although the regulatory exemption would limit the Board's opportunity to block certain internal reorganizations of a banking company based on an ad hoc analysis of the condition of the bank or the nature or quality of the assets being transferred to the bank, the Board believes that the well-capitalized and well-managed requirements, the two-year buyback commitment, and the quantitative limit in the rule should prevent banking companies from abusing their banking units in reorganization transactions.

D. Correspondent Banking (§ 223.42(a))

Section 23A exempts from its quantitative limits and collateral requirements any deposit by a member bank in an affiliated bank or affiliated foreign bank that is made in the ordinary course of correspondent business, subject to any restrictions that the Board may impose.[155] The final rule (like the proposed rule) further provides that such deposits must represent ongoing, working balances maintained by the member bank in the ordinary course of conducting the correspondent business. Although one commenter argued that the Board should eliminate this regulatory ''ongoing, working balances'' requirement, in the Board's view, an occasional deposit in an affiliated institution would not be in the ordinary course of correspondent business. Failure to impose this restriction on the correspondent banking exemption could enable member banks to abuse the exemption to provide one-off funding to an affiliated bank or foreign bank.[156]

Although not required by section 23A or HOLA, the final rule also provides that correspondent deposits in an affiliated insured savings association are exempt if they otherwise meet the requirements of the exemption.

E. Secured Credit Transactions (§ 223.42(c))

Section 23A exempts any credit transaction by a member bank with an affiliate that is ''fully secured'' by U.S. government obligations or by a ''segregated, earmarked'' deposit account.[157] The rule clarifies that a deposit account meets the ''segregated, earmarked'' requirement only if the account exists for the sole purpose of securing credit transactions between the member bank and its affiliates and is so identified. This requirement would parallel the provision in section 223.14(b)(1)(i)(D) of the rule relating to which deposits count toward the collateral requirements of section 23A.

A few commenters requested confirmation that a credit transaction partially secured by U.S. government obligations or deposit accounts would be exempt under this section to the extent of such collateral. As noted above, under section 23A, if U.S. government obligations or deposit accounts are sufficient to *fully* secure a credit transaction, then the transaction is completely exempt. Under the statute, however, if the U.S. government obligations or deposit accounts represent less than full security for the credit transaction, then the amount of U.S. government obligations or deposits counts toward the collateral requirements of section 23A, but no part of the transaction is exempt from the statute's quantitative limits.

In response to the request of commenters, the Board has decided to grant an additional exemption consistent with the spirit of the (d)(4) exemption in section 23A. Under this expanded form of the (d)(4) exemption, a credit transaction with an affiliate will be exempt ''to the extent that the transaction is and remains secured'' by appropriate (d)(4) collateral. This exemption is consistent with the Board's treatment of similar transactions under Regulation O and the OCC's interpretations of the national bank lending limits.[158]

Accordingly, under the final rule, if a member bank makes a $100 non-amortizing term loan to an affiliate that is secured by $50 of U.S. Treasury securities and $75 of real estate, the value of the covered transaction will be $50. If the market value of the U.S. Treasury securities falls to $45 during the life of the loan, the value of the covered transaction would increase to $55. The Board expects member banks that use this expanded (d)(4) exemption to review the market value of their U.S. government obligations collateral regularly to ensure compliance with the exemption.

F. Purchases of Assets With Readily Identifiable Market Quotes (§ 223.42(e))

Section 23A(d)(6) exempts the purchase of assets by a member bank from an affiliate if the assets have a ''readily identifiable and publicly available market quotation'' and are purchased at their current market

[154] The notice also must describe the primary business activities of the affiliate whose shares or assets are being transferred to the member bank and must indicate the anticipated date of the reorganization.

[155] 12 U.S.C. 371c(d)(2).

[156] Unlike the sister-bank exemption, the exemption for correspondent banking deposits would apply to deposits placed by a member bank in an *uninsured* depository institution or foreign bank. Because the statutory exemption by its terms covers deposits made in a foreign bank, Congress must not have intended to restrict this exemption to deposits made in an insured depository institution.

[157] 12 U.S.C. 371c(d)(4).

[158] *See* 58 FR 26507–26508, May 4, 1993; 12 CFR 32.3(i).

quotation.[159] The Board generally has limited the availability of this exemption (the ''(d)(6) exemption'') to purchases of assets with market prices that are recorded in widely disseminated publications that are readily available to the general public, such as newspapers with a national circulation. Because as a general matter only exchange-traded assets are recorded in such publications, the test has ensured that the qualifying assets are traded actively enough to have a true ''market quotation'' and that examiners can verify that the assets are purchased at their current market quotation. Regulation W codifies this Board interpretation of the (d)(6) exemption and clarifies that the exemption applies to a member bank's purchase from an affiliate of an asset that has a readily identifiable and publicly available market quotation if the asset is purchased at *or below* the asset's current market quotation.[160]

A number of commenters requested that the Board clarify that certain assets would be eligible for purchase by a member bank under the statutory (d)(6) exemption. These assets included (i) assets whose prices are quoted on an internet web site that is generally available to the public (with or without a subscription fee) and that provides actual prices of securities traded on at least a daily basis; (ii) securities issued by an affiliate or at least affiliate-issued securities that are fully guaranteed by the U.S. government or its agencies; and (iii) OTC securities, loans, and derivative contracts.

With respect to the first asset class, commenters have failed to demonstrate that an asset whose price is quoted on an internet web site but is not otherwise recorded in a widely disseminated publication is traded in a sufficiently liquid market to ensure that a member bank's purchase of that asset from its affiliate would be at a fair market price.

With respect to the second asset class, the Board has decided to remove the provision of the proposed rule that rendered the (d)(6) exemption unavailable for purchases of affiliate-issued securities. As discussed in more detail in part X of this preamble (and subpart H of the final rule), however, if a member bank purchases from one affiliate securities issued by another affiliate, the bank has engaged in two types of covered transaction. Under the final rule, although the (d)(6) exemption may exempt the one-time asset purchase from the first affiliate, it would not exempt the ongoing investment in securities issued by the second affiliate.

With respect to the third asset class, the Board confirms that the (d)(6) exemption may apply to a purchase of assets that are not traded on an exchange. In particular, purchases of gold and silver, and purchases of OTC securities, loans, and derivative contracts whose prices are recorded in widely disseminated publications, may qualify for the (d)(6) exemption.

G. Purchases of Securities With a Ready Market From a Securities Affiliate (§ 223.42(f))

Concurrently with the issuance of proposed Regulation W, the Board adopted a final rule that provided an additional exemption from section 23A for certain purchases of securities by a member bank from an affiliate (the ''Final (d)(6) Rule'').[161] The Final (d)(6) Rule expanded the statutory (d)(6) exemption to allow a member bank to purchase securities from an affiliate based on price quotes obtained from certain electronic screens so long as, among other things, the selling affiliate is a broker-dealer registered with the SEC; the securities are traded in a ready market and eligible for purchase by State member banks; the securities are not purchased within 30 days of an underwriting (if an affiliate of the bank is an underwriter of the securities); and the securities are not issued by an affiliate. Proposed Regulation W also contained this exemption, and the Board sought further comment on the scope and conditions of the exemption. Commenters expressed general support for the new exemption but criticized many of the particular conditions to the exemption.

1. Broker-Dealer Requirement

Some commenters believed that the new (d)(6) exemption should not contain a U.S. registered broker-dealer requirement. Several other commenters urged the Board, in light of the increasing globalization of fixed-income markets and the rigorous supervisory frameworks for securities firms in many foreign jurisdictions, to allow banks to purchase securities from a registered foreign broker-dealer under the new (d)(6) exemption.

The Board has decided to retain the U.S. registered broker-dealer requirement. Broker-dealers that are registered with the SEC are subject to supervision and examination by the SEC and are required by SEC regulations to keep and maintain detailed records concerning each securities transaction conducted by the broker-dealer. In addition, SEC-registered broker-dealers have experience in determining whether a security has a ''ready market'' under SEC regulations. The Board believes that these factors will help ensure that member banks satisfy the requirements of the expanded exemption and will assist the Federal banking agencies in monitoring such compliance.

The Board does not believe it is appropriate at this time to expand the exemption to include securities purchases from foreign broker-dealers because such entities may be subject to different levels of supervision and regulation and because of the increased difficulties associated with monitoring compliance by foreign entities. The final rule explicitly provides, however, that a member bank may request that the Board exempt securities purchases from a particular foreign broker-dealer, and the Board would consider these requests on a case-by-case basis in light of all the facts and circumstances. In any event, the Board expects to evaluate the continued need for this requirement as banks and the Board gain experience with this expanded exemption.

2. Securities Eligible for Purchase by a State Member Bank

A number of commenters asked the Board to eliminate the requirement in the new (d)(6) exemption that the securities be eligible for purchase by a State member bank. These commenters noted that certain depository institutions (notably State nonmember banks) and certain overseas (for example, Edge corporation) and domestic subsidiaries of banks have broader investment powers, including equity investment powers, than State member banks. Moreover, according to these commenters, this requirement would impose a high recordkeeping and compliance burden on State nonmember banks that are not subject to the State member bank investment rules but are already subject to a host of State and Federal investment regulations.

The Board believes that the statutory and other restrictions placed on a State member bank's ownership of securities also are appropriate limits on the securities eligible for the new (d)(6) exemption. Although this requirement may impose some additional burden on certain State nonmember banks, the

[159] 12 U.S.C. 371c(d)(6).

[160] The proposed rule provided that all U.S. government obligations were eligible (d)(6) assets. The final rule provides that a U.S. government obligation is an eligible (d)(6) asset only if the obligation's price is quoted routinely in a widely disseminated publication that is readily available to the general public. The Board has tightened the rule in this regard because, although all U.S. government obligations have low credit risk, not all U.S. government obligations trade in liquid markets at publicly available market quotations.

[161] 66 FR 24220, May 11, 2001.

Board believes that it is important to provide a level section 23A playing field and to prevent the new (d)(6) exemption from being used to move volatile assets from an affiliate's balance sheet to that of the bank.

In addition, one commenter requested clarification that this requirement would not prevent a bank from using the new (d)(6) exemption to purchase securities permissible for a State member bank to purchase and hold as a hedge (even if not otherwise permissible under a State member bank's general investment powers). For example, the OCC recently determined that a national bank, subject to certain conditions and OCC review and approval, may acquire equity securities solely for the purpose of hedging the bank's exposure arising from customer-driven equity derivative transactions lawfully entered into by the bank.[162] The Federal Reserve also recently determined that it would not prohibit a State member bank from acquiring equity securities to hedge the bank's customer-driven equity derivative transactions, subject to the same conditions and restrictions applicable to national banks.[163] In light of the hedging purpose of these securities purchases, and the remaining conditions to the availability of the new (d)(6) exemption, the Board agrees that a member bank may purchase equity securities from an affiliate under the new (d)(6) exemption if the purchase is made to hedge the bank's permissible customer-driven equity derivative transaction (and the purchase meets all the other requirements of the exemption).

3. No Purchases Within 30 Days of the Underwriting

The Final (d)(6) Rule generally prohibited a member bank from using the new (d)(6) exemption to purchase securities within 30 days of their underwriting if an affiliate of the bank is an underwriter of the securities. One commenter argued that the new (d)(6) exemption should allow banks to purchase debt securities within 30 days of the underwriting because the market price of *debt* securities is easily verifiable during this time period. A few commenters argued that the new (d)(6) exemption should allow banks to purchase securities within 30 days of the underwriting if the purchase is pre-approved by the bank's board of directors and does not amount to more than 50 percent of the total offering.

The Board has maintained the underwriting period restriction in the final Regulation W because of the uncertain and volatile market values of securities during and shortly after an underwriting period and because of the conflicts of interest that may arise during and after an underwriting period, especially if an affiliate has difficulty selling its allotment. Commenters did not provide any evidence as to the reliability of pricing data on debt securities during an underwriting period, and the Board is not convinced that capping at 50 percent of the total offering the amount of securities a member bank may purchase would materially ameliorate the conflicts of interest inherent in the underwriting process.

One commenter requested clarification, in light of the fact that an argument can be made that mutual funds are continuously underwritten, as to whether the new (d)(6) exemption could apply to the purchase of mutual fund shares distributed by an affiliate of the purchasing member bank. The price uncertainty and conflicts of interest concerns that motivated the underwriting period restriction in the new (d)(6) exemption do not apply in the context of mutual fund distribution. The 1940 Act and SEC rules thereunder require mutual funds to sell shares at a public net asset value computed each day,[164] and distributors of mutual funds do not bear the same sorts of market risks that underwriters of corporate debt and equity securities typically bear. In view of the special nature of mutual funds, the Board does not believe that the underwriting period restriction in the new (d)(6) exemption should be read to prevent a member bank from purchasing shares of a mutual fund distributed by an affiliate of the bank.[165]

4. No Securities Issued by an Affiliate

Commenters generally supported limiting the availability of the new (d)(6) exemption to purchases of securities that are not issued by an affiliate. Several commenters argued, however, that the new (d)(6) exemption should allow banks to purchase affiliate-issued asset-backed securities because of the liquidity of the market for asset-backed securities. One commenter contended, on the other hand, that the new (d)(6) exemption is not the right vehicle for allowing banks to buy affiliate-issued asset-backed securities because most of these securities do not have a listed market price.

A number of commenters argued that the new (d)(6) exemption should allow banks to purchase affiliate-issued mutual fund shares, especially if the mutual fund is an affiliate simply because the bank or an affiliate is the advisor to the fund. These commenters noted that mutual funds have public prices, the SEC regulates mutual funds and mutual fund pricing, and expanding the ability of banks to purchase mutual funds would enhance the ability of banks to diversify their investment portfolios.

Similar to the final rule's approach to the statutory (d)(6) exemption, the Board has decided to remove from the new (d)(6) exemption the requirement that the asset purchased not be a security issued by an affiliate. The Board notes, however, that if a member bank purchases from one affiliate securities issued by another affiliate, although the new (d)(6) exemption may exempt the asset purchase from the first affiliate, it would not exempt the investment in securities issued by the second affiliate.

5. Price Verification Methods

The new (d)(6) exemption, as set forth in the Final (d)(6) Rule, applied only in situations where the member bank is able to obtain price quotes on the purchased securities from an unaffiliated electronic, real-time pricing service. Many commenters expressed a view that the new (d)(6) exemption should allow banks to purchase securities based on price quotes from two independent dealers. These commenters made the following principal arguments: (i) Independent dealers have no incentive to quote an artificial price; (ii) the Board has determined that two dealer bids are an acceptable pricing mechanism for exempt purchases of municipal securities; (iii) the SEC allows mutual funds to purchase securities from an affiliate at the lowest offer price from a disinterested third party after a reasonable inquiry by the mutual fund; (iv) NASD rules require the use of dealer quotes to price certain securities where multiple quotes from an interdealer quotation system are not available; (v) dealer quotes are routinely used by securities traders because some seasoned corporate and mortgage-backed securities are traded infrequently; and (vi) dealer quotes are used to establish the value of securities for close-out and netting purposes in ISDA derivatives master agreements.

[162] *See* OCC Interpretive Ltr. No. 892 (Sept. 13, 2000).

[163] *See* Board press release dated Feb. 21, 2002.

[164] 15 U.S.C. 80a–22(c); 17 CFR 270.22c–1.

[165] The Board notes that neither the old nor the new (d)(6) exemption exempts a member bank's purchase of mutual fund securities that are not only underwritten by an affiliate of the bank but also are *issued by* a mutual fund affiliate of the bank. *See* part X of this preamble and § 223.71 of the final rule.

Notwithstanding these comments, the Board reaffirms its previous conclusion that it would not be appropriate to use independent dealer quotations to establish a market price for a security under the new (d)(6) exemption. The Board is concerned that a security that is not quoted routinely in a widely disseminated news source or a third-party electronic financial network may not trade in a sufficiently liquid market to justify allowing a member bank to purchase unlimited amounts of the security from an affiliate. In the absence of recent, actual, publicly reported transactions, the risks of price manipulations and sham or reciprocal quotation arrangements are too high.

6. Record Retention

One commenter suggested that the final rule expressly include the 2-year record retention requirement set forth in the preamble to the Final (d)(6) Rule. The Board has supplemented Regulation W to include this recordkeeping requirement.

H. Purchasing Municipal Securities (§ 223.42(g))

Regulation W exempts a member bank's purchase of municipal securities from an affiliate if the purchase meets a streamlined version of the requirements applicable to the new (d)(6) exemption.[166] First, as in the new (d)(6) exemption, the member bank must purchase the municipal securities from a broker-dealer affiliate that is registered with the SEC. Second, also as in the new (d)(6) exemption, the municipal securities must be eligible for purchase by a State member bank, and the member bank must report the transaction as a securities purchase in its Call Report. Third, the municipal securities must either be rated by a nationally recognized statistical rating organization or must be part of an issue of securities that does not exceed $25 million in size. Finally, the price for the securities purchased must be (i) quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks; (ii) verified by reference to two or more actual independent dealer quotes on the securities to be purchased or securities that are comparable to the securities to be purchased; or (iii) in the case of securities purchased during the underwriting period, verified by reference to the price indicated in the syndicate manager's written summary of the underwriting.[167] Under any of the three pricing options, the member bank must purchase the municipal securities at or below the quoted or verified price.

The Board believes that the streamlined set of requirements for purchases of municipal securities is appropriate because municipal obligations generally have comparatively low default risks. In addition, these relaxed requirements are consistent with the expressed desire of Congress to support local communities' use of municipal securities to help meet their financing needs.

I. Purchases of Assets by Newly Formed Banks (§ 223.42(i))

The rule exempts a purchase of assets by a newly chartered member bank from an affiliate if the appropriate Federal banking agency for the bank has approved the purchase. This exemption would allow companies to charter a new bank and transfer assets to the bank free of the quantitative limits and low-quality asset prohibition of section 23A. Currently, if a company (usually a BHC) establishes a new subsidiary bank, the newly chartered institution cannot acquire a critical mass of assets from its parent company because of the quantitative limits of section 23A. Commenters generally agreed that applying the restrictions of section 23A to a newly formed bank is unnecessary because the chartering authority for the new bank (and, in the case of a new bank formed under a BHC, the Board) reviews the transaction to ensure that the asset transfer does not result in any safety or soundness problems.

J. Transactions Approved Under the Bank Merger Act (§ 223.42(j))

Before issuing proposed Regulation W, the Board had provided a regulatory exemption from section 23A for any transaction between affiliated insured depository institutions if the transaction had been approved by the responsible Federal banking agency under the Bank Merger Act.[168] The Board had provided this regulatory exemption because the Bank Merger Act required the primary Federal supervisor of the resulting insured depository institution to review these transactions using safety and soundness and public interest standards similar to those that the Board would apply in reviewing a section 23A exemption request. Proposed Regulation W included this exemption.

Several commenters argued that the Board should expand the Bank Merger Act exemption to include mergers between a national bank and a nonbank subsidiary or affiliate of the bank, which are reviewed by the OCC under the National Bank Consolidation and Merger Act (''NBCM Act'').[169] The Board notes that a member bank should not need a special exemption from section 23A to merge with a nonbank subsidiary (other than a financial subsidiary and certain other nonbank subsidiaries) because such transactions generally will be deemed to be within the bank for purposes of section 23A.

The Board has determined not to grant a regulatory exemption for merger transactions between a national bank and its nonbank affiliate for a number of reasons. First, the legislative history of section 23A and Board experience indicate that merger transactions between banks and their *nonbank* affiliates have a greater potential for risk of loss to the bank than would similar transactions between sister banks and thus are appropriately subject to greater regulatory scrutiny. In addition, such transactions between banks and their nonbank affiliates have a greater potential for risk of loss to the Federal deposit insurance funds because the cross-guarantee provisions of the FDI Act apply only between affiliated insured depository institutions.[170] Finally, although the NBCM Act provides for OCC review of such transactions, the statute does not establish criteria that a national bank must satisfy to obtain OCC approval, and the OCC has not yet issued implementing regulations for the statute. The Board may consider including in Regulation W an exemption for NBCM Act transactions after reviewing any future implementing regulations adopted by the OCC. The Board notes that any member bank merging or consolidating with a nonbank affiliate may be able to take advantage of the regulatory exemption for internal reorganization transactions contained in section 223.41(d) of the final rule.

A few other commenters urged the Board to expand the Bank Merger Act exemption to include Bank Merger Act

[166] The regulation defines municipal securities by reference to section 3(a)(29) of the Securities Exchange Act, which defines municipal securities as direct obligations of, or obligations guaranteed as to principal or interest by, a State or agency, instrumentality, or political subdivision thereof, and certain tax-exempt industrial development bonds. *See* 17 U.S.C. 78c(a)(29).

[167] Under the Municipal Securities Rulemaking Board's Rule G–11, the syndicate manager for a municipal bond underwriting is required to send a written summary to all members of the syndicate. The summary discloses the aggregate par values and prices of bonds sold from the syndicate account.

[168] *See* 57 FR 41643, Sept. 11, 1992.

[169] Section 1206(a) of the American Homeownership and Economic Opportunity Act of 2000 amended the NBCM Act to provide that a national bank may merge with one or more of its nonbank subsidiaries or affiliates with the approval of the OCC. *See* 12 U.S.C. 215a–3.

[170] *See* 12 U.S.C. 1815(e).

transactions with any affiliate (not just an insured depository institution affiliate) and any other transactions with affiliates that are subject to approval by the bank's primary Federal supervisor. For the reasons discussed in the previous paragraph, the Board is not willing to grant a regulatory exemption to any transaction between a member bank and an affiliate that is subject to approval by the bank's primary Federal supervisor.

In light of the comments, however, the final rule does include a partial expansion of the traditional Bank Merger Act exemption. As noted above, the traditional Bank Merger Act exemption only applied to transactions between a member bank and an insured depository institution affiliate. Although the Board does not believe that expanding the Bank Merger Act exemption to include transactions with any affiliate would be consistent with the purposes of section 23A, the final rule makes the Bank Merger Act exemption available for merger and other related transactions between a member bank and a U.S. branch or agency of an affiliated foreign bank. The Bank Merger Act approval process, combined with the ongoing regulation and supervision of U.S. branches and agencies of foreign banks by the Federal banking agencies, should help ensure that such transactions do not pose significant risks to the member bank.

K. Purchases of Extensions of Credit (§ 223.42(k))

In 1974, the Board issued a formal interpretation of section 23A (codified at 12 CFR 250.250) that exempted a member bank's purchase of a loan from an affiliate if (i) the bank made an independent evaluation of the creditworthiness of the borrower before the affiliate made the loan and (ii) the bank committed to purchase the loan before the affiliate made the loan (the ''250.250 exemption'').[171] Although the 1974 interpretation did not impose a strict dollar limit on the amount of an affiliate's loans that a member bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a member bank to take advantage of an investment opportunity and not to alleviate the working capital needs of an affiliate.

By 1995, some BHCs were using the 250.250 exemption extensively to fund their nonbank lending affiliates. In these cases, banks were providing all or nearly all of such affiliates' funding. In response, staff indicated in an interpretive letter that the 250.250 exemption was not available if the dollar amount of the bank's purchases from the affiliate represented more than 50 percent of the total dollar amount of loans made by the affiliate.[172] Staff reasoned that, in these circumstances, the asset purchases looked less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing the principal ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and would reduce the pressure on the bank to purchase the affiliate's extensions of credit.

Proposed Regulation W included the 250.250 exemption. The proposed rule also included staff's 50 percent test as a condition to the availability of the exemption and solicited comment on whether to supplement the bright-line 50 percent test with a requirement that the member bank not use the exemption to provide ''substantial, ongoing funding'' to the affiliate.

1. The Traditional 50 Percent Test

Several commenters explicitly supported the Board's retention of a 50 percent limit on the amount of loans a bank may purchase from an affiliate under the 250.250 exemption. Other commenters requested that the Board remove the 50 percent test because, in the view of these commenters, it is unnecessary and burdensome and most of these bank-affiliate arrangements are designed to benefit the bank. A few commenters asked the Board to modify the 50 percent test. One of these commenters stated that, if the rule retains the 50 percent limit, the limit should be revised to be 50 percent of the total assets of the affiliate (not just the credit portfolio of the affiliate). Another commenter asked that the 50 percent per affiliate limit be revised to be 50 percent of the loan portfolio of *all* lending affiliates in the aggregate (to reduce the burden of monitoring each affiliate's compliance with the 50 percent test).

The Board has decided to retain the 50 percent test. The Board continues to believe that if a member bank purchases more than half of the extensions of credit originated by an affiliate, the purchases represent the principal ongoing funding mechanism for the affiliate. The member bank's status as the predominant source of financing for the affiliate calls into question the availability of alternative funding sources for the affiliate, places significant pressure on the bank to continue to support the affiliate through asset purchases, and reduces the bank's ability to make independent credit decisions with respect to the asset purchases. The final rule does not expand the denominator of the 50 percent test to include all the assets of the affiliate or all the credit portfolios of all the lending affiliates of the member bank. In the Board's view, the member bank's underwriting integrity may be compromised if any single affiliate becomes dependent on the bank for financing, even if that single affiliate is a diversified company that becomes dependent on the bank for financing of only one portion of its business.

2. The ''Substantial, Ongoing Funding'' Test

One commenter supported the rule's inclusion of the ''substantial, ongoing funding'' test. A large number of commenters (including most of the banking industry trade associations) urged the Board to remove the ''substantial, ongoing funding'' test. These commenters contended that the test is too vague and subjective, may disrupt many existing operations, would prevent banks and their affiliates from accomplishing rational business planning, and is unnecessary in light of the lack of evidence that the existing 50 percent test has failed to check abuse.

A ''substantial, ongoing funding'' test would provide examiners with the flexibility to stop arrangements in which a bank provides a significant amount of funding to an affiliated lending company but does not provide a majority of the affiliate's working capital. On the other hand, such a subjective standard would create legal uncertainty for banks that purchase a substantial amount of assets from their lending affiliates. In addition, use of a ''substantial, ongoing funding'' standard could result in inconsistent application of the 250.250 exemption by the different Federal banking agencies and by different examiners within an agency.

The final rule does not include such a supplemental standard in the 250.250 exemption. The final rule, however, does allow the appropriate Federal banking agency for a member bank to reduce the 50 percent threshold prospectively, on a case-by-case basis, in those situations where the agency believes that the bank's asset purchases from an affiliate under the exemption may cause harm to the bank. Although

[171] *See* 39 FR 28975, Aug. 13, 1974.

[172] Letter dated April 24, 1995, from J. Virgil Mattingly, Jr., General Counsel of the Board, to William F. Kroener, III, Federal Deposit Insurance Corporation; *see also* Letter dated January 21, 1987, from Michael Bradfield, General Counsel of the Board, to Jeffrey C. Gerrish.

this agency discretion to tighten the 50 percent threshold may result in some inconsistency in application of the exemption, the supervisory benefits of the flexibility should outweigh its potential adverse effects.

3. Test Based on Size of Bank

The proposed rule also sought comment on whether to limit the amount of assets that a member bank may purchase from an affiliate pursuant to the 250.250 exemption to some percentage of the *bank's* total assets. Many commenters objected to placing a limit on the percentage of a bank's assets that represent assets purchased from an affiliate under the 250.250 exemption. These commenters argued that case-by-case review is a better approach to addressing situations where a large portion of a bank's assets are loans purchased from an affiliate. These commenters believed that the remaining conditions of the exemption should suffice to prevent abuse of the bank. One commenter, on the other hand, recommended that the rule include a 50 percent limit based on the assets of the bank.

In light of the comments and the fact that the Board did not suggest a specific limit based on the bank's size in proposed Regulation W, the Board has determined to issue a further proposed rule (concurrently with final Regulation W) that would seek public comment on whether to deny the 250.250 exemption to any member bank if assets purchased by the bank from an affiliate under the 250.250 exemption represent more than 100 percent of the bank's capital stock and surplus. A more detailed explanation of the Board's reasons for issuing the further proposed rule is set forth in the preamble to the proposed rule.

4. Independent Credit Review by the Bank

To qualify for the 250.250 exemption, a member bank must independently review the creditworthiness of each obligor before committing to purchase each loan.[173] Several commenters requested that the Board interpret the ''independent evaluation'' requirement so as not to require an actual evaluation of each credit by the bank if the affiliate uses the same credit underwriting system as the bank. According to these commenters, such an interpretation would recognize appropriately that banks and affiliates often use the same underwriting standards and would encourage banks and affiliates to share effective underwriting practices with each other and to work toward harmonization of underwriting practices within a single organization. These commenters indicated that, as currently interpreted, the 250.250 exemption interferes with efficient, centralized, formula-based credit underwriting processes. In addition, several commenters contended that the Board should interpret the ''independent evaluation'' requirement so as not to require an actual evaluation of each credit by the bank if the affiliate uses the underwriting standards of Fannie Mae, Freddie Mac, or Ginnie Mae.

The Board does not believe that a member bank can satisfy the ''independent evaluation'' requirement of the 250.250 exemption by simply having its lending affiliates use the bank's underwriting standards or the underwriting standards of Fannie Mae or any other government agency or government-sponsored enterprise. Under established Federal Reserve guidance, a State member bank is required to have clearly defined policies and procedures to ensure that it performs its own due diligence in analyzing the credit and other risks inherent in a proposed transaction.[174] This function is not delegable to any third party, including affiliates of the member bank or government-sponsored enterprises. Accordingly, to qualify for this exemption, the member bank, independently and using its own credit policies and procedures, must itself review and approve each extension of credit before giving a purchase commitment to its affiliate.

5. Miscellaneous

One commenter asked the Board to clarify whether the 250.250 exemption could be used in connection with a bank's purchase of loans from an affiliate if the affiliate retained recourse on the loans. Consistent with the fact pattern underlying the original 250.250 exemption and staff's traditional interpretation of the exemption, the final rule specifies that the exemption does not apply in situations where the affiliate retains recourse on the loans purchased by the member bank. In such a circumstance, the member bank has ongoing credit exposure to the affiliate. If the Board were not to adopt this position, a member bank arguably could incur unlimited credit exposure to an affiliate through exempt loan purchases under the 250.250 exemption.

The final rule also specifies, consistent with the fact pattern underlying the original 250.250 exemption and staff's traditional interpretation of the exemption, that the 250.250 exemption only applies in situations where the member bank purchases loans from an affiliate that were originated by the affiliate. The exemption cannot be used by a member bank to purchase loans from an affiliate that the affiliate purchased from another lender. The exemption is designed to facilitate a member bank using its affiliate as an origination agent, not to permit a member bank to take off an affiliate's books loans that the affiliate purchased from a third party. Among other concerns, a contrary determination would increase the likelihood that a member bank could acquire low-quality assets from an affiliate through the exemption.

L. Intraday Extensions of Credit (§ 223.42(l))

As noted above, the GLB Act required the Board to adopt, by May 12, 2001, a final rule to address as covered transactions under section 23A the credit exposure arising from intraday extensions of credit by member banks to their affiliates.[175] The Board took a two-step approach, similar to the Board's approach to bank-affiliate derivatives, to fulfill this statutory mandate. First, the Board published an interim final rule on May 11, 2001, that (i) required, under section 23A, that a member bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's intraday extensions of credit to affiliates; and (ii) clarified that intraday extensions of credit by a member bank to an affiliate are subject to the market terms requirement of section 23B. The policies and procedures, at a minimum, had to provide for monitoring and controlling the member bank's intraday credit exposure to affiliates and ensuring that the bank's intraday credit extensions to affiliates comply with section 23B. The interim final rule had a delayed effective date of January 1, 2002.

Second, the Board requested comment on a more detailed and more restrictive proposed rule on intraday credit extensions by member banks to affiliates

[173] Consistent with the Board's 1974 interpretation, the member bank also must not make a legally enforceable blanket advance commitment to purchase a stipulated amount of loans from the affiliate.

[174] *See, e.g.*, Federal Reserve SR Letter No. 97–21 (SUP) (July 11, 1997).

[175] The text of section 23A does not indicate that an extension of credit must extend overnight to qualify as a covered transaction. Nevertheless, at the time of enactment of the GLB Act, the Board had not ruled on whether intraday credit extensions by a member bank to an affiliate were covered transactions under section 23A or subject to the market terms requirement of section 23B. Industry practice did not treat intraday credit extensions as subject to section 23A or 23B.

in Regulation W. Proposed Regulation W treated all such intraday credit extensions as covered transactions but exempted those intraday credits that arose in connection with the performance by a member bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions on behalf of an affiliate. The more limited Regulation W exemption for intraday credit was available only if the member bank (i) had no reason to believe that the affiliate would have difficulty repaying the extension of credit; (ii) established limits on the net amount of intraday credit that the bank may extend to affiliates; and (iii) maintained policies and procedures for monitoring each affiliate's compliance with the limits. Under the Regulation W proposal, intraday extensions of credit by a member bank to an affiliate that did not meet these conditions were subject to the quantitative, collateral, and other requirements of section 23A. Importantly, under the proposed rule, an intentional intraday loan by a member bank to an affiliate outside of the clearing context (for example, a loan to allow an affiliate to meet a debt obligation coming due during the day) became fully subject to section 23A at the time during the day that the bank made the loan.

Most commenters on the intraday credit issue expressed support for either the interim rule or proposed Regulation W approach to intraday credit, although the interim rule approach garnered more support. A few commenters rejected both approaches, however, and urged the Board to treat intraday credit as not subject to section 23A.

Commenters generally advocated an exemption for intraday credit by banks to affiliates because, in the view of commenters, (i) banks do not use intraday credit to fund affiliates; (ii) intraday credit becomes covered by section 23A at the end of the day and, therefore, banks have incentives to monitor intraday overdrafts by affiliates; (iii) banks do not have the systems to monitor intraday credit transactions with all accounts of all affiliates in real time; and (iv) banks have not suffered losses on intraday credit extensions to affiliates. According to these commenters, the minimal benefits of the Regulation W approach would not outweigh the substantial costs.

Many commenters urged the Board to grant an exemption for intraday credit arising from special purpose credit card transactions if the Board were to decide to treat intraday credit extensions as covered transactions under section 23A. These commenters explained that special purpose credit card banks make thousands of credit extensions each day that are deemed to be credit extensions to affiliates under section 23A's attribution rule. These banks currently comply with section 23A by either selling their credit card receivables at the end of each day or fully securing them at the end of each day with segregated, earmarked deposit accounts. According to commenters, the Regulation W approach to intraday credit would significantly disrupt the existing practices of special purpose credit card banks and would create substantial inefficiencies for these banks (requiring thousands of sales of receivables each day instead of one sale at the end of each day). These commenters emphasized that third-party customers, not the affiliated merchants, are liable for repayment to the bank on these transactions, and that the intraday risk to the bank on these transactions is similar to the risk on payment or settlement transactions.

In the Board's view, existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures to affiliates would not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit generally are not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk is sufficiently remote that application of the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures would require banks not only to measure exposures across multiple accounts, offices, and systems on a global basis but also to adjust collateral holdings in real time throughout the day. The Board is concerned that few banks currently have these capabilities and that they would be very costly to implement. Furthermore, there is no evidence that banks, including special purpose credit card banks, have suffered losses from intraday extensions of credit to affiliates.

Federal Reserve examiners have reviewed the policies and procedures that a number of large banks adopted to comply with the Board's interim final rule on intraday credit to affiliates. This review confirmed that requiring banks to adopt policies and procedures for managing the credit exposure arising from intraday credit extensions to affiliates and subjecting such transactions to section 23B is the most workable solution for addressing intraday credit exposure of banks to affiliates. For the most part, the surveyed banks treated intraday credit to affiliates in the same manner as they treated intraday credit to third parties.

In light of these considerations, the Board is adopting an approach to intraday credit that is a combination of the approaches contained in the interim rule and proposed Regulation W. Final Regulation W provides that intraday credit extensions by a member bank to an affiliate are section 23A covered transactions but exempts all such intraday credit extensions from the quantitative and collateral requirements of section 23A if the member bank (i) maintains policies and procedures for the management of intraday credit exposure and (ii) has no reason to believe that any affiliate receiving intraday credit would have difficulty repaying the credit in accordance with its terms.

The approach of the final rule should impose substantially less burden on banking organizations than the proposed Regulation W approach. Most significantly, whereas the proposed rule exempted only intraday credit extensions relating to clearing and settlement, the final rule exempts all types of intraday credit. In light of the limited scope for, and limited history of, abuse of intraday credit to affiliates and the significant burden of verifying and documenting the use of each intraday credit extension to an affiliate, the Board does not believe that the regulatory benefits of this aspect of the proposed rule would have outweighed its regulatory burden. Unlike the proposed rule, the global exemptive approach of the final rule also should avoid interrupting the existing, unproblematic intraday business practices of banks that issue special purpose credit cards. In addition, the approach of the final rule imposes more discipline on banks than the interim rule approach in that the final rule requires a member bank to make intraday assessments of the credit quality of each affiliated borrower and restricts a member bank's intraday credit extensions to an affiliate if the bank has any doubt as to the affiliate's ability to repay the credit in accordance with its terms.

The proposed rule did not include a definition of an intraday extension of credit. The final rule, however, defines an intraday extension of credit as an extension of credit by a member bank to an affiliate that the member bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under the rule, by the end of its business day in the United States. An intraday extension of credit would include, for example, a loan by a member bank to an affiliate that (i) by its terms must be repaid before the end of the bank's U.S. business day; (ii) the bank expects to sell at the end of the bank's U.S. business day; or (iii) the bank intends to fully secure with a segregated, earmarked deposit account at the end of the bank's U.S. business day. On the other hand, if a member bank makes a 30-day loan to an affiliate at 2 p.m. on a particular day and does not expect to sell the loan or to qualify the loan for an exemption under the rule by the end of its U.S. business day, the intraday credit exemption would not exempt the loan from 2 p.m. until the end of the bank's U.S. business day. Rather, the member bank must ensure that the loan complies with the requirements of Regulation W as of 2 p.m. on that day (unless the loan qualifies for another exemption in the rule at such time).

M. Riskless Principal Transactions (§ 223.42(m))

The final rule contains an additional exemption that was not part of the proposed rule. Section 223.42(m) of the final rule exempts the purchase by a member bank of a security from a securities affiliate of the bank if (i) the bank or the securities affiliate is acting exclusively as a riskless principal in the transaction; and (ii) the security purchased is not issued or underwritten, or sold as principal (other than as riskless principal), by any affiliate of the bank.[176] These riskless principal securities transactions between a member bank and an affiliate are covered transactions under section 23A because the member bank, acting as a principal, has purchased an asset from an affiliate, acting as a principal. The Board does not believe that there is any regulatory benefit to subjecting these transactions to section 23A, however, because riskless principal securities transactions closely resemble securities brokerage transactions.

The riskless principal in a riskless principal securities transaction buys and sells the same security contemporaneously. Accordingly, if a member bank acts as a riskless principal in purchasing a security from a securities affiliate, the asset risk passes promptly from the affiliate through the bank on to the bank's customer. If the securities affiliate acts as a riskless principal in selling a security to the member bank, the asset risk passes promptly from a third party through the affiliate to the bank. In neither case would the securities affiliate be able to transfer pre-existing asset risk from its books to the books of the member bank. Although the final rule exempts these riskless principal transactions from section 23A, such transactions would remain subject to section 23B.

N. Additional Exemption Requests

Approximately 16 commenters asked the Board to establish formal filing and processing guidelines for section 23A exemption requests. These commenters offered a wide variety of suggested time frames for Board action on such requests, but most of them asked that the Board commit to acting within 30 to 60 days of receiving a request. In light of the policy importance and factual intricacy of most section 23A exemption requests, the Board has decided not to adopt regulatory deadlines for processing section 23A exemption requests. The Board has indicated in the final rule, however, that exemption requests should describe in detail the transaction or relationship for which the member bank seeks exemption, explain why the Board should exempt the transaction or relationship, and explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

As noted above, although sections 23A and 23B apply by their terms only to member banks, other Federal law subjects insured nonmember banks and insured thrifts to the sections as if they were member banks. Accordingly, insured nonmember banks and insured thrifts must apply to the Board (rather than their appropriate Federal banking agency) for any additional exemptions from section 23A or 23B.

VIII. General Provisions of Section 23B—Subpart F

Subpart F of the regulation sets forth the principal restrictions of section 23B. These include (i) a requirement that most transactions between a member bank and its affiliates be on terms and circumstances that are substantially the same as those prevailing at the time for comparable transactions with nonaffiliates; (ii) a restriction on a member bank's purchase as fiduciary of assets from an affiliate; (iii) a restriction on a member bank's purchase, during the existence of an underwriting syndicate, of any security if a principal underwriter of the security is an affiliate; and (iv) a prohibition on publishing an advertisement or entering into an agreement stating that a member bank will be responsible for the obligations of its affiliates. For the most part, subpart F restates the operative provisions of section 23B, and these provisions are not discussed below. The remainder of this section of the preamble highlights four areas in which Regulation W provides additional guidance on section 23B.

A. Transactions Exempt From Section 23B (§ 223.52(a)(1))

The market terms requirement of section 23B applies to, among other transactions, any ''covered transaction'' between a member bank and an affiliate.[177] Section 23B(d)(3) makes clear that the term ''covered transaction'' in section 23B has the same meaning as the term ''covered transaction'' in section 23A, but does not include any transaction that is exempt under section 23A(d)—for example, transactions between sister banks, transactions fully secured by a deposit account or U.S. government obligations, and purchases of assets from an affiliate at a readily identifiable and publicly available market quotation.[178] Consistent with the statute, the regulation exempts from section 23B any transaction that is exempt under section 23A(d).

Regulation W also excludes from section 23B any covered transaction that is exempt from section 23A under section 223.42(i) or (j) of the regulation (that is, asset purchases by a newly formed member bank and transactions approved under the Bank Merger Act). The Board is excluding from section 23B this additional set of transactions because, in each case, the appropriate Federal banking agency for the member bank involved in the transaction should ensure that the terms of the transaction are not unfavorable to the bank.

B. Purchases of Securities for Which an Affiliate Is the Principal Underwriter (§ 223.53(b))

The GLB Act amended section 23B in one respect. Since its passage in 1987, section 23B(b)(1)(B) has prohibited a member bank, whether acting as principal or fiduciary, from purchasing securities during the existence of an underwriting or selling syndicate if a

[176] This exemption parallels the exemption from the attribution rule provided in section 223.16(c)(1) of the final rule.

[177] 12 U.S.C. 371c–1(a)(2)(A).

[178] 12 U.S.C. 371c–1(d)(3).

principal underwriter of the securities is an affiliate of the bank.[179] Before the GLB Act, a member bank could escape this prohibition only if a majority of the *outside* directors of the bank approved the bank's securities purchase before the securities were initially offered to the public.[180] The GLB Act amended section 23B, however, to permit a member bank to purchase securities during an underwriting conducted by an affiliate if the following two conditions are met. First, a majority of the directors of the member bank (with no distinction drawn between inside and outside directors) must approve the securities purchase before the securities are initially offered to the public. Second, such approval must be based on a determination that the purchase would be a sound investment for the member bank regardless of the fact that an affiliate of the bank is a principal underwriter of the securities.[181] The regulation incorporates this new standard and clarifies that if a member bank proposes to make such a securities purchase in a fiduciary capacity, then the directors of the bank must base their approval on a determination that the purchase is a sound investment for the person on whose behalf the bank is acting as fiduciary.

Obviously, a member bank may satisfy this director approval requirement by obtaining specific prior director approval of each securities acquisition otherwise prohibited by section 23B(b)(1)(B). The regulation clarifies, however, that a member bank also satisfies this director approval requirement if a majority of the directors of the bank approves appropriate standards for the bank's acquisition of securities otherwise prohibited by section 23B(b)(1)(B) and each such acquisition meets the standards adopted by the directors. In addition, a majority of the member bank's directors must periodically review such acquisitions to ensure that they meet the standards and must periodically review the standards to ensure they meet the ''sound investment'' criterion of section 23B(b)(2). The appropriate period of time between reviews would vary depending on the scope and nature of the member bank's program, but such reviews should be conducted by the directors at least annually. Before the passage of the GLB Act, Board staff informally allowed member banks, based on the legislative history of section 23B, to meet the director approval requirement in this fashion, and there is no indication that Congress in the GLB Act intended to alter the procedures that a member bank could use to obtain the requisite director approval.[182]

For these reasons, the regulation codifies staff's preexisting approach to the director approval requirement.[183]

C. The Definition of Affiliate Under Section 23B (§ 223.2(c))

Section 23B states that the term ''affiliate'' under section 23B has the meaning given to such term in section 23A except that the term ''affiliate'' under section 23B does not include a ''bank,'' as defined in section 23A.[184] Other Federal law provides that an insured savings association should be treated as a ''bank'' for purposes of section 23B.[185] As in the case of the sister-bank exemption, proposed Regulation W clarified that the only companies that qualify for the ''bank'' exception to section 23B's definition of affiliate are *insured* depository institutions.

One commenter objected to this aspect of the proposed rule. Without such an interpretation, however, a member bank would be able to engage in transactions with certain uninsured depository affiliates on terms and conditions that were highly unfavorable to the bank. Entering into these kinds of transactions would not be consistent with bank safety and soundness and would contravene one of the goals of section 23B—protecting the Federal deposit insurance funds. Accordingly, the final rule continues to restrict the ''bank'' exception from section 23B's definition of affiliate to insured depository institutions.

D. The Advertising restriction (§ 223.54)

Section 23B(c), the ''advertising restriction,'' prohibits a member bank from publishing any advertisement or entering into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.[186] Read literally, this provision appears to prohibit a member bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate. Because section 23A includes as a permissible (though limited) covered transaction the issuance by a member bank of a guarantee, acceptance, or letter of credit on behalf of its affiliates, Board staff traditionally has read the advertising restriction of section 23B in light of section 23A. That is, Board staff has not read section 23B(c) to prohibit a member bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent permitted under section 23A. The regulation contains this clarification.[187] In response to comments from several banking organizations, the final rule also clarifies that section 23B(c) does not prohibit a member bank from making reference to such a guarantee, acceptance, or letter of credit in a prospectus or other disclosure document, for example, if otherwise required by law.

IX. Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks—Subpart G

Subpart G discusses the application of sections 23A and 23B to U.S. branches and agencies of foreign banks. As noted above, sections 23A and 23B apply by their terms only to member banks of the Federal Reserve System, and other Federal banking laws have made insured nonmember banks and insured savings associations subject to the sections. Federal banking law generally does not subject the U.S. branches and agencies of foreign banks to sections 23A and 23B.

Section 114(b)(4) of the GLB Act explicitly authorizes the Board, however, to impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank. The Board may impose such prudential limits if it finds that the

[179] 12 U.S.C. 371c–1(b)(1)(B).

[180] Many smaller banking organizations had difficulty meeting this standard because most or all of their banks' directors were officers or employees of the banks or affiliates of the banks.

[181] GLB Act § 738 (codified at 12 U.S.C. 371c–1(b)(2)).

[182] The Conference Report accompanying the Competitive Equality Banking Act of 1987 stated that the prior approval requirement of section 23B(b) could be met ''by the establishment in advance of specific standards by the outside directors for such acquisitions. If the outside directors establish such standards, they must regularly review acquisitions to assure that the standards have been followed, and they must periodically review the standards to assure that they continue to be appropriate in light of market and other conditions.'' *See* H.R. Conf. Rep. No. 100–261, at 133 (1987).

[183] The rule also provides, consistent with existing Board interpretations, that a U.S. branch, agency, or commercial lending company of a foreign bank may comply with this requirement by obtaining the required approvals and reviews from either a majority of the directors or a majority of the senior executive officers of the foreign bank.

[184] 12 U.S.C. 371c–1(d)(1).

[185] 12 U.S.C. 1468(a)(2)(B).

[186] 12 U.S.C. 371c–1(c).

[187] The Board also believes that if a member bank and its affiliate enter into a joint undertaking with a third party, the contract among the parties should make clear that the bank is only responsible for its own obligations under the contract.

limits are appropriate to prevent an evasion of certain Federal banking laws, avoid a significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund, or avoid other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In order to ensure competitive equity, the Board has for years imposed certain of the requirements of sections 23A and 23B on transactions between a U.S. branch or agency of a foreign bank and its U.S. affiliates engaged in underwriting and dealing in bank-ineligible securities (''section 20 affiliates'').[188] The Board also recently applied sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and affiliates conducting merchant banking activities under the GLB Act and portfolio companies held under that authority.[189]

With one material exception, the regulation applies sections 23A and 23B to a U.S. branch or agency of a foreign bank as if the branch or agency were a member bank. The material exception is that the only companies that are deemed affiliates of such branch or agency of a foreign bank are affiliates of the foreign bank that are *directly* engaged in the United States in the following GLB Act financial activities: (i) Insurance underwriting pursuant to section 4(k)(4)(B) of the BHC Act; (ii) securities underwriting and dealing pursuant to section 4(k)(4)(E) of the BHC Act; (iii) merchant banking activities pursuant to section 4(k)(4)(H) of the BHC Act;[190] or (iv) insurance company investment activities pursuant to section 4(k)(4)(I) of the BHC Act.[191]

The regulation also treats as a section 23A affiliate of a U.S. branch or agency any subsidiary of an affiliate of the foreign bank directly engaged in the four activities set forth above (regardless of whether the subsidiary itself engages in any of the four activities).[192] In addition, the rule treats as a section 23A affiliate of a U.S. branch or agency any portfolio company controlled by the foreign bank under the GLB Act's merchant banking or insurance company investment authorities (and any subsidiary of such a portfolio company). The regulation does not treat as a section 23A affiliate of a U.S. branch or agency any other type of affiliate of the foreign bank (for example, foreign affiliates or U.S. affiliates engaged in nonbanking activities under section 4(c)(8) of the BHC Act), and does not treat a foreign bank's non-U.S. offices as member banks subject to section 23A.[193]

Applying the restrictions of sections 23A and 23B to transactions between the U.S. branches and agencies of foreign banks and the specified U.S. affiliates will help to ensure maintenance of a competitive playing field between U.S. banks and foreign banks operating in the United States. The issue of competitive equity arises most strongly in connection with those activities that a U.S. bank cannot engage in directly or through an operating subsidiary. A U.S. bank may affiliate itself with a company engaged in the financial activities specified above only if the company is a holding company affiliate of the bank or, in some cases, a financial subsidiary of the bank. In either case, covered transactions between the U.S. bank and the company would be subject to sections 23A and 23B. Without Regulation W's extension of the scope of these statutory provisions, a foreign bank's U.S. branch or agency could fund and engage in transactions with these types of affiliates more freely than could a U.S. bank. To the extent that a foreign bank's U.S. branches and agencies are able to fund these types of U.S. affiliates outside of the restrictions of sections 23A and 23B, the affiliates are able to compete for business in the United States with a potential advantage not available to the analogous affiliates of U.S. banks.

The Board does not believe that it is appropriate or necessary at this time to impose the requirements of sections 23A and 23B on transactions between a foreign bank's U.S. branch or agency and its U.S. affiliates that are engaged only in activities that were permissible for BHCs before the passage of the GLB Act (other than section 20 affiliates). The Board recognizes the hardship this might impose on foreign banks conducting such activities in the United States under previous law. Moreover, most of these activities may be conducted by a U.S. bank directly (or in an operating subsidiary) and, hence, may be funded by a U.S. bank in a manner that is not subject to sections 23A and 23B.[194]

The potential scope, nature, and risks of transactions and relationships between U.S. branches and agencies of foreign banks and their affiliates engaged in the United States in insurance underwriting, full-scope securities underwriting and dealing, merchant banking, and insurance company investment are unclear at this time. At least until the Board acquires more information and supervisory experience regarding these transactions

[188] The Board's Operating Standards for section 20 affiliates require (i) any intraday extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates to comply with the market terms requirement of section 23B; (ii) any extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates and any purchase by such branch or agency of securities for which a section 20 affiliate is the principal underwriter to comply with sections 23A and 23B; and (iii) a U.S. branch or agency of a foreign bank to refrain from advertising or suggesting that it is responsible for the obligations of a section 20 affiliate, consistent with section 23B(c). *See* 12 CFR 225.200; 62 FR 45295, Aug. 27, 1997. Prior to the adoption of the Operating Standards, all U.S. branches and agencies of a foreign bank (like all member banks) were prohibited from extending credit to, or purchasing assets from, a section 20 affiliate. Consequently, the Board's 1997 decision partially to apply sections 23A and 23B to such branches and agencies represented a liberalization of the regulatory framework.

[189] *See* 12 CFR 225.176(b)(6); 66 FR 8466, Jan. 21, 2001.

[190] Regulation W, consistent with the merchant banking rule, imposes sections 23A and 23B on a covered transaction between a U.S. branch or agency of a foreign bank and its U.S. merchant banking affiliate only to the extent the proceeds of the covered transaction are used for the purpose of funding the affiliate's merchant banking activities.

[191] *See* 12 U.S.C. 1843(k)(4)(B), (E), (H), and (I).

[192] The regulation covers subsidiaries of affiliates directly engaged in the specified activities in order to prevent evasion. If these subsidiaries were not covered, the U.S. branch or agency of a foreign bank arguably could fund the foreign bank's U.S. insurance underwriter outside the scope of sections 23A and 23B by, for example, lending money to a subsidiary of the underwriter and having the subsidiary dividend or on-lend the loan proceeds to the underwriter.

[193] The text and structure of the final rule on U.S. branches and agencies of foreign banks are somewhat different from that of the proposed rule. The proposed rule provided that section 23A applied to transactions *between* a U.S. branch or agency of a foreign bank, on the one hand, and certain U.S. affiliates of the foreign bank, on the other hand. The Board has revised the proposed rule to ensure that foreign banks treat certain indirect affiliate transactions as covered transactions under Regulation W. For example, an argument could be made that when a U.S. branch of a foreign bank accepts securities issued by a U.S. insurance company affiliate of the foreign bank as collateral for a loan to a nonaffiliate, there has been no transaction *between* the branch and the insurance affiliate. These transactions are, however, covered transactions under section 23A. The text and structure of the final rule make clear that such indirect affiliate transactions by a U.S. branch or agency of a foreign bank are subject to the rule.

[194] One U.S. bank commenter contended that Regulation W should be expanded to apply sections 23A and 23B to transactions between a foreign bank's U.S. branch or agency and a U.S. affiliate of the foreign bank engaged in any activities permissible under section 4(c)(8) of the BHC Act but not permissible for U.S. banks or their operating subsidiaries (for example, real estate leasing). The Board has determined not to add such activities to the rule's foreign bank activity list at this time because of the hardship this would impose on foreign banks and because the Board has substantial supervisory experience with such activities and has not observed any adverse competitive effects in the relevant markets. The Board does not intend to add such activities to the list in the future unless adverse competitive effects develop in the relevant markets that could be remedied by an expansion of the scope of sections 23A and 23B to the U.S. operations of foreign banks.

and relationships, applying sections 23A and 23B will help ensure competitive equity between foreign banks and U.S. banking organizations in the funding of certain of their U.S. nonbank operations. The Board will regularly review this section of Regulation W, consistent with the requirements of section 114(b)(3) of the GLB Act, to determine whether there is a continuing need for its restrictions and will modify or eliminate any restrictions that are no longer required to mitigate potential or actual adverse effects.

The regulation also provides that the Board may add to the list of affiliates of a foreign bank that are subject to the restrictions of sections 23A and 23B. The Board intends generally to use this reserved authority to ensure competitive equity between foreign banks and U.S. banks with respect to affiliates engaged in the United States in new activities that the Board may authorize for FHCs.

The Board also has considered the issue of how to calculate the capital stock and surplus of a foreign bank's U.S. branch or agency for purposes of section 23A. In light of the fact that foreign banks do not separately capitalize their U.S. branches or agencies, the regulation defines the capital stock and surplus of such branches and agencies by reference to the capital of the foreign bank as calculated under its home country capital standards. This definition is consistent with the approach adopted by the Board in its merchant banking rule,[195] and represents a relaxation from the Board's current position with respect to foreign banks that operate section 20 affiliates in the United States.[196]

A number of commenters strongly objected to the foreign bank provisions of the proposed rule, including the Canadian Department of Finance, the Institute of International Bankers, the Canadian Bankers Association, and the Swiss Bankers Association. Several of these commenters challenged the Board's authority under section 114 of the GLB Act to apply section 23A to the U.S. branches and agencies of foreign banks. According to these commenters, the Board's action fails to meet the first requirement of section 114 (consistency with Federal banking law) because Federal banking law does not generally subject U.S. branches and agencies of foreign banks to section 23A. In commenters' view, the Board's action also fails to meet the second prong of section 114 (intention to prevent adverse effects) because the Board has not presented specific evidence of actual abuse and is admittedly acting to fight *possible* future abuse.

The Board believes that its partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks is consistent with Federal banking law. The Board is aware of, and commenters cited, no Federal banking laws that contradict or otherwise conflict with the provisions of subpart G of Regulation W. Moreover, the Board disagrees with the implication of commenters' views of section 114, which would render section 114 useless by preventing the Board from imposing safeguards under the section unless such safeguards were already present in Federal banking law. Commenters also have failed to present evidence to support their claim that the Board may only use section 114 to combat adverse effects for which the Board has made specific findings. Nothing in the text or legislative history of the GLB Act supports this position. The Board does not believe that section 114 requires the Board to wait, observe, and document damage to U.S. financial institutions or markets before it may take action under the section to impose prudential safeguards.

Some commenters argued that the competitive equity justification for the Board's partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks does not fit within the ''unfair competition'' rationale in section 114 of the GLB Act. According to these commenters, the Board previously acknowledged that the ''unfair competition'' prong of section 4(j) of the BHC Act did not authorize the Board to consider disparities based on the structure of the banking industry.[197] Again, the Board is not aware of, and commenters have not presented, evidence that the phrase ''unfair competition'' in section 114(b)(4)(B) of the GLB Act cannot or should not be read to include competitive advantages based on regulatory environment. Importantly, the Board is not bound by its former interpretations of the BHC Act when interpreting provisions of the GLB Act. The Board notes that its former interpretation of section 4(j) of the BHC Act explicitly depended on the specific legislative history of section 4(j) and other sections of the BHC Act. The legislative history of the GLB Act does not similarly constrain the Board's interpretation of section 114. Indeed, the Congressional intent behind the GLB Act strongly supports the Board's position on this matter. The GLB Act authorized an expanded set of permissible activities for banking organizations, but required such activities to be conducted in section 23A affiliates of a bank (not directly in the bank) in order to reduce risks to the bank and to constrain the spread of the government subsidy enjoyed by banks. This Congressional concern to limit the transference of the bank subsidy into markets for other financial services is the same competitive concern that has motivated the Board to apply sections 23A and 23B to some portion of the U.S. operations of foreign banks.[198]

Several commenters on the foreign bank provisions of the proposed rule advanced the proposition that foreign banks do not enjoy a subsidy in the United States and do not have a competitive advantage over U.S. banking organizations. In fact, according to these commenters, U.S. banking firms have a competitive ''home field'' advantage in the United States.[199] The Board's partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks does not depend for its justification on whether foreign banks operating in the United States *generally* have a competitive advantage over U.S. banking firms. Rather, as noted above, the Board has chosen to extend the scope of sections 23A and 23B to address a specific potential competitive imbalance: the funding advantages enjoyed by the specified types of affiliates of foreign banks as compared to the same types of affiliates of U.S. banks. Foreign banks

[195] *See* 66 FR 8466, 8482, Jan. 31, 2001.

[196] The Board's position on section 20 affiliates requires U.S. branches and agencies of foreign banks whose home country supervisor has not adopted capital standards consistent with the Basle Accord to calculate their section 23A capital stock and surplus by reference to the capital of the foreign bank parent as calculated under standards applicable to U.S. banking organizations. *See* 62 FR 45304, Aug. 27, 1997.

[197] *See BankAmerica Corporation,* 69 Federal Reserve Bulletin 105, 111 (1983).

[198] The Board also notes that the ''adverse effects'' clause in section 114 of the GLB Act is broader than the ''adverse effects'' clause in section 4(j) of the BHC Act. Significantly, section 114, unlike section 4(j), explicitly authorizes the Board to consider risks to the safety and soundness of U.S. depository institutions. In the Board's view, the safety and soundness of U.S. depository institutions could be put at risk if certain of their affiliates are forced to compete with the affiliates of foreign banks at a significant regulatory disadvantage.

[199] In support of their position, many of these commenters referred to a study conducted by the Federal Reserve System that concluded that section 20 affiliates of U.S. BHCs have outperformed section 20 affiliates of foreign banks. In light of the fact that the Board has imposed many of the restrictions of sections 23A and 23B on transactions between the U.S. branches and agencies of foreign banks and their section 20 affiliates, this study does not provide much evidence as to whether foreign bank-owned securities underwriters and dealers would enjoy a competitive advantage over U.S. BHC-owned securities underwriters and dealers in the absence of an extension of sections 23A and 23B to cover foreign banks.

are able to raise low-cost deposits abroad and to use this low-cost funding to finance, including through their U.S. branches and agencies, the activities of the specified U.S. affiliates without having to comply with sections 23A and 23B. U.S. banks are limited by sections 23A and 23B in the extent to which they are able to finance the operations of the specified affiliates.

Commenters also pointed out alleged inconsistencies in the Board's treatment of the U.S. branches and agencies of foreign banks under subpart G. First, several commenters stated that it is inconsistent and unfair to subject the U.S. branches and agencies of foreign banks to section 23A but then to deny them the benefits of the sister-bank exemption. Regulation W does not, as a general matter, apply section 23A to transactions between a U.S. branch or agency and a sister U.S. branch, agency, or depository institution. The rule only applies section 23A to transactions between the U.S. branch or agency and a U.S. affiliate of the foreign bank engaged in the United States in insurance underwriting, securities underwriting and dealing, merchant banking, or insurance company investment. Because these activities generally are not permissible activities for a U.S. branch, agency, or subsidiary depository institution of a foreign bank, subpart G of the rule generally does not apply section 23A to transactions between the U.S. branch or agency of a foreign bank and any sister banks of the branch or agency.

Second, commenters claimed that it is inconsistent to permit a U.S. bank to fund its non-U.S. subsidiaries through a non-U.S. branch without complying with section 23A, but to force a non-U.S. bank to fund its U.S. subsidiaries through a U.S. branch in compliance with section 23A. As explained above, the Board is adopting subpart G of Regulation W in order to mitigate potential competitive inequities in certain nonbanking markets in the United States. Non-U.S. financial regulators are free to address any similar inequities that exist in their nonbanking markets due to disparate regulatory treatment. The Board notes that section 23A generally would apply to transactions between a U.S. bank and a foreign affiliate of the U.S. bank engaged in the four specified activities (other than an Edge subsidiary of the U.S. bank engaged in securities underwriting and dealing or certain limited investment activities).

X. Miscellaneous Interpretations—Subpart H

The Board has decided to include a subpart H in final Regulation W to house Board interpretations of sections 23A and 23B that do not fit neatly elsewhere in the regulation. Although subpart H of the final rule contains only a single section, the Board intends to place future Board miscellaneous interpretations of the statute into this subpart.

Section 223.71 of the final rule explains how sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate. In some situations in which a member bank purchases an asset from an affiliate, the asset purchase qualifies for an exemption under Regulation W, but the member bank's resulting ownership of the purchased asset also represents another covered transaction (which may or may not qualify for an exemption under the rule). In these situations, the transaction engaged in by the member bank would qualify as two different types of covered transaction. Although an asset purchase exemption may suffice to exempt the member bank's asset purchase from the first affiliate, the asset purchase exemption does not exempt the bank's resulting covered transaction with the second affiliate.

For example, assume a member bank purchases from one affiliate securities issued by another affiliate in a purchase that qualifies for the (d)(6) exemption in section 23A. The member bank's asset purchase from the first affiliate would be exempt under § 223.42(e) of the rule; but the bank also would have acquired an investment in securities issued by the second affiliate, which would be a covered transaction between the bank and the second affiliate that does not qualify for the (d)(6) exemption. The (d)(6) exemption, by its terms, only exempts asset purchases by a member bank from an affiliate; hence, the (d)(6) exemption cannot exempt a member bank's investment in securities issued by an affiliate (even if the securities would qualify for the (d)(6) exemption).

Section 223.71 sets forth this general interpretation and includes several examples to flesh out the interpretation (including the example given in the previous paragraph).[200]

[200] In light of the inclusion of section 223.71 in the final rule, the Board has removed certain conditions to the (d)(6)-related exemptions in section 223.42(e) and (f) of the rule.

XI. Effective Date; Transition Rule

Many commenters urged the Board to provide either a transition period for banks to come into compliance with Regulation W or a grandfather for existing transactions that do not comply with the rule. According to these commenters, banks need such relief because of the many ways in which the rule is inconsistent with existing bank practices or existing staff interpretations of section 23A. Although most commenters did not propose a specific time period, one commenter advocated a transition period of 2 to 3 years.

The Board recognizes that Regulation W tightens a number of traditional Board and staff interpretations of sections 23A and 23B. The Board also believes that the changes effected by the final rule are of substantial regulatory importance, and that the burden on member banks of full and prompt compliance with the final rule will be minimal in most cases. Accordingly, the Board has decided to delay the effective date of the rule only for the minimum period of time required by law and to provide member banks with only a limited transition period and grandfather authority for preexisting transactions.

The Board has decided to make Regulation W effective as of April 1, 2003. Accordingly, transactions entered into on or after April 1, 2003, will be immediately subject to the rule. Transactions entered into after December 12, 2002, but before April 1, 2003, will become subject to the rule on April 1, 2003.

The Board also has determined to adopt a limited transition rule for transactions that consummate on or before the date of publication of final Regulation W in the **Federal Register**. As a general matter, any transaction engaged in by a member bank on or before December 12, 2002 that would become subject to section 23A or 23B solely as a result of this rule, or whose treatment under section 23A or 23B would change solely as a result of this rule, will not become subject to this rule until July 1, 2003. The Board may, in its discretion, extend this deadline in circumstances where a member bank has demonstrated to the Board's satisfaction that compliance with the deadline would impose regulatory burden on the member bank that outweighs the regulatory benefit of early compliance.

For purposes of the transition rule, a transaction is subject to section 23A or 23B solely as a result of Regulation W if the transaction is subject to section 23A or 23B under the rule but was not

subject to section 23A or 23B under the terms of the sections or any written interpretations of the sections by the Board or its staff that predated December 12, 2002. In addition, a transaction's treatment under section 23A or 23B changes solely as a result of Regulation W if the treatment of the transaction under the rule differs from the treatment of the transaction under the terms of sections 23A and 23B or any written interpretations of the sections by the Board or its staff that predated December 12, 2002.

The transition rule has several exceptions. First, any transaction that qualifies for the transition rule but is renewed, extended, or materially altered on or after April 1, 2003, will be immediately subject to the rule at the time of such renewal, extension, or material alteration. In addition, any transaction that qualifies for the transition rule but is a purchase of assets by a member bank from an affiliate that consummated on or before December 12, 2002 will not be subject to this rule.

The following examples are designed to assist member banks in understanding the transition rule. The first example involves an extension of credit that predates December 12, 2002. Suppose that on February 18, 2002, a member bank makes a loan to an unregistered investment fund advised (but not sponsored) by the bank. The member bank does not control the fund, but the bank's holding company owns 10 percent of the total equity of the fund. The fund is not an affiliate of the member bank under sections 23A and 23B and written interpretations of such sections by the Board and its staff at the time the loan is made. The fund would become an affiliate of the member bank under Regulation W, and the loan would become a covered transaction, as of July 1, 2003.[201] If the member bank renews the loan on May 14, 2003, however, the loan would become a covered transaction as of May 14, 2003.

The second example involves an asset purchase that predates December 12, 2002. Suppose that on August 9, 2002, a member bank purchases assets from an uninsured depository institution affiliate in a transaction that qualifies for the sister-bank exemption in section 23A(d)(4). Although Regulation W renders the sister-bank exemption unavailable for transactions with uninsured depository institution affiliates as of April 1, 2003, the asset purchase would permanently qualify for the sister-bank exemption.

The Board also has determined to allow member banks to apply certain provisions of Regulation W that relieve regulatory burden before the rule's effective date.[202] In particular, notwithstanding the effective date and transition rule provisions discussed above, a member bank may choose to apply any of the following provisions of the rule beginning on December 12, 2002: (i) section 223.16(c)(4); (ii) section 223.24(a), (b), or (c); (iii) section 223.31(d); (iv) section 223.41(d); or (v) section 223.42(c), (f), (g), (i), (j), or (k).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. Sections 23A and 23B of the Federal Reserve Act limit transactions between a depository institution and its affiliates and authorize the Board to issue regulations as necessary to administer and carry out the purposes of the sections.[203] Sections 23A and 23B are two of the most important statutory protections against a depository institution suffering losses from its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a depository institution to transfer to its affiliates the subsidy arising from its access to the Federal safety net. Although sections 23A and 23B each grant the Board authority to issue regulations, the Board has never issued a regulation fully implementing either section. Instead, depository institutions seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff opinions. Banking organizations have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern FHCs and the growing complexities of the U.S. financial markets.

As noted above, the Board believes that adoption of a comprehensive regulation implementing sections 23A and 23B is appropriate for several reasons. First, the new regulatory framework established by the GLB Act emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Moreover, adoption of a comprehensive regulation will simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden to the extent consistent with the statute's goals.

The Board received approximately 120 public comments in response to the Board's proposed section 23A rulemakings. As discussed above, nearly all commenters supported the Board's decision to issue Regulation W, but raised specific concerns on certain aspects of the regulation. The preamble provides a detailed discussion of the public comments. The Board considered the alternatives proposed by the comments, and the preamble describes the numerous changes that the Board made to the proposed rule as a result of the comments.

Regulation W provides users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B. Accordingly, the regulation incorporates Board and staff interpretations and also restates the statutory definitions, restrictions, and exemptions in order to make understanding and using the regulation easier.

The regulation first sets forth, in subpart A, a comprehensive glossary of the terms used in the regulation. Subpart B then describes the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, derivative transactions with affiliates, and certain merger and acquisition transactions with affiliates. Subpart E sets forth available exemptions from certain of the requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of the rule to U.S. branches and agencies of foreign banks. Subpart H contains an additional interpretation of the statute. Regulation W also includes examples illustrating how several of the rule's provisions apply in particular circumstances.

Regulation W applies, by its terms, to all member banks regardless of their size. The regulation affects all insured depository institutions, however, because other Federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B as if they were member banks. The rule also applies indirectly to the ''affiliates'' of insured depository institutions. A

[201] The Board would expect member banks to treat such a transaction, as of July 1, 2003, in accordance with the timing rules set forth in section 223.21(b)(2) of Regulation W for a credit transaction with a nonaffiliate that becomes an affiliate.

[202] Permitting member banks to comply with provisions of the final rule that relieve burden prior to the rule's effective date is consistent with applicable Federal law. *See* 5 U.S.C 553 and 12 U.S.C. 4802.

[203] 12 U.S.C. 371c(f) and 371c–1(e).

depository institution's affiliates include, among other companies, any company that controls the institution, any company under common control with the institution, and certain investment funds that are advised by the institution or an affiliate of the institution. The number of small entities affected by Regulation W is estimated to be a little over 6,500, including *3,292* depository institutions. For purposes of this regulatory flexibility analysis, the Board defines small entity as any depository institution or other company with less than $150 million in total assets. The Board does not collect data on all affiliates of depository institutions at this time. Accordingly, the exact number of small entities affected by the rule would require additional surveys or reports, which would increase the burden on the public and are not necessary for implementation of the rule.

The vast majority of depository institutions that are currently in compliance with sections 23A and 23B will also be in compliance with the rule. The rule does not impose any new compliance requirements and mainly codifies existing practice and grants new exemptions. The rule includes several exemptions that will be available to a depository institution only if it notifies its primary Federal supervisor. This notification, however, allows the institution to engage in a transaction that is otherwise prohibited by law and replaces the current requirement of a more time-consuming case-by-case exemption request to the Board. The primary Federal supervisor of an institution also may require additional documentation to ensure compliance with the regulation. Moreover, the Board has delegated authority to the primary Federal supervisors of depository institutions to make certain determinations as to the permissibility of certain transactions.

The rule does not result in significant additional burden to the institutions that must comply with its terms. The provisions of Regulation W, in fact, may be less burdensome than existing law because of the increased number of exemptions. One alternative to adopting this rule is to maintain the current collection of formal and informal Board and staff interpretations. Most public commenters believed, however, that the adoption of Regulation W would reduce burden by placing sections 23A and 23B and the Board's interpretations thereof in a single, comprehensive, public document.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Federal Reserve displays a currently valid OMB control number. The Federal Reserve will assign an OMB control number.

The collection of information requirements in this final rulemaking are found in 12 CFR 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1). The respondents are all insured depository institutions and uninsured member banks.

The notice requirement cited in 12 CFR 223.15(b)(4) is a condition to an exemption for renewals of loan participations involving problem loans. The participating depository institution must provide its appropriate Federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation. There will be no reporting form associated with this information collection. The Board estimates that approximately 10 depository institutions will file this notice annually and that it will take approximately 2 hours to prepare the notice.

The notice requirement cited in 12 CFR 223.31(d)(4) is a condition to an exemption for a depository institution's acquisition of an affiliate that becomes an operating subsidiary of the institution after the acquisition. The institution must provide its appropriate Federal banking agency and the Board with written notice of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution. There will be no reporting form associated with this information collection. The Board estimates that approximately 10 depository institutions will file this notice annually and that it will take approximately 6 hours to prepare the notice.

The notice requirement cited in 12 CFR 223.41(d)(2) is a condition to an exemption for internal corporate reorganization transactions. The depository institution must provide its appropriate Federal banking agency and the Board with written notice of the transaction before consummation. The notice must describe the primary business activities of the affiliate and indicate the proposed date of the reorganization. There will be no reporting form associated with this information collection. The Board estimates that approximately 20 depository institutions will file this notice annually and that it will take approximately 6 hours to prepare a notice.

The notice requirement cited in 12 CFR 223.43(b) provides procedures for requesting additional exemptions from the requirements of section 23A. The depository institution must submit a written request to the General Counsel of the Board. The request must describe in detail the transaction or relationship for which the institution seeks exemption; explain why the Board should exempt the transaction or relationship; and explain how the exemption would be in the public interest and consistent with the purposes of section 23A. There will be no reporting form associated with this information collection. The Board estimates that approximately 5 depository institutions will file these requests annually and that it will take approximately 10 hours to prepare a request.

The total estimated annual burden for the depository institutions that must comply with the above-mentioned requirements is 250 hours. Based on a rate of $50 per hour, the total annual cost to the public for these collections of information is estimated to be $12,500.

In addition, there are existing reports (such as the Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y–8; OMB No. 7100–0126)) that will be modified to reflect the adoption of this rule. The Board expects to publish a separate notice describing the changes to these reports. The burden associated with these collections of information will be addressed at that time.

Comments are invited on (i) whether the proposed notifications are necessary for the proper performance of the Board's functions, including whether the information contained in the notifications would have practical utility; (ii) the accuracy of the Board's estimate of the burden of the proposed information collections, including the cost of compliance; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of information collections on respondents, including through the use of automated

collection techniques or other forms of information technology.

Comments regarding any aspect of these information collections, including suggestions for reducing the burden, must be submitted on or before February 10, 2003, and may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-[to be assigned]), Washington, DC 20503.

Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invited comments about how to make the proposed rule easier to understand and, in doing so, posed the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The Board also provided examples in the proposed rule to illustrate how several of the rule's provisions would apply in particular circumstances, and solicited comment on what kinds of additional examples should be added to the rule.

Commenters generally expressed support for the format of the regulation and believed that the rule conveyed the Board's interpretations of section 23A in plain language. Several commenters did recommend, however, that the Board move the definitional sections of the rule to the front. In response to these comments, the Board has placed the rule's definitions in the first subpart of the rule.

Several commenters also recommended clarification of several examples contained in the proposed rule and inclusion of additional examples, particularly in the valuation subpart of the rule. The final rule modifies several of the proposed rule's examples to enhance their illustrative power and includes a number of new examples to increase the ability of users of the regulation to understand the valuation formulas of the rule.

List of Subjects in 12 CFR Part 223

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, title 12 of the Code of Federal Regulations is amended by adding a new part 223 to read as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

Subpart A—Introduction and Definitions

Sec.
223.1 Authority, purpose, and scope.
223.2 What is an ''affiliate'' for purposes of sections 23A and 23B and this part?
223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

Subpart B—General Provisions of Section 23A

223.11 What is the maximum amount of covered transactions that a member bank may enter into with any single affiliate?
223.12 What is the maximum amount of covered transactions that a member bank may enter into with all affiliates?
223.13 What safety and soundness requirement applies to covered transactions?
223.14 What are the collateral requirements for a credit transaction with an affiliate?
223.15 May a member bank purchase a low-quality asset from an affiliate?
223.16 What transactions by a member bank with any person are treated as transactions with an affiliate?

Subpart C—Valuation and Timing Principles Under Section 23A

223.21 What valuation and timing principles apply to credit transactions?
223.22 What valuation and timing principles apply to asset purchases?
223.23 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?
223.24 What valuation principles apply to extensions of credit secured by affiliate securities?

Subpart D—Other Requirements Under Section 23A

223.31 How does section 23A apply to a member bank's acquisition of an affiliate that becomes an operating subsidiary of the member bank after the acquisition?
223.32 What rules apply to financial subsidiaries of a member bank?
223.33 What rules apply to derivative transactions?

Subpart E—Exemptions from the Provisions of Section 23A

223.41 What covered transactions are exempt from the quantitative limits and collateral requirements?
223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?
223.43 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

Subpart F—General Provisions of Section 23B

223.51 What is the market terms requirement of section 23B?
223.52 What transactions with affiliates or others must comply with section 23B's market terms requirement?
223.53 What asset purchases are prohibited by section 23B?
223.54 What advertisements and statements are prohibited by section 23B?
223.55 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

223.61 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

Subpart H—Miscellaneous Interpretations

223.71 How do sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate?

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), and 1468(a).

Subpart A—Introduction and Definitions

§ 223.1 Authority, purpose, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (12 U.S.C. 371c(f), 371c–1(e)).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a member bank and its affiliates. This regulation implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions.

(c) *Scope.* Sections 23A and 23B and this regulation apply by their terms to ''member banks''—that is, any national bank, State bank, trust company, or other institution that is a member of the Federal Reserve System. In addition, the

Federal Deposit Insurance Act (12 U.S.C. 1828(j)) applies sections 23A and 23B to insured State nonmember banks in the same manner and to the same extent as if they were member banks. The Home Owners' Loan Act (12 U.S.C. 1468(a)) also applies sections 23A and 23B to insured savings associations in the same manner and to the same extent as if they were member banks (and imposes two additional restrictions).

§ 223.2 What is an ''affiliate'' for purposes of sections 23A and 23B and this part?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, ''affiliate'' with respect to a member bank means:

(1) *Parent companies.* Any company that controls the member bank;

(2) *Companies under common control by a parent company.* Any company, including any subsidiary of the member bank, that is controlled by a company that controls the member bank;

(3) *Companies under other common control.* Any company, including any subsidiary of the member bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors, trustees, or general partners (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or an affiliate of the member bank;

(6) *Investment companies.* (i) Any investment company for which the member bank or any affiliate of the member bank serves as an investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)); and

(ii) Any other investment fund for which the member bank or any affiliate of the member bank serves as an investment advisor, if the member bank and its affiliates own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the member bank;

(8) *Financial subsidiaries.* A financial subsidiary of the member bank;

(9) *Companies held under merchant banking or insurance company investment authority*—(i) *In general.* Any company in which a holding company of the member bank owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company will not be an affiliate under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also will not be an affiliate under paragraph (a)(9)(i) of this section if:

(A) No director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) A person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) A person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity capital of a company for purposes of paragraph (a)(9)(i) of this section solely by virtue of an investment made by the holding company in a private equity fund (as defined in the merchant banking subpart of the Board's Regulation Y (12 CFR 225.173(a))) that owns or controls the equity capital of the company unless the holding company controls the private equity fund under 12 CFR 225.173(d)(4).

(v) *Definition.* For purposes of this paragraph (a)(9), ''*holding company*'' with respect to a member bank means a company that controls the member bank, or a company that is controlled by shareholders that control the member bank, and all subsidiaries of the company (including any depository institution that is a subsidiary of the company).

(10) *Partnerships associated with the member bank or an affiliate.* Any partnership for which the member bank or any affiliate of the member bank serves as a general partner or for which the member bank or any affiliate of the member bank causes any director, officer, or employee of the member bank or affiliate to serve as a general partner;

(11) *Subsidiaries of affiliates.* Any subsidiary of a company described in paragraphs (a)(1) through (10) of this section; and

(12) *Other companies.* Any company that the Board determines by regulation or order, or that the appropriate Federal banking agency for the member bank determines by order, to have a relationship with the member bank, or any affiliate of the member bank, such that covered transactions by the member bank with that company may be affected by the relationship to the detriment of the member bank.

(b) ''*Affiliate*'' with respect to a member bank does *not* include:

(1) *Subsidiaries.* Any company that is a subsidiary of the member bank, unless the company is:

(i) A depository institution;

(ii) A financial subsidiary;

(iii) Directly controlled by:

(A) One or more affiliates (other than depository institution affiliates) of the member bank; or

(B) A shareholder that controls the member bank or a group of shareholders that together control the member bank;

(iv) An employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the member bank or any of its affiliates; or

(v) Any other company determined to be an affiliate under paragraph (a)(12) of this section;

(2) *Bank premises.* Any company engaged solely in holding the premises of the member bank;

(3) *Safe deposit.* Any company engaged solely in conducting a safe deposit business;

(4) *Government securities.* Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(5) *Companies held DPC.* Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted. This exclusion from the definition of ''affiliate'' applies only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law

or regulation, for a period of two years from the date of the exercise of such rights. The Board may authorize, upon application and for good cause shown, extensions of time for not more than one year at a time, but such extensions in the aggregate will not exceed three years.

(c) For purposes of subpart F (implementing section 23B), ''affiliate'' with respect to a member bank also does *not* include any depository institution.

§ 223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

For purposes of this part:

(a) *Aggregate amount of covered transactions* means the amount of the covered transaction about to be engaged in added to the current amount of all outstanding covered transactions.

(b) *Appropriate Federal banking agency* with respect to a member bank or other depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) ''*Bank holding company*'' has the same meaning as in 12 CFR 225.2.

(d) ''*Capital stock and surplus*'' means the sum of:

(1) A member bank's tier 1 and tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3);

(2) The balance of a member bank's allowance for loan and lease losses not included in its tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(3) The amount of any investment by a member bank in a financial subsidiary that counts as a covered transaction and is required to be deducted from the member bank's capital for regulatory capital purposes.

(e) *Carrying value* with respect to a security means (unless otherwise provided) the value of the security on the financial statements of the member bank, determined in accordance with GAAP.

(f) *Company* means a corporation, partnership, limited liability company, business trust, association, or similar organization and, unless specifically excluded, includes a member bank and a depository institution.

(g) *Control.* (1) *In general.* ''*Control*'' by a company or shareholder over another company means that:

(i) The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(ii) The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company; or

(iii) The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(2) *Ownership or control of shares as fiduciary.* Notwithstanding any other provision of this regulation, no company will be deemed to control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (a)(3) of § 223.2 or if the company owning or controlling the shares is a business trust.

(3) *Ownership or control of securities by subsidiary.* A company controls securities, assets, or other ownership interests owned or controlled, directly or indirectly, by any subsidiary (including a subsidiary depository institution) of the company.

(4) *Ownership or control of convertible instruments.* A company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities, controls the securities, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder should not be deemed to control the securities.

(5) *Ownership or control of nonvoting securities.* A company or shareholder that owns or controls 25 percent or more of the equity capital of another company controls the other company, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder does not control the other company.

(h) *Covered transaction* with respect to an affiliate means:

(1) An extension of credit to the affiliate;

(2) A purchase of, or an investment in, a security issued by the affiliate;

(3) A purchase of an asset from the affiliate, including an asset subject to recourse or an agreement to repurchase, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation;

(4) The acceptance of a security issued by the affiliate as collateral for an extension of credit to any person or company; and

(5) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate, a confirmation of a letter of credit issued by the affiliate, and a cross-affiliate netting arrangement.

(i) *Credit transaction* with an affiliate means:

(1) An extension of credit to the affiliate;

(2) An issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate and a confirmation of a letter of credit issued by the affiliate; and

(3) A cross-affiliate netting arrangement.

(j) *Cross-affiliate netting arrangement* means an arrangement among a member bank, one or more affiliates of the member bank, and one or more nonaffiliates of the member bank in which:

(1) A nonaffiliate is permitted to deduct any obligations of an affiliate of the member bank to the nonaffiliate when settling the nonaffiliate's obligations to the member bank; or

(2) The member bank is permitted or required to add any obligations of its affiliate to a nonaffiliate when determining the member bank's obligations to the nonaffiliate.

(k) ''*Depository institution*'' means, unless otherwise noted, an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), but does not include any branch of a foreign bank. For purposes of this definition, an operating subsidiary of a depository institution is treated as part of the depository institution.

(l) ''*Derivative transaction*'' means any derivative contract listed in sections III.E.1.a. through d. of Appendix A to 12 CFR part 225 and any similar derivative contract, including a credit derivative contract.

(m) ''*Eligible affiliated mutual fund securities*'' has the meaning specified in paragraph (c)(2) of § 223.24.

(n) ''*Equity capital*'' means:

(1) With respect to a corporation, preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock, plus any other account that constitutes equity of the corporation; and

(2) With respect to a partnership, limited liability company, or other company, equity accounts similar to those described in paragraph (n)(1) of this section.

(o) ''*Extension of credit*'' to an affiliate means the making or renewal of a loan, the granting of a line of credit, or the extending of credit in any manner whatsoever, including on an intraday basis, to an affiliate. An extension of credit to an affiliate includes, without limitation:

(1) An advance to an affiliate by means of an overdraft, cash item, or otherwise;

(2) A sale of Federal funds to an affiliate;

(3) A lease that is the functional equivalent of an extension of credit to an affiliate;

(4) An acquisition by purchase, discount, exchange, or otherwise of a note or other obligation, including commercial paper or other debt securities, of an affiliate;

(5) Any increase in the amount of, extension of the maturity of, or adjustment to the interest rate term or other material term of, an extension of credit to an affiliate; and

(6) Any other similar transaction as a result of which an affiliate becomes obligated to pay money (or its equivalent).

(p) ''*Financial subsidiary*''

(1) *In general.* Except as provided in paragraph (p)(2) of this section, the term ''*financial subsidiary*'' means any subsidiary of a member bank that:

(i) Engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted under terms and conditions that differ from those that govern the conduct of such activity by national banks; and

(ii) Is not a subsidiary that a national bank is specifically authorized to own or control by the express terms of a Federal statute (other than 12 U.S.C. 24a), and not by implication or interpretation.

(2) *Exceptions.* ''*Financial subsidiary*'' does not include:

(i) A subsidiary of a member bank that is considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in the sale of insurance as agent or broker in a manner that is not permitted for national banks; and

(ii) A subsidiary of a State bank (other than a subsidiary described in section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w(a))) that is considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in one or more of the following activities:

(A) An activity that the State bank may engage in directly under applicable Federal and State law and that is conducted under the same terms and conditions that govern the conduct of the activity by the State bank; and

(B) An activity that the subsidiary was authorized by applicable Federal and State law to engage in prior to December 12, 2002, and that was lawfully engaged in by the subsidiary on that date.

(3) *Subsidiaries of financial subsidiaries.* If a company is a financial subsidiary under paragraphs (p)(1) and (p)(2) of this section, any subsidiary of such a company is also a financial subsidiary.

(q) ''*Foreign bank*'' and an ''*agency,*'' ''*branch,*'' or ''*commercial lending company*'' of a foreign bank have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(r) ''*GAAP*'' means U.S. generally accepted accounting principles.

(s) ''*General purpose credit card*'' has the meaning specified in paragraph (c)(4)(ii) of § 223.16.

(t) *In contemplation.* A transaction between a member bank and a nonaffiliate is presumed to be ''*in contemplation*'' of the nonaffiliate becoming an affiliate of the member bank if the member bank enters into the transaction with the nonaffiliate after the execution of, or commencement of negotiations designed to result in, an agreement under the terms of which the nonaffiliate would become an affiliate.

(u) ''*Intraday extension of credit*'' has the meaning specified in paragraph (l)(2) of § 223.42.

(v) ''*Low-quality asset*'' means:

(1) An asset (including a security) classified as ''substandard,'' ''doubtful,'' or ''loss,'' or treated as ''special mention'' or ''other transfer risk problems,'' either in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency or in any internal classification system used by the member bank or the affiliate (including an asset that receives a rating that is substantially equivalent to ''classified'' or ''special mention'' in the internal system of the member bank or affiliate);

(2) An asset in a nonaccrual status;

(3) An asset on which principal or interest payments are more than thirty days past due;

(4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(5) An asset acquired through foreclosure, repossession, or otherwise in satisfaction of a debt previously contracted, if the asset has not yet been reviewed in an examination or inspection.

(w) ''*Member bank*'' means any national bank, State bank, banking association, or trust company that is a member of the Federal Reserve System. For purposes of this definition, an operating subsidiary of a member bank is treated as part of the member bank.

(x) ''*Municipal securities*'' has the same meaning as in section 3(a)(29) of the Securities Exchange Act of 1934 (17 U.S.C. 78c(a)(29)).

(y) ''*Nonaffiliate*'' with respect to a member bank means any person that is not an affiliate of the member bank.

(z) ''*Obligations of, or fully guaranteed as to principal and interest by, the United States or its agencies*'' includes those obligations listed in 12 CFR 201.108(b) and any additional obligations as determined by the Board. The term does not include Federal Housing Administration or Veterans Administration loans.

(aa) ''*Operating subsidiary*'' with respect to a member bank or other depository institution means any subsidiary of the member bank or depository institution other than a subsidiary described in paragraphs (b)(1)(i) through (v) of § 223.2.

(bb) ''*Person*'' means an individual, company, trust, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(cc) ''*Principal underwriter*'' has the meaning specified in paragraph (c)(1) of § 223.53.

(dd) ''*Purchase of an asset*'' by a member bank from an affiliate means the acquisition by a member bank of an asset from an affiliate in exchange for cash or any other consideration, including an assumption of liabilities. The merger of an affiliate into a member bank is a purchase of assets by the member bank from an affiliate if the member bank assumes any liabilities of the affiliate or pays any other form of consideration in the transaction.

(ee) *Riskless principal.* A company is ''*acting exclusively as a riskless principal*'' if, after receiving an order to buy (or sell) a security from a customer, the company purchases (or sells) the security in the secondary market for its own account to offset a contemporaneous sale to (or purchase from) the customer.

(ff) ''*Securities*'' means stocks, bonds, debentures, notes, or similar obligations (including commercial paper).

(gg) ''*Securities affiliate*'' with respect to a member bank means:

(1) An affiliate of the member bank that is registered with the Securities and Exchange Commission as a broker or dealer; or

(2) Any other securities broker or dealer affiliate of a member bank that is approved by the Board.

(hh) ''*State bank*'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(ii) ''*Subsidiary*'' with respect to a specified company means a company that is controlled by the specified company.

(jj) ''*Voting securities*'' has the same meaning as in 12 CFR 225.2.

(kk) ''*Well capitalized*'' has the same meaning as in 12 CFR 225.2 and, in the case of any holding company that is not a bank holding company, ''*well capitalized*'' means that the holding company has and maintains at least the capital levels required for a bank holding company to be well capitalized under 12 CFR 225.2.

(ll) ''*Well managed*'' has the same meaning as in 12 CFR 225.2.

Subpart B'General Provisions of Section 23A

§ 223.11 What is the maximum amount of covered transactions that a member bank may enter into with any single affiliate?

A member bank may not engage in a covered transaction with an affiliate (other than a financial subsidiary of the member bank) if the aggregate amount of the member bank's covered transactions with such affiliate would exceed 10 percent of the capital stock and surplus of the member bank.

§ 223.12 What is the maximum amount of covered transactions that a member bank may enter into with all affiliates?

A member bank may not engage in a covered transaction with any affiliate if the aggregate amount of the member bank's covered transactions with all affiliates would exceed 20 percent of the capital stock and surplus of the member bank.

§ 223.13 What safety and soundness requirement applies to covered transactions?

A member bank may not engage in any covered transaction, including any transaction exempt under this regulation, unless the transaction is on terms and conditions that are consistent with safe and sound banking practices.

§ 223.14 What are the collateral requirements for a credit transaction with an affiliate?

(a) *Collateral required for extensions of credit and certain other covered transactions.* A member bank must ensure that each of its credit transactions with an affiliate is secured by the amount of collateral required by paragraph (b) of this section at the time of the transaction.

(b) *Amount of collateral required.* (1) *The rule.* A credit transaction described in paragraph (a) of this section must be secured by collateral having a market value equal to at least:

(i) 100 percent of the amount of the transaction, if the collateral is:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such;

(ii) 110 percent of the amount of the transaction, if the collateral is obligations of any State or political subdivision of any State;

(iii) 120 percent of the amount of the transaction, if the collateral is other debt instruments, including loans and other receivables; or

(iv) 130 percent of the amount of the transaction, if the collateral is stock, leases, or other real or personal property.

(2) *Example.* A member bank makes a $1,000 loan to an affiliate. The affiliate posts as collateral for the loan $500 in U.S. Treasury securities, $480 in corporate debt securities, and $130 in real estate. The loan satisfies the collateral requirements of this section because $500 of the loan is 100 percent secured by obligations of the United States, $400 of the loan is 120 percent secured by debt instruments, and $100 of the loan is 130 percent secured by real estate.

(c) *Ineligible collateral.* The following items are not eligible collateral for purposes of this section:

(1) Low-quality assets;

(2) Securities issued by any affiliate;

(3) Equity securities issued by the member bank, and debt securities issued by the member bank that represent regulatory capital of the member bank;

(4) Intangible assets (including servicing assets), unless specifically approved by the Board; and

(5) Guarantees, letters of credit, and other similar instruments.

(d) *Perfection and priority requirements for collateral.* (1) *Perfection.* A member bank must maintain a security interest in collateral required by this section that is perfected and enforceable under applicable law, including in the event of default resulting from bankruptcy, insolvency, liquidation, or similar circumstances.

(2) *Priority.* A member bank either must obtain a first priority security interest in collateral required by this section or must deduct from the value of collateral obtained by the member bank the lesser of:

(i) The amount of any security interest in the collateral that is senior to that of the member bank; or

(ii) The amount of any credit secured by the collateral that is senior to that of the member bank.

(3) *Example.* A member bank makes a $2,000 loan to an affiliate. The affiliate grants the member bank a second priority security interest in a piece of real estate valued at $3,000. Another institution that previously lent $1,000 to the affiliate has a first priority security interest in the entire parcel of real estate. This transaction is not in compliance with the collateral requirements of this section. Due to the existence of the prior third-party lien on the real estate, the effective value of the real estate collateral for the member bank for purposes of this section is only $2,000—$600 less than the amount of real estate collateral required by this section for the transaction ($2,000 × 130 percent = $2,600).

(e) *Replacement requirement for retired or amortized collateral.* A member bank must ensure that any required collateral that subsequently is retired or amortized is replaced with additional eligible collateral as needed to keep the percentage of the collateral value relative to the amount of the outstanding credit transaction equal to the minimum percentage required at the inception of the transaction.

(f) *Inapplicability of the collateral requirements to certain transactions.* The collateral requirements of this section do not apply to the following transactions.

(1) *Acceptances.* An acceptance that already is fully secured either by attached documents or by other property that is involved in the transaction and has an ascertainable market value.

(2) *The unused portion of certain extensions of credit.* The unused portion of an extension of credit to an affiliate as long as the member bank does not have any legal obligation to advance additional funds under the extension of credit until the affiliate provides the amount of collateral required by paragraph (b) of this section with

respect to the entire used portion (including the amount of the requested advance) of the extension of credit.

(3) *Purchases of affiliate debt securities in the secondary market.* The purchase of a debt security issued by an affiliate as long as the member bank purchases the debt security from a nonaffiliate in a bona fide secondary market transaction.

§ 223.15 May a member bank purchase a low-quality asset from an affiliate?

(a) *In general.* A member bank may not purchase a low-quality asset from an affiliate unless, pursuant to an independent credit evaluation, the member bank had committed itself to purchase the asset before the time the asset was acquired by the affiliate.

(b) *Exemption for renewals of loan participations involving problem loans.* The prohibition contained in paragraph (a) of this section does not apply to the renewal of, or extension of additional credit with respect to, a member bank's participation in a loan to a nonaffiliate that was originated by an affiliate if:

(1) The loan was not a low-quality asset at the time the member bank purchased its participation;

(2) The renewal or extension of additional credit is approved, as necessary to protect the participating member bank's investment by enhancing the ultimate collection of the original indebtedness, by the board of directors of the participating member bank or, if the originating affiliate is a depository institution, by:

(i) An executive committee of the board of directors of the participating member bank; or

(ii) One or more senior management officials of the participating member bank, if:

(A) The board of directors of the member bank approves standards for the member bank's renewals or extensions of additional credit described in this paragraph (b), based on the determination set forth in paragraph (b)(2) of this section;

(B) Each renewal or extension of additional credit described in this paragraph (b) meets the standards; and

(C) The board of directors of the member bank periodically reviews renewals and extensions of additional credit described in this paragraph (b) to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section;

(3) The participating member bank's share of the renewal or extension of additional credit does not exceed its proportional share of the original transaction by more than 5 percent, unless the member bank obtains the prior written approval of its appropriate Federal banking agency; and

(4) The participating member bank provides its appropriate Federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation.

§ 223.16 What transactions by a member bank with any person are treated as transactions with an affiliate?

(a) *In general.* A member bank must treat any of its transactions with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(b) *Certain agency transactions.* (1) Except to the extent described in paragraph (b)(2) of this section, an extension of credit by a member bank to a nonaffiliate is not treated as an extension of credit to an affiliate under paragraph (a) of this section if:

(i) The proceeds of the extension of credit are used to purchase an asset through an affiliate of the member bank, and the affiliate is acting exclusively as an agent or broker in the transaction; and

(ii) The asset purchased by the nonaffiliate is not issued, underwritten, or sold as principal by any affiliate of the member bank.

(2) The interpretation set forth in paragraph (b)(1) of this section does not apply to the extent of any agency fee, brokerage commission, or other compensation received by an affiliate from the proceeds of the extension of credit. The receipt of such compensation may qualify, however, for the exemption contained in paragraph (c)(2) of this section.

(c) *Exemptions.* Notwithstanding paragraph (a) of this section, the following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12 or the collateral requirements of § 223.14. The transactions are, however, subject to the safety and soundness requirement of § 223.13 and the market terms requirement and other provisions of subpart F (implementing section 23B).

(1) *Certain riskless principal transactions.* An extension of credit by a member bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security through a securities affiliate of the member bank, and the securities affiliate is acting exclusively as a riskless principal in the transaction;

(ii) The security purchased by the nonaffiliate is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank; and

(iii) Any riskless principal mark-up or other compensation received by the securities affiliate from the proceeds of the extension of credit meets the market terms standard set forth in paragraph (c)(2) of this section.

(2) *Brokerage commissions, agency fees, and riskless principal mark-ups.* An affiliate's retention of a portion of the proceeds of an extension of credit described in paragraph (b) or (c)(1) of this section as a brokerage commission, agency fee, or riskless principal mark-up, if that commission, fee, or mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliates, in accordance with the market terms requirement of § 223.51.

(3) *Preexisting lines of credit.* An extension of credit by a member bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security from or through a securities affiliate of the member bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the member bank.

(4) *General purpose credit card transactions.*

(i) *In general.* An extension of credit by a member bank to a nonaffiliate, if:

(A) The proceeds of the extension of credit are used by the nonaffiliate to purchase a product or service from an affiliate of the member bank; and

(B) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a general purpose credit card issued by the member bank to the nonaffiliate.

(ii) *Definition.* ''*General purpose credit card*'' means a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the member bank for the purchase of products or services, if:

(A) Less than 25 percent of the total value of products and services purchased with the card by all cardholders are purchases of products and services from one or more affiliates of the member bank;

(B) All affiliates of the member bank would be permissible for a financial holding company (as defined in 12 U.S.C. 1841) under section 4 of the Bank Holding Company Act (12 U.S.C. 1843), and the member bank has no reason to believe that 25 percent or more of the

total value of products and services purchased with the card by all cardholders are or would be purchases of products and services from one or more affiliates of the member bank; or

(C) The member bank presents information to the Board that demonstrates, to the Board's satisfaction, that less than 25 percent of the total value of products and services purchased with the card by all cardholders are and would be purchases of products and services from one or more affiliates of the member bank.

(iii) *Calculating compliance.* To determine whether a credit card qualifies as a general purpose credit card under the standard set forth in paragraph (c)(4)(ii)(A) of this section, a member bank must compute compliance on a monthly basis, based on cardholder purchases that were financed by the credit card during the preceding 12 calendar months. If a credit card has qualified as a general purpose credit card for 3 consecutive months but then ceases to qualify in the following month, the member bank may continue to treat the credit card as a general purpose credit card for such month and three additional months (or such longer period as may be permitted by the Board).

(iv) *Example of calculating compliance with the 25 percent test.* A member bank seeks to qualify a credit card as a general purpose credit card under paragraph (c)(4)(ii)(A) of this section. The member bank assesses its compliance under paragraph (c)(4)(iii) of this section on the 15th day of every month (for the preceding 12 calendar months). The credit card qualifies as a general purpose credit card for at least three consecutive months. On June 15, 2005, however, the member bank determines that, for the 12-calendar-month period from June 1, 2004, through May 31, 2005, 27 percent of the total value of products and services purchased with the card by all cardholders were purchases of products and services from an affiliate of the member bank. Unless the credit card returns to compliance with the 25 percent limit by the 12-calendar-month period ending August 31, 2005, the card will cease to qualify as a general purpose credit card as of September 1, 2005. Any outstanding extensions of credit under the credit card that were used to purchase products or services from an affiliate of the member bank would become covered transactions at such time.

Subpart C—Valuation and Timing Principles Under Section 23A

§ 223.21 What valuation and timing principles apply to credit transactions?

(a) *Valuation.* (1) *Initial valuation.* Except as provided in paragraph (a)(2) or (3) of this section, a credit transaction with an affiliate initially must be valued at the greater of:

(i) The principal amount of the transaction;

(ii) The amount owed by the affiliate to the member bank under the transaction; or

(iii) The sum of:

(A) The amount provided to, or on behalf of, the affiliate in the transaction; and

(B) Any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(2) *Initial valuation of certain acquisitions of a credit transaction.* If a member bank acquires from a nonaffiliate a credit transaction with an affiliate, the covered transaction initially must be valued at the sum of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the credit transaction; and

(ii) Any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(3) *Debt securities.* The valuation principles of paragraphs (a)(1) and (2) of this section do not apply to a member bank's purchase of or investment in a debt security issued by an affiliate, which is governed by § 223.23.

(4) *Examples.* The following are examples of how to value a member bank's credit transactions with an affiliate.

(i) *Term loan.* A member bank makes a loan to an affiliate that has a principal amount of $100. The affiliate pays $2 in up-front fees to the member bank, and the affiliate receives net loan proceeds of $98. The member bank must initially value the covered transaction at $100.

(ii) *Revolving credit.* A member bank establishes a $300 revolving credit facility for an affiliate. The affiliate has drawn down $100 under the facility. The member bank must value the covered transaction at $300 throughout the life of the facility.

(iii) *Guarantee.* A member bank has issued a guarantee to a nonaffiliate on behalf of an affiliate under which the member bank would be obligated to pay the nonaffiliate $500 if the affiliate defaults on an issuance of debt securities. The member bank must value the guarantee at $500 throughout the life of the guarantee.

(iv) *Acquisition of a loan to an affiliate.* A member bank purchases from a nonaffiliate a fixed-rate loan to an affiliate. The loan has an outstanding principal amount of $100 but, due to movements in the general level of interest rates since the time of the loan's origination, the member bank is able to purchase the loan for $90. The member bank initially must value the credit transaction at $90 (and must ensure that the credit transaction complies with the collateral requirements of § 223.14 at the time of its acquisition of the loan).

(b) *Timing.* (1) *In general.* A member bank engages in a credit transaction with an affiliate at the time during the day that:

(i) The member bank becomes legally obligated to make an extension of credit to, issue a guarantee, acceptance, or letter of credit on behalf of, or confirm a letter of credit issued by, an affiliate;

(ii) The member bank enters into a cross-affiliate netting arrangement; or

(iii) The member bank acquires an extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(2) *Credit transactions by a member bank with a nonaffiliate that becomes an affiliate of the member bank.*

(i) *In general.* A credit transaction with a nonaffiliate becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. The member bank must treat the amount of any such credit transaction as part of the aggregate amount of the member bank's covered transactions for purposes of determining compliance with the quantitative limits of §§ 223.11 and 223.12 in connection with any future covered transactions. Except as described in paragraph (b)(2)(ii) of this section, the member bank is not required to reduce the amount of its covered transactions with any affiliate because the nonaffiliate has become an affiliate. If the nonaffiliate becomes an affiliate less than one year after the member bank enters into the credit transaction with the nonaffiliate, the member bank also must ensure that the credit transaction complies with the collateral requirements of § 223.14 promptly after the nonaffiliate becomes an affiliate.

(ii) *Credit transactions by a member bank with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* Notwithstanding the provisions of paragraph (b)(2)(i) of this section, if a member bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member

bank, the member bank must ensure that:

(A) The aggregate amount of the member bank's covered transactions (including any such credit transaction with the nonaffiliate) would not exceed the quantitative limits of § 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate; and

(B) The credit transaction complies with the collateral requirements of § 223.14 at the time the nonaffiliate becomes an affiliate.

(iii) *Example.* A member bank with capital stock and surplus of $1,000 and no outstanding covered transactions makes a $120 unsecured loan to a nonaffiliate. The member bank does not make the loan in contemplation of the nonaffiliate becoming an affiliate. Nine months later, the member bank's holding company purchases all the stock of the nonaffiliate, thereby making the nonaffiliate an affiliate of the member bank. The member bank is not in violation of the quantitative limits of § 223.11 or 223.12 at the time of the stock acquisition. The member bank is, however, prohibited from engaging in any additional covered transactions with the new affiliate at least until such time as the value of the loan transaction falls below 10 percent of the member bank's capital stock and surplus. In addition, the member bank must bring the loan into compliance with the collateral requirements of § 223.14 promptly after the stock acquisition.

§ 223.22 What valuation and timing principles apply to asset purchases?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (a)(2) of this section, a purchase of an asset by a member bank from an affiliate must be valued initially at the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the asset. The value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP.

(2) *Exceptions.* (i) *Purchase of an extension of credit to an affiliate.* A purchase from an affiliate of an extension of credit to an affiliate must be valued in accordance with § 223.21, unless the note or obligation evidencing the extension of credit is a security issued by an affiliate (in which case the transaction must be valued in accordance with § 223.23).

(ii) *Purchase of a security issued by an affiliate.* A purchase from an affiliate of a security issued by an affiliate must be valued in accordance with § 223.23.

(iii) *Transfer of a subsidiary.* A transfer to a member bank of securities issued by an affiliate that is treated as a purchase of assets from an affiliate under § 223.31 must be valued in accordance with paragraph (b) of § 223.31.

(iv) *Purchase of a line of credit.* A purchase from an affiliate of a line of credit, revolving credit facility, or other similar credit arrangement for a nonaffiliate must be valued initially at the total amount of consideration given by the member bank in exchange for the asset plus any additional amount that the member bank could be required to provide to the borrower under the terms of the credit arrangement.

(b) *Timing.* (1) *In general.* A purchase of an asset from an affiliate remains a covered transaction for a member bank for as long as the member bank holds the asset.

(2) *Asset purchases by a member bank from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* If a member bank purchases an asset from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank, the asset purchase becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. In addition, the member bank must ensure that the aggregate amount of the member bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of § 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate.

(c) *Examples.* The following are examples of how to value a member bank's purchase of an asset from an affiliate.

(1) *Cash purchase of assets.* A member bank purchases a pool of loans from an affiliate for $10 million. The member bank initially must value the covered transaction at $10 million. Going forward, if the borrowers repay $6 million of the principal amount of the loans, the member bank may value the covered transaction at $4 million.

(2) *Purchase of assets through an assumption of liabilities.* An affiliate of a member bank contributes real property with a fair market value of $200,000 to the member bank. The member bank pays the affiliate no cash for the property, but assumes a $50,000 mortgage on the property. The member bank has engaged in a covered transaction with the affiliate and initially must value the transaction at $50,000. Going forward, if the member bank retains the real property but pays off the mortgage, the member bank must continue to value the covered transaction at $50,000. If the member bank, however, sells the real property, the transaction ceases to be a covered transaction at the time of the sale (regardless of the status of the mortgage).

§ 223.23 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (b) of § 223.32 with respect to financial subsidiaries, a member bank's purchase of or investment in a security issued by an affiliate must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; or

(ii) The carrying value of the security.

(2) *Examples.* The following are examples of how to value a member bank's purchase of or investment in securities issued by an affiliate (other than a financial subsidiary of the member bank).

(i) *Purchase of the debt securities of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company. The member bank purchases debt securities issued by the mortgage company for $600. The initial carrying value of the securities is $600. The member bank initially must value the investment at $600.

(ii) *Purchase of the shares of an affiliate.* The parent holding company of a member bank owns 51 percent of the shares of a mortgage company. The member bank purchases an additional 30 percent of the shares of the mortgage company from a third party for $100. The initial carrying value of the shares is $100. The member bank initially must value the investment at $100. Going forward, if the member bank's carrying value of the shares declines to $40, the member bank must continue to value the investment at $100.

(iii) *Contribution of the shares of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company and contributes 30 percent of the shares to the member bank. The member bank gives no consideration in exchange for the shares. If the initial carrying value of the shares is $300, then the member bank initially must value the investment at $300. Going forward, if the member bank's carrying value of the shares increases to $500, the member bank must value the investment at $500.

(b) *Timing.* (1) *In general.* A purchase of or investment in a security issued by an affiliate remains a covered transaction for a member bank for as long as the member bank holds the security.

(2) *A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank.* A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank must be treated according to the same transition rules that apply to credit transactions described in paragraph (b)(2) of § 223.21.

§ 223.24 What valuation principles apply to extensions of credit secured by affiliate securities?

(a) *Valuation of extensions of credit secured exclusively by affiliate securities.* An extension of credit by a member bank to a nonaffiliate secured exclusively by securities issued by an affiliate of the member bank must be valued at the lesser of:

(1) The total value of the extension of credit; or

(2) The fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market quotation standard contained in paragraph (e) of § 223.42 or the standards set forth in paragraphs (f)(1) and (5) of § 223.42.

(b) *Valuation of extensions of credit secured by affiliate securities and other collateral.* An extension of credit by a member bank to a nonaffiliate secured in part by securities issued by an affiliate of the member bank and in part by nonaffiliate collateral must be valued at the lesser of:

(1) The total value of the extension of credit less the fair market value of the nonaffiliate collateral; or

(2) The fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market quotation standard contained in paragraph (e) of § 223.42 or the standards set forth in paragraphs (f)(1) and (5) of § 223.42.

(c) *Exclusion of eligible affiliated mutual fund securities.* (1) *The exclusion.* Eligible affiliated mutual fund securities are not considered to be securities issued by an affiliate, and are instead considered to be nonaffiliate collateral, for purposes of paragraphs (a) and (b) of this section, unless the member bank knows or has reason to know that the proceeds of the extension of credit will be used to purchase the eligible affiliated mutual fund securities collateral or will otherwise be used for the benefit of or transferred to an affiliate of the member bank.

(2) *Definition.* ''*Eligible affiliated mutual fund securities*'' with respect to a member bank are securities issued by an affiliate of the member bank that is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), if:

(i) The securities issued by the investment company:

(A) Meet the market quotation standard contained in paragraph (e) of § 223.42;

(B) Meet the standards set forth in paragraphs (f)(1) and (5) of § 223.42; or

(C) Have closing prices that are made public through a mutual fund ''supermarket'' website maintained by an unaffiliated securities broker-dealer or mutual fund distributor; and

(ii) The member bank and its affiliates do not own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the investment company (excluding securities held by the member bank or an affiliate in good faith in a fiduciary capacity, unless the member bank or affiliate holds the securities for the benefit of the member bank or affiliate, or the shareholders, employees, or subsidiaries of the member bank or affiliate).

(3) *Example.* A member bank proposes to lend $100 to a nonaffiliate secured exclusively by eligible affiliated mutual fund securities. The member bank knows that the nonaffiliate intends to use all the loan proceeds to purchase the eligible affiliated mutual fund securities that would serve as collateral for the loan. Under the attribution rule in § 223.16, the member bank must treat the loan to the nonaffiliate as a loan to an affiliate, and, because securities issued by an affiliate are ineligible collateral under § 223.14, the loan would not be in compliance with § 223.14.

Subpart D—Other Requirements Under Section 23A

§ 223.31 How does section 23A apply to a member bank's acquisition of an affiliate that becomes an operating subsidiary of the member bank after the acquisition?

(a) *Certain acquisitions by a member bank of securities issued by an affiliate are treated as a purchase of assets from an affiliate.* A member bank's acquisition of a security issued by a company that was an affiliate of the member bank before the acquisition is treated as a purchase of assets from an affiliate, if:

(1) As a result of the transaction, the company becomes an operating subsidiary of the member bank; and

(2) The company has liabilities, or the member bank gives cash or any other consideration in exchange for the security.

(b) *Valuation.* (1) *Initial valuation.* A transaction described in paragraph (a) of this section must be valued initially at the greater of:

(i) The sum of:

(A) The total amount of consideration given by the member bank in exchange for the security; and

(B) The total liabilities of the company whose security has been acquired by the member bank, as of the time of the acquisition; or

(ii) The total value of all covered transactions (as computed under this part) acquired by the member bank as a result of the security acquisition.

(2) *Ongoing valuation.* The value of a transaction described in paragraph (a) of this section may be reduced after the initial transfer to reflect:

(i) Amortization or depreciation of the assets of the transferred company, to the extent that such reductions are consistent with GAAP; and

(ii) Sales of the assets of the transferred company.

(c) *Valuation example.* The parent holding company of a member bank contributes between 25 and 100 percent of the voting shares of a mortgage company to the member bank. The parent holding company retains no shares of the mortgage company. The member bank gives no consideration in exchange for the transferred shares. The mortgage company has total assets of $300,000 and total liabilities of $100,000. The mortgage company's assets do not include any loans to an affiliate of the member bank or any other asset that would represent a separate covered transaction for the member bank upon consummation of the share transfer. As a result of the transaction, the mortgage company becomes an operating subsidiary of the member bank. The transaction is treated as a purchase of the assets of the mortgage company by the member bank from an affiliate under paragraph (a) of this section. The member bank initially must value the transaction at $100,000, the total amount of the liabilities of the mortgage company. Going forward, if the member bank pays off the liabilities, the member bank must continue to value the covered transaction at $100,000. If the member bank, however, sells $15,000 of the transferred assets of the mortgage company or if $15,000 of the transferred assets amortize, the

member bank may value the covered transaction at $85,000.

(d) *Exemption for step transactions.* A transaction described in paragraph (a) of this section is exempt from the requirements of this regulation (other than the safety and soundness requirement of § 223.13 and the market terms requirement of § 223.51) if:

(1) The member bank acquires the securities issued by the transferred company within one business day (or such longer period, up to three months, as may be permitted by the member bank's appropriate Federal banking agency) after the company becomes an affiliate of the member bank;

(2) The member bank acquires all the securities of the transferred company that were transferred in connection with the transaction that made the company an affiliate of the member bank;

(3) The business and financial condition (including the asset quality and liabilities) of the transferred company does not materially change from the time the company becomes an affiliate of the member bank and the time the member bank acquires the securities issued by the company; and

(4) At or before the time that the transferred company becomes an affiliate of the member bank, the member bank notifies its appropriate Federal banking agency and the Board of the member bank's intent to acquire the company.

(e) *Example of step transaction.* A bank holding company acquires 100 percent of the shares of an unaffiliated leasing company. At that time, the subsidiary member bank of the holding company notifies its appropriate Federal banking agency and the Board of its intent to acquire the leasing company from its holding company. On the day after consummation of the acquisition, the holding company transfers all of the shares of the leasing company to the member bank. No material change in the business or financial condition of the leasing company occurs between the time of the holding company's acquisition and the member bank's acquisition. The leasing company has liabilities. The leasing company becomes an operating subsidiary of the member bank at the time of the transfer. This transfer by the holding company to the member bank, although deemed an asset purchase by the member bank from an affiliate under paragraph (a) of this section, would qualify for the exemption in paragraph (d) of this section.

§ 223.32 What rules apply to financial subsidiaries of a member bank?

(a) *Exemption from the 10 percent limit for covered transactions between a member bank and a single financial subsidiary.* The 10 percent quantitative limit contained in § 223.11 does not apply with respect to covered transactions between a member bank and a financial subsidiary of the member bank. The 20 percent quantitative limit contained in § 223.12 does apply to such transactions.

(b) *Valuation of purchases of or investments in the securities of a financial subsidiary.* (1) *General rule.* A member bank's purchase of or investment in a security issued by a financial subsidiary of the member bank must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; and

(ii) The carrying value of the security (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the security).

(2) *Carrying value of an investment in a consolidated financial subsidiary.* If a financial subsidiary is consolidated with its parent member bank under GAAP, the carrying value of the member bank's investment in securities issued by the financial subsidiary shall be equal to the carrying value of the securities on parent-only financial statements of the member bank, determined in accordance with GAAP (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the securities).

(3) *Examples of the valuation of purchases of and investments in the securities of a financial subsidiary.* The following are examples of how a member bank must value its purchase of or investment in securities issued by a financial subsidiary of the member bank. Each example involves a securities underwriter that becomes a financial subsidiary of the member bank after the transactions described below.

(i) *Initial valuation.* (A) *Direct acquisition by a member bank.* A member bank pays $500 to acquire 100 percent of the shares of a securities underwriter. The initial carrying value of the shares on the member bank's parent-only GAAP financial statements is $500. The member bank initially must value the investment at $500.

(B) *Contribution of a financial subsidiary to a member bank.* The parent holding company of a member bank acquires 100 percent of the shares of a securities underwriter in a transaction valued at $500, and immediately contributes the shares to the member bank. The member bank gives no consideration in exchange for the shares. The member bank initially must value the investment at the carrying value of the shares on the member bank's parent-only GAAP financial statements. Under GAAP, the member bank's initial carrying value of the shares would be $500.

(ii) *Carrying value not adjusted for earnings and losses of the financial subsidiary.* A member bank and its parent holding company engage in the transaction described in paragraph (b)(3)(i)(B) of this section, and the member bank initially values the investment at $500. In the following year, the securities underwriter earns $25 in profit, which is added to its retained earnings. The member bank's carrying value of the shares of the underwriter is not adjusted for purposes of this part, and the member bank must continue to value the investment at $500. If, however, the member bank contributes $100 of additional capital to the securities underwriter, the member bank must value the aggregate investment at $600.

(c) *Treatment of an affiliate's investments in, and extensions of credit to, a financial subsidiary of a member bank.* (1) *Investments.* Any purchase of, or investment in, the securities of a financial subsidiary of a member bank by an affiliate of the member bank is treated as a purchase of or investment in such securities by the member bank.

(2) *Extensions of credit that are treated as regulatory capital of the financial subsidiary.* Any extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank is treated as an extension of credit by the member bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

(3) *Other extensions of credit.* Any other extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank will be treated as an extension of credit by the member bank to the financial subsidiary, if the Board determines, by regulation or order, that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act or the Gramm-Leach-Bliley Act.

§ 223.33 What rules apply to derivative transactions?

(a) *Market terms requirement.* Derivative transactions between a member bank and its affiliates (other than depository institutions) are subject to the market terms requirement of § 223.51.

(b) *Policies and procedures.* A member bank must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its derivative transactions with affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising at any one time from the member bank's derivative transactions with each affiliate and all affiliates in the aggregate (through, among other things, imposing appropriate credit limits, mark-to-market requirements, and collateral requirements); and

(2) Ensuring that the member bank's derivative transactions with affiliates comply with the market terms requirement of § 223.51.

(c) *Credit derivatives.* A credit derivative between a member bank and a nonaffiliate in which the member bank provides credit protection to the nonaffiliate with respect to an obligation of an affiliate of the member bank is a guarantee by a member bank on behalf of an affiliate for purposes of this regulation. Such derivatives would include:

(1) An agreement under which the member bank, in exchange for a fee, agrees to compensate the nonaffiliate for any default of the underlying obligation of the affiliate; and

(2) An agreement under which the member bank, in exchange for payments based on the total return of the underlying obligation of the affiliate, agrees to pay the nonaffiliate a spread over funding costs plus any depreciation in the value of the underlying obligation of the affiliate.

Subpart E—Exemptions from the Provisions of Section 23A

§ 223.41 What covered transactions are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12 or the collateral requirements of § 223.14. The transactions are, however, subject to the safety and soundness requirement of § 223.13 and the prohibition on the purchase of a low-quality asset of § 223.15.

(a) *Parent institution/subsidiary institution transactions.* Transactions with a depository institution if the member bank controls 80 percent or more of the voting securities of the depository institution or the depository institution controls 80 percent or more of the voting securities of the member bank.

(b) *Transactions between a member bank and a depository institution owned by the same holding company.* Transactions with a depository institution if the same company controls 80 percent or more of the voting securities of the member bank and the depository institution.

(c) *Certain loan purchases from an affiliated depository institution.* Purchasing a loan on a nonrecourse basis from an affiliated depository institution.

(d) *Internal corporate reorganization transactions.* Purchasing assets from an affiliate (including in connection with a transfer of securities issued by an affiliate to a member bank described in paragraph (a) of § 223.31), if:

(1) The asset purchase is part of an internal corporate reorganization of a holding company and involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate;

(2) The member bank provides its appropriate Federal banking agency and the Board with written notice of the transaction before consummation, including a description of the primary business activities of the affiliate and an indication of the proposed date of the asset purchase;

(3) The member bank's top-tier holding company commits to its appropriate Federal banking agency and the Board before consummation either:

(i) To make quarterly cash contributions to the member bank, for a two-year period following the member bank's purchase, equal to the book value plus any write-downs taken by the member bank, of any transferred assets that have become low-quality assets during the quarter; or

(ii) To repurchase, on a quarterly basis for a two-year period following the member bank's purchase, at a price equal to the book value plus any write-downs taken by the member bank, any transferred assets that have become low-quality assets during the quarter;

(4) The member bank's top-tier holding company complies with the commitment made under paragraph (d)(3) of this section;

(5) A majority of the member bank's directors reviews and approves the transaction before consummation;

(6) The value of the covered transaction (as computed under this part), when aggregated with the value of any other covered transactions (as computed under this part) engaged in by the member bank under this exemption during the preceding 12 calendar months, represents less than 10 percent of the member bank's capital stock and surplus (or such higher amount, up to 25 percent of the member bank's capital stock and surplus, as may be permitted by the member bank's appropriate Federal banking agency after conducting a review of the member bank's financial condition and the quality of the assets transferred to the member bank); and

(7) The holding company and all its subsidiary member banks and other subsidiary depository institutions are well capitalized and well managed and would remain well capitalized upon consummation of the transaction.

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

The following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12, the collateral requirements of § 223.14, or the prohibition on the purchase of a low-quality asset of § 223.15. The transactions are, however, subject to the safety and soundness requirement of § 223.13.

(a) *Making correspondent banking deposits.* Making a deposit in an affiliated depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or affiliated foreign bank that represents an ongoing, working balance maintained in the ordinary course of correspondent business.

(b) *Giving credit for uncollected items.* Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business.

(c) *Transactions secured by cash or U.S. government securities.*

(1) *In general.* Engaging in a credit transaction with an affiliate to the extent that the transaction is and remains secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such.

(2) *Example.* A member bank makes a $100 non-amortizing term loan to an

affiliate secured by U.S. Treasury securities with a market value of $50 and real estate with a market value of $75. The value of the covered transaction is $50. If the market value of the U.S. Treasury securities falls to $45 during the life of the loan, the value of the covered transaction would increase to $55.

(d) *Purchasing securities of a servicing affiliate.* Purchasing a security issued by any company engaged solely in providing services described in section 4(c)(1) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)).

(e) *Purchasing certain liquid assets.* Purchasing an asset having a readily identifiable and publicly available market quotation and purchased at or below the asset's current market quotation. An asset has a readily identifiable and publicly available market quotation if the asset's price is quoted routinely in a widely disseminated publication that is readily available to the general public.

(f) *Purchasing certain marketable securities.* Purchasing a security from a securities affiliate, if:

(1) The security has a ''ready market,'' as defined in 17 CFR 240.15c3–1(c)(11)(i);

(2) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the member bank records the transaction as a purchase of a security for purposes of its Call Report, consistent with the requirements for a State member bank;

(3) The security is not a low-quality asset;

(4) The member bank does not purchase the security during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(5) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(i) The price paid by the member bank is at or below the current market quotation for the security; and

(ii) The size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(6) The member bank maintains, for a period of two years, records and supporting information that are sufficient to enable the appropriate Federal banking agency to ensure the member bank's compliance with the terms of this exemption.

(g) *Purchasing municipal securities.* Purchasing a municipal security from a securities affiliate if:

(1) The security is rated by a nationally recognized statistical rating organization or is part of an issue of securities that does not exceed $25 million;

(2) The security is eligible for purchase by a State member bank, subject to the same terms and conditions that govern the investment activities of a State member bank, and the member bank records the transaction as a purchase of a security for purposes of its Call Report, consistent with the requirements for a State member bank; and

(3)(i) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the member bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; or

(ii) The price paid for the security can be verified by reference to two or more actual, current price quotes from unaffiliated broker-dealers on the exact security to be purchased or a security comparable to the security to be purchased, where:

(A) The price quotes obtained from the unaffiliated broker-dealers are based on a transaction similar in size to the transaction that is actually executed; and

(B) The price paid is no higher than the average of the price quotes; or

(iii) The price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, if the member bank:

(A) Purchases the municipal security during the underwriting period at a price that is at or below that indicated in the summary; and

(B) Obtains a copy of the summary from its securities affiliate and retains the summary for three years.

(h) *Purchasing an extension of credit subject to a repurchase agreement.* Purchasing from an affiliate an extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

(i) *Asset purchases by a newly formed member bank.* The purchase of an asset from an affiliate by a newly formed member bank, if the appropriate Federal banking agency for the member bank has approved the asset purchase in writing in connection with its review of the formation of the member bank.

(j) *Transactions approved under the Bank Merger Act.* Any merger or consolidation between a member bank and an affiliated depository institution or U.S. branch or agency of a foreign bank, or any acquisition of assets or assumption of deposit liabilities by a member bank from an affiliated depository institution or U.S. branch or agency of a foreign bank, if the transaction has been approved by the responsible Federal banking agency pursuant to the Bank Merger Act (12 U.S.C. 1828(c)).

(k) *Purchasing an extension of credit from an affiliate.* Purchasing from an affiliate, on a nonrecourse basis, an extension of credit, if:

(1) The extension of credit was originated by the affiliate;

(2) The member bank makes an independent evaluation of the creditworthiness of the borrower before the affiliate makes or commits to make the extension of credit;

(3) The member bank commits to purchase the extension of credit before the affiliate makes or commits to make the extension of credit;

(4) The member bank does not make a blanket advance commitment to purchase extensions of credit from the affiliate; and

(5) The dollar amount of the extension of credit, when aggregated with the dollar amount of all other extensions of credit purchased from the affiliate during the preceding 12 calendar months by the member bank and its depository institution affiliates, does not represent more than 50 percent (or such lower percent as is imposed by the member bank's appropriate Federal banking agency) of the dollar amount of extensions of credit originated by the affiliate during the preceding 12 calendar months.

(l) *Intraday extensions of credit.*

(1) *In general.* An intraday extension of credit to an affiliate, if the member bank:

(i) Has established and maintains policies and procedures reasonably designed to manage the credit exposure arising from the member bank's intraday extensions of credit to affiliates in a safe

and sound manner, including policies and procedures for:

(A) Monitoring and controlling the credit exposure arising at any one time from the member bank's intraday extensions of credit to each affiliate and all affiliates in the aggregate; and

(B) Ensuring that any intraday extension of credit by the member bank to an affiliate complies with the market terms requirement of § 223.51;

(ii) Has no reason to believe that the affiliate will have difficulty repaying the extension of credit in accordance with its terms; and

(iii) Ceases to treat any such extension of credit (regardless of jurisdiction) as an intraday extension of credit at the end of the member bank's business day in the United States.

(2) *Definition. Intraday extension of credit* by a member bank to an affiliate means an extension of credit by a member bank to an affiliate that the member bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under this regulation, by the end of its business day in the United States.

(m) *Riskless principal transactions.* Purchasing a security from a securities affiliate of the member bank if:

(1) The member bank or the securities affiliate is acting exclusively as a riskless principal in the transaction; and

(2) The security purchased is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank.

§ 223.43 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

(a) *The standards.* The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A and subparts B, C, and D of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A.

(b) *Procedure.* A member bank may request an exemption from the requirements of section 23A and subparts B, C, and D of this part by submitting a written request to the General Counsel of the Board. Such a request must:

(1) Describe in detail the transaction or relationship for which the member bank seeks exemption;

(2) Explain why the Board should exempt the transaction or relationship; and

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

Subpart F—General Provisions of Section 23B

§ 223.51 What is the market terms requirement of section 23B?

A member bank may not engage in a transaction described in § 223.52 unless the transaction is:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the member bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliates.

§ 223.52 What transactions with affiliates or others must comply with section 23B's market terms requirement?

(a) The market terms requirement of § 223.51 applies to the following transactions:

(1) Any covered transaction with an affiliate, unless the transaction is exempt under paragraphs (a) through (c) of § 223.41 or paragraphs (a) through (e) or (h) through (j) of § 223.42;

(2) The sale of a security or other asset to an affiliate, including an asset subject to an agreement to repurchase;

(3) The payment of money or the furnishing of a service to an affiliate under contract, lease, or otherwise;

(4) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the member bank or to any other person; and

(5) Any transaction or series of transactions with a nonaffiliate, if an affiliate:

(i) Has a financial interest in the nonaffiliate; or

(ii) Is a participant in the transaction or series of transactions.

(b) For the purpose of this section, any transaction by a member bank with any person will be deemed to be a transaction with an affiliate of the member bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, the affiliate.

§ 223.53 What asset purchases are prohibited by section 23B?

(a) *Fiduciary purchases of assets from an affiliate.* A member bank may not purchase as fiduciary any security or other asset from any affiliate unless the purchase is permitted:

(1) Under the instrument creating the fiduciary relationship;

(2) By court order; or

(3) By law of the jurisdiction governing the fiduciary relationship.

(b) *Purchase of a security underwritten by an affiliate.* (1) A member bank, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the member bank.

(2) Paragraph (b)(1) of this section does not apply if the purchase or acquisition of the security has been approved, before the security is initially offered for sale to the public, by a majority of the directors of the member bank based on a determination that the purchase is a sound investment for the member bank, or for the person on whose behalf the member bank is acting as fiduciary, as the case may be, irrespective of the fact that an affiliate of the member bank is a principal underwriter of the security.

(3) The approval requirement of paragraph (b)(2) of this section may be met if:

(i) A majority of the directors of the member bank approves standards for the member bank's acquisitions of securities described in paragraph (b)(1) of this section, based on the determination set forth in paragraph (b)(2) of this section;

(ii) Each acquisition described in paragraph (b)(1) of this section meets the standards; and

(iii) A majority of the directors of the member bank periodically reviews acquisitions described in paragraph (b)(1) of this section to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section.

(4) A U.S. branch, agency, or commercial lending company of a foreign bank may comply with paragraphs (b)(2) and (b)(3) of this section by obtaining the approvals and reviews required by paragraphs (b)(2) and (b)(3) from either:

(i) A majority of the directors of the foreign bank; or

(ii) A majority of the senior executive officers of the foreign bank.

(c) *Special definitions.* For purposes of this section:

(1) *''Principal underwriter''* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(2) *''Security''* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

§ 223.54 What advertisements and statements are prohibited by section 23B?

(a) *In general.* A member bank and its affiliates may not publish any advertisement or enter into any agreement stating or suggesting that the member bank will in any way be responsible for the obligations of its affiliates.

(b) *Guarantees, acceptances, letters of credit, and cross-affiliate netting arrangements subject to section 23A.* Paragraph (a) of this section does not prohibit a member bank from:

(1) Issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate, confirming a letter of credit issued by an affiliate, or entering into a cross-affiliate netting arrangement, to the extent such transaction satisfies the quantitative limits of §§ 223.11 and 223.12 and the collateral requirements of § 223.14, and is otherwise permitted under this regulation; or

(2) Making reference to such a guarantee, acceptance, letter of credit, or cross-affiliate netting arrangement if otherwise required by law.

§ 223.55 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

The Board may prescribe regulations to exempt transactions or relationships from the requirements of section 23B and subpart F of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23B.

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

§ 223.61 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

(a) *Applicability of sections 23A and 23B to foreign banks engaged in underwriting insurance, underwriting or dealing in securities, merchant banking, or insurance company investment in the United States.* Except as provided in this subpart, sections 23A and 23B of the Federal Reserve Act and the provisions of this regulation apply to each U.S. branch, agency, or commercial lending company of a foreign bank in the same manner and to the same extent as if the branch, agency, or commercial lending company were a member bank.

(b) *Affiliate defined.* For purposes of this subpart, any company that would be an affiliate of a U.S. branch, agency, or commercial lending company of a foreign bank if such branch, agency, or commercial lending company were a member bank is an affiliate of the branch, agency, or commercial lending company if the company also is:

(1) Directly engaged in the United States in any of the following activities:

(i) Insurance underwriting pursuant to section 4(k)(4)(B) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(B));

(ii) Securities underwriting, dealing, or market making pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(iii) Merchant banking activities pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) (but only to the extent that the proceeds of the transaction are used for the purpose of funding the affiliate's merchant banking activities);

(iv) Insurance company investment activities pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)); or

(v) Any other activity designated by the Board;

(2) A portfolio company (as defined in the merchant banking subpart of Regulation Y (12 CFR 225.177(c))) controlled by the foreign bank or an affiliate of the foreign bank or a company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of § 223.2 if such branch, agency, or commercial lending company were a member bank; or

(3) A subsidiary of an affiliate described in paragraph (b)(1) or (2) of this section.

(c) *Capital stock and surplus.* For purposes of this subpart, the *''capital stock and surplus''* of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home country capital standards.

Subpart H—Miscellaneous Interpretations

§ 223.71 How do sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate?

(a) *In general.* In some situations in which a member bank purchases an asset from an affiliate, the asset purchase qualifies for an exemption under this regulation, but the member bank's resulting ownership of the purchased asset also represents a covered transaction (which may or may not qualify for an exemption under this part). In these situations, the transaction engaged in by the member bank would qualify as two different types of covered transaction. Although an asset purchase exemption may suffice to exempt the member bank's asset purchase from the first affiliate, the asset purchase exemption does not exempt the member bank's resulting covered transaction with the second affiliate. The exemptions subject to this interpretation include §§ 223.31(e), 223.41(a) through (d), and 223.42(e), (f), (i), (j), (k), and (m).

(b) *Examples.* (1) *The (d)(6) exemption.* A member bank purchases from Affiliate A securities issued by Affiliate B in a purchase that qualifies for the (d)(6) exemption in section 23A. The member bank's asset purchase from Affiliate A would be an exempt covered transaction under § 223.42(e); but the member bank also would have acquired an investment in securities issued by Affiliate B, which would be a covered transaction between the member bank and Affiliate B under § 223.3(h)(2) that does not qualify for the (d)(6) exemption. The (d)(6) exemption, by its terms, only exempts asset purchases by a member bank from an affiliate; hence, the (d)(6) exemption cannot exempt a member bank's investment in securities issued by an affiliate (even if the securities would qualify for the (d)(6) exemption).

(2) T*he sister-bank exemption.* A member bank purchases from Sister-Bank Affiliate A a loan to Affiliate B in a purchase that qualifies for the sister-bank exemption in section 23A. The member bank's asset purchase from Sister-Bank Affiliate A would be an exempt covered transaction under § 223.41(b); but the member bank also would have acquired an extension of credit to Affiliate B, which would be a covered transaction between the member bank and Affiliate B under § 223.3(h)(1) that does not qualify for the sister-bank exemption. The sister-bank exemption, by its terms, only exempts transactions by a member bank with a sister-bank affiliate; hence, the sister-bank exemption cannot exempt a member bank's extension of credit to an affiliate that is not a sister bank (even if the extension of credit was purchased from a sister bank).

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30634 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1135]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to amend an exemption in Regulation W that permits a member bank to exclude the purchase of an extension of credit from an affiliate from the quantitative limits imposed by section 23A of the Federal Reserve Act if certain criteria are met. The proposed amendment would limit a member bank's ability to buy an extension of credit from an affiliate under the exemption to 100 percent of the capital stock and surplus of the member bank.

DATES: Submit comments on or before January 13, 2003.

ADDRESSES: Comments should refer to docket number R–1135 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson also may be delivered between 8:45 a.m. and 5:15 p.m. to the Board's mail facility in the west courtyard of the Eccles Building, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in accordance with the Board's Rules Regarding the Availability of Information (12 CFR part 261) in Room MP–500 of the Martin Building on weekdays between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 23A is designed to protect banks from misuse in financial transactions with their affiliates. Section 23A attempts to accomplish this goal by imposing safeguards on all ''covered transactions'' between a bank and its affiliates; this includes limiting all covered transactions by a bank with any single affiliate to no more than 10 percent of the bank's capital stock and surplus, and limiting a bank's covered transactions with all affiliates to 20 percent of the bank's capital stock and surplus.

In 1974, the Board issued a formal interpretation that exempted from section 23A a bank's purchase, on a nonrecourse basis, of a mortgage note or participation therein from a mortgage banking affiliate, provided that the bank's commitment to purchase was (i) obtained by the affiliate within the context of each proposed loan, (ii) obtained prior to the affiliate's commitment to make each loan, and (iii) based upon the bank's independent evaluation of the creditworthiness of each mortgagor (the ''Purchase Exemption'').[1] Although this interpretation did not impose a strict dollar limit on the amount of an affiliate's mortgage loans that a bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a bank to take advantage of an investment opportunity and not to provide all the working capital needed by an affiliate.

By 1995, some bank holding companies were using the Purchase Exemption extensively to fund their nonbank lending affiliates. In those cases, banks were providing all or nearly all of such affiliates' funding. In response, staff indicated in an interpretive letter that the Purchase Exemption was not available if the dollar amount of the bank's loan purchases from the affiliate represented more than 50 percent of the total dollar amount of loans originated by the affiliate. Staff reasoned that, in these circumstances, the asset purchases look less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing an ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and would reduce the pressure on the bank to purchase the affiliate's extensions of credit.

In 2001, the Board reviewed a proposal where a leasing company proposed to charter a bank for the primary purpose of purchasing loans or leases from the leasing company.[2] The Board was concerned that, under the proposal, the new bank's credit underwriting process could be compromised as result of the complete dependence of the bank on the affiliate for asset growth. The Board conditioned its approval of the proposal on the bank limiting its purchases of leases or loans from an affiliate to no more than 50 percent of the bank's credit portfolio.

Concurrently with the issuance of this proposed rule, the Board is adopting final Regulation W, which incorporates the Purchase Exemption at 12 CFR 223.42(k) and formally expands the exemption to cover the purchase of any of type of extension of credit from an affiliate.

The Purchase Exemption in Regulation W also retains the limitation previously imposed by staff that prevents a bank from using the Purchase Exemption to purchase more than 50 percent of the loans originated by any affiliate. When the Board proposed Regulation W, the preamble of the regulation asked for comment on whether the rule should include a quantitative condition to the Purchase Exemption based on the size of the purchasing bank.[3] The Board, however, did not propose a specific bank-based limit at that time. Eleven commenters objected to such a condition and argued that case-by-case review is a better approach to handling situations where loans purchased from an affiliate represent a large portion of a bank's assets. These commenters believed that the remaining conditions of the Purchase Exemption should suffice to prevent abuse of the bank. One commenter, on the other hand, recommended that the rule include a 50 percent limit based on the assets of the bank.

In light of the comments and the fact that the Board did not set forth a specific limit based on the bank's size in proposed Regulation W, the Board now proposes to amend Regulation W to impose a limitation on the Purchase Exemption based on the capital stock and surplus of the bank. Specifically, the Board is requesting comment on a condition that would limit the amount of extensions of credit that a bank could purchase from an affiliate under the Purchase Exemption to 100 percent of the bank's capital stock and surplus. All other restrictions imposed by the Purchase Exemption would still apply. Although those restrictions include a requirement that the bank conduct an independent credit review prior to purchasing assets under the Purchase Exemption, sections 23A and 23B were enacted in recognition that the bank might relax its independent judgment when making credit decisions involving an affiliate. The Board believes that the

[1] This exemption was codified at 12 CFR 250.250 (2002).

[2] *Amplicon Inc.,* 87 Federal Reserve Bulletin 421 (2001).

[3] 66 FR 24186, 24199–00, May 11, 2001.

100 percent limit will guard against a bank acquiring an excessive concentration of assets under the Purchase Exemption, but still will provide the bank with the flexibility to purchase assets from an affiliate, within prudential limitations, in an amount well in excess of the statute's 10 and 20 percent quantitative limits.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) the Board must publish an initial regulatory flexibility analysis with this proposed regulation. As discussed above, the purpose of the rule is to limit the concentration of assets held by a bank that are originated by an affiliate and to reduce pressure on the bank to make inappropriate credit decisions. The Board does not collect data on the number of institutions that take advantage of the current exemption. There are approximately 3,300 banks below $100 million in assets, but the Board does not believe that a significant number of these institutions engage in Purchase Exemption transactions because most banks of that size do not have affiliates engaged in credit-extending activities. The requirements of the proposed rule would be the same for all depository institutions regardless of their size. The Board knows of no other regulations that overlap, conflict with, or duplicate the proposed rule. The Board solicits comment on the likely impact the proposed rule would have on depository institutions, including small depository institutions. The proposed rule contains no reporting requirement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board has reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 223

Banks, Banking, Affiliates, Federal Reserve System.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 223 as set forth below:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), and 1468(a).

2. Section 223.42 would be amended by adding a new paragraph (k)(6) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(k) *Purchasing an extension of credit from an affiliate.* * * *

(6) The dollar amount of the extension of credit, when aggregated with the dollar amount of all other extensions of credit purchased by the member bank from affiliates under this exemption and currently owned by the member bank, does not represent more than 100 percent (or such lower percent as is imposed by the member bank's appropriate Federal banking agency) of the capital stock and surplus of the member bank.

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30635 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Sections 23A and 23B of the Federal Reserve Act restrict the ability of a member bank to engage in certain transactions with an affiliate. Since its initial passage in 1933, the Board and its staff have issued numerous formal and informal interpretations of section 23A. On October 31, 2002, the Board adopted a new Regulation W, which implements sections 23A and 23B and incorporates most of these interpretations. Accordingly, the Board is rescinding most of its formal interpretations of section 23A and removing these interpretations, as well as most staff opinions relating to section 23A, from the Federal Reserve Regulatory Service. With the adoption of Regulation W, most of the Board's previous section 23A interpretations are outdated or unnecessary, and the Board believes that reliance on the new Regulation W will eliminate confusion and simplify compliance with sections 23A and 23B.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Sections 23A and 23B of the Federal Reserve Act are two of the most important statutory protections against a bank suffering losses because of its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Although sections 23A and 23B each explicitly grant the Board broad authority to issue regulations to administer these sections,[1] the Board never issued a regulation fully implementing either section. Instead, banks seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff guidance. Some of these Board interpretations are codified in part 250 of title 12 of the Code of Federal Regulations. Many of the staff interpretations are publicly available, and the summaries of the interpretations can be found in the Board's loose-leaf service, the Federal Reserve Regulatory Service.

On October 31, 2002, the Board adopted Regulation W, which comprehensively implements sections 23A and 23B. In order to avoid confusion and simplify compliance with sections 23A and 23B, the Board is deleting the section 23A interpretations that are codified in part 250 of title 12 of the Code of Federal Regulations. In addition, the Board is deleting most of the summaries of staff interpretations of section 23A that are published in the Federal Reserve Regulatory Service.

Below is a chart of the interpretations of sections 23A and 23B found in the Federal Reserve Regulatory Service along with an indication of whether each summary will be retained in the Federal Reserve Regulatory Service or removed. For those summaries that will be removed, the chart identifies the provision of Regulation W or an appropriate statute that renders the summary unnecessary or inconsistent with current law. The Board believes that a few existing interpretations of section 23A would provide helpful guidance to banking organizations, but are too fact-specific to include in Regulation W; the summaries of these interpretations will remain in the Federal Reserve Regulatory Service. All new Board interpretations of sections 23A and 23B will be codified under part 223 instead of the Miscellaneous Interpretations found in part 250, and will be available on the Board's public Web site, *http://www.federalreserve.gov.* Persons desiring older written interpretations will be able to obtain them by filing a request pursuant to the Freedom of Information Act.

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1118, 12 CFR 250.242	Definition of Capital Stock and Surplus	§ 223.3(d).
3–1120, 1934 Fed. Res. Bull. 391	Collateral—Paper Eligible for Rediscount or Purchase by Federal Reserve Banks.	§ 223.14(b)(1).
3–1121, 1935 Fed. Res. Bull. 395	Collateral—Stock	§ 223.14(b)(1)(iv).
3–1125, 1936 Fed. Res. Bull. 324	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	No exemption available.
3–1126, S–285, 10/24/41	Exemptions—Relationships Arising Out of Bona Fide Debt Previously Contracted.	§ 223.2(b)(5).
3–1127, 12 CFR 250.240	Exemptions—Loan to Bank Operations Subsidiary	§§ 223.2(b) & (2).
3–1128, 12 CFR 250.241	Exemptions—Transactions Subject to Review Under the Bank Merger Act.	§ 223.42(j).
3–1128.1, 12 CFR 250.245	Exemptions—Loans and Extensions of Credit by Member Bank to Third Party.	§ 223.16(c)(3).
3–1128.2, 12 CFR 250.246	Exemptions—Purchase of Security by Insured Depository Institution from an Affiliate.	§ 223.42(f).
3–1130, 1934 Fed. Res. Bull. 391	Extension of Credit—Loan on Note Bearing Endorsement by Affiliate	Retained.
3–1131, 1951 Fed. Res. Bull. 960	Extension of Credit—Purchase of Affiliate's Notes	§ 223.3(o)(4).
3–1132, 12 CFR 250.160(b)	Extension of Credit—Federal Funds Transaction	§ 223.3(o).
3–1133, 12 CFR 250.250	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliates.	§ 223.42(k).
3–1135, 1933 Fed. Res. Bull. 501	Loans & Investments Made Before June 16, 1933	See Preamble For Grandfathering.
3–1136, 1934 Fed. Res. Bull. 391	Limitations on Amount—Loans Secured by Paper Eligible for Rediscount by Federal Reserve Bank.	§ 223.14(b)(1)(C).
3–1137, 12 CFR 250.247	Market Terms Requirement—Derivatives	§ 223.33.

[1] 12 U.S.C. 371c(f), 371c–1(e).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1137.1, 12 CFR 250.248	Market Terms Requirement—Intraday Extensions of Credit by Insured Depository Institutions to Their Affiliates.	§ 223.42(l).
3–1140	Affiliates to Which Applicable—Cotrustee or Coexecutor of Corporation.	§ 223.2(b).
3–1141	Affiliates to Which Applicable	Retained.
3–1142	Affiliates to Which Applicable—Small Business Subsidiary of Bank Holding Company.	§ 223.2(a)(2).
3–1143	Affiliate to Which Applicable—Joint Venture in Which Subsidiary Has 50% Interest.	§ 223.2(b)(1)(iii).
3–1144	Affiliates to Which Applicable—Corporation with Stock Held as Collateral.	§ 223.3(p)(1)(ii).
3–1145	Affiliates to Which Applicable—Corporation Owned by Affiliate Edge Corporation.	§ 223.3(p)(1)(ii).
3–1146	Affiliates to Which Applicable—Trust	Retained.
3–1146.1	Affiliates to Which Applicable—Foreign Affiliate of Domestic Bank Holding Company.	§ 223.2(a)(2).
3–1146.2	Affiliates to Which Applicable—Less Than 25 Percent Control	§ 223.2(a)(3).
3–1146.3	Affiliates to Which Applicable—Agricultural Credit Corporation	§ 223.2(b)(1)(iii).
3–1146.4	Affiliates to Which Applicable—Bank Subsidiaries of Bank Holding Company.	§ 223.2(b)(1).
3–1146.5	Affiliates to Which Applicable—Purchaser of Subsidiary Banks	§ 223.16.
3–1146.6	Affiliates to Which Applicable—Common Shareholders	Retained.
3–1146.61	Affiliates to Which Applicable—Partnership & Association	Retained.
3–1146.7	Affiliates to Which Applicable—Foreign Exchange Fund	Retained.
3–1150	Bank—Savings Loan	12 U.S.C. 1468.
3–1151	Bank—Bank Whose Deposits Are Insured by the FDIC	12 U.S.C. 1828(j).
3–1152	Bank—Foreign Bank	12 U.S.C. 371c(b)(5) & § 223.18.
3–1152.1	Bank—Domestic Branch of a Foreign Bank	12 U.S.C.371c(b)(5) & § 223.3(k).
3–1152.2	Bank—National Bank Subsidiary	12 U.S.C. 371c(b)(5).
3–1155	Collateral—Automobile Rental Contracts	§ 223.14(b)(1)(iv).
3–1156	Collateral—Stock	§ 223.24.
3–1157	Collateral—''Secured by''	§ 223.14.
3–1158	Collateral—Stock in Wholly Owned Subsidiary	§ 223.14.
3–1160	Collateral—FHA Mortgages	§ 223.3(y).
3–1161	Collateral—U.S. Government Securities	§ 223.14.
3–1162	Collateral—Stock Valuation	Retained
3–1163	Collateral—Stock Valuation	Retained.
3–1164	Collateral—Stock Valuation	Retained.
3–1164.1	Collateral—Stock of a Subsidiary Bank	§ 223.14(c)(2).
3–1164.2	Collateral—Real Estate	§ 223.14(b)(l)(iv).
3–1164.3	Collateral—Mortgage Servicing Rights	§ 223.14(c)(4).
3–1167	Covered Transactions—Purchase of Affiliate's Securities	§ 223.3(h)(2).
3–1167.1	Covered Transactions—Purchase of Assets	Retained.
3–1167.2	Covered Transactions—Purchase of Assets	§ 223.42(k).
3–1167.3	Covered Transactions—Acceptance of Securities	Retained.
3–1167.4	Covered Transactions—Issuance of Guarantee	Retained.
3–1167.5	Covered Transactions—Purchase of Leases	§ 223.42(k) & Subpart F.
3–1170	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	§ 223.3(h).
3–1171	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3–1172	Exemptions—Investment in Agricultural Credit Corporation	§ 223.2.
3–1173	Exemptions—Sale of Assets on Credit	§ 223.3(h)(1).
3–1174	Exemptions—Trust	§ 223.2.
3–1175	Exemptions—Loans to Subsidiary Bank Premises	§ 223.2(b)(2).
3–1176	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3–1177	Exemptions—Bank Operations Subsidiary	§ 223.2(b)(1).
3–1177.1	Exemptions—Bank Controlled by Same Company	§§ 223.41(b) & 223.3(k) & (v).
3–1177.2	Exemptions—Bank Premises Subsidiary	§ 223.2(a)(3) & (b)(2).
3–1177.3	Exemptions—Privately Issued Collateralized Mortgage Obligations	Retained.
3–1177.4	Exemptions—Bank Controlled by Same Company That Is Not Bank Holding Company.	§ 223.41(b).
3–1180	Extension of Credit—Nonrecourse Acquisition of Promissory Note	§ 223.3(o)(4).
3–1181	Extension of Credit—Transaction with Bank Holding Company	§§ 223.3(o) & 223.42(h).
3–1182	Extension of Credit—Guaranteed Debt of Holding Company	§ 225.3(o).
3–1183	Extension of Credit—Participation in Assets Pool	Deleted.
3–1184	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliate.	§ 223.42(k).
3–1185	Extension of Credit—GNMA Certificate of Guarantee	Retained.
3–1186	Extension of Credit—Paid Letter of Credit	§ 223.3(o).
3–1187	Extension of Credit—Equipment Lease Agreement	Retained.
3–1188	Extension of Credit—Participation in Mortgage Loan Pool	§ 223.42(k).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1189	Extension of Credit—Finance Company Loan Participation	§ 223.42(k).
3–1189.1	Extension of Credit—Transactions Involving Funding, Letters of Credit & Bankers Acceptance.	§§ 223.3(h)(1) & 223.3(h)(5).
3–1189.2	Extension of Credit—Contingency, Negotiating or Accepting Letters of Credit.	§ 223.3(h).
3–1195	Limitations on Amount—Loans & Investments Made Before June 16, 1933.	See Preamble Grandfathering.
3–1196	Limitations on Amount—Loan Secured by Paper Eligible for Rediscount or Purchase by Federal Reserve Bank.	§ 223.14(b)(i)(C).
3–1197	Limitations on Amount—Capital Stock	§ 223.3(h)(2).
3–1198	Limitations on Amount—Stockholder Ownership & Capital Expenditures.	§§ 223.3(h) & 223.7(c)
3–1199	Limitations on Amount—Valuation of Transactions	§ 223.24(b).
3–1199.5	Low-Quality Asset—Open-End Credit Card Account	Retained.
3–1199.51	Low-Quality Assets—Renewal of a Loan	§ 223.15(b).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board is not required to publish a regulatory flexibility analysis with this rulemaking.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Board is issuing this deletion of the Board and staff's existing section 23A interpretations as a final rule. Most of the interpretations in question are staff opinions, which were not subject to public comment pursuant to 5 U.S.C. 553(b)(2)(A). The deletion of the Board interpretations from the Code of Federal Regulations is part of the implementation of Regulation W, which the Board issued for public notice and comment on May 11, 2001, and thus further public comment on the deletions is unnecessary. A review of the public comments on Regulation W can be found in the preamble to Regulation W, 67 FR (2002).

Paperwork Reduction Act

The Board has determined that the removal of the interpretations from the Code of Federal Regulations will not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR part 250

Federal Reserve System.

For reasons set out in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i), 371c(f) and 371c–1(e).

§ 250.160 [Amended]

2. In § 250.160, remove paragraph (b).

§§ 250.240, 250.248 and § 250.250 [Removed]

3. Sections 250.240, 250.241, 250.242, 250.243, 250.244, 250.245, 250.246, 250.247, 250.248, and 250.250 are removed.

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30636 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Thursday,
December 12, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, et al.

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. FAA–98–4458]

RIN 2120–AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing proposed amendments regarding the transportation of devices designed as chemical oxygen generators, including ones that have been discharged and ones that are newly manufactured but not yet charged. Since the NPRM was issued, the FAA has determined that regulations adopted by the Research and Special Programs Administration (RSPA) alleviate the FAA's specific concerns that gave rise to the NPRM. In addition, the FAA is withdrawing a proposed amendment to require that unexpired chemical oxygen generators be placed in a central location in an accessible compartment and separated from other cargo in all-cargo operations. This proposed amendment is being withdrawn because the FAA and RSPA are evaluating the need for improved packaging for chemical oxygen generators, which would be proposed in an NPRM by RSPA and would satisfy the intent of the FAA's NPRM.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Background

After the May 11, 1996 crash of ValuJet Flight 592, the National Transportation Safety Board (NTSB) issued Recommendation A–96–29 on May 31, 1996, which stated that the Research and Special Programs Administration (RSPA) should, ''in cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted'' and ''prohibit the transportation of oxidizers and oxidizing materials * * * in cargo compartments that do not have fire or smoke detection systems.''

Since that recommendation was issued, both RSPA and FAA have published several final rules that address the concerns raised by the NTSB. First, RSPA has prohibited the transportation of chemical oxygen generators as cargo on board passenger-carrying aircraft (61 FR 68952; Dec. 30, 1996). Second, in 1997, RSPA adopted a more specific shipping description for chemical oxygen generators to make it easier for air carriers to identify them and specified additional packaging requirements (62 FR 30767, June 5, 1997). RSPA's Hazardous Materials Regulations define a chemical oxygen generator as, ''a device containing chemicals that upon activation release oxygen as a product of chemical reaction.'' In that rulemaking, RSPA also aligned its hazardous materials regulations with the provisions of the International Civil Aviation Organization's Technical Instructions on the Safe Transport of Dangerous Goods. Finally, in 1998, the FAA issued a final rule that upgraded the fire safety standards for Class D cargo compartments for certain transport-category aircraft (63 FR 8033; Feb. 17, 1998).

On August 27, 1998, the FAA issued an NPRM entitled ''Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft'' (63 FR 45912; Aug. 27, 1998), which was intended to supplement RSPA's rules and help eliminate human error. That NPRM proposed to amend 14 CFR parts 91, 119, 121, 125, and 135 to ban the transportation of devices designed to chemically generate oxygen. In the NPRM, the FAA proposed to create a definition for the terms ''devices designed as chemical oxygen generators'' and ''chemical oxygen generator.'' The term ''devices designed as chemical oxygen generators'' would have been defined to include all chemical oxygen generators carried as cargo, even those that had been discharged, those past their expiration dates and newly manufactured devices designed as chemical oxygen generators but not yet charged with chemicals. The NPRM would not have applied to chemical oxygen generators that are installed to meet aircraft certification requirements or other FAA regulations. The proposal also contained another definition for the term ''chemical oxygen generator'' that would have been different from the term used in RSPA's hazardous materials regulations.

The FAA's NPRM also would have prohibited devices designed as chemical oxygen generators from being carried as cargo on passenger carrying operations. The carriage of devices designed as chemical oxygen generators would have been permitted on aircraft engaged in all-cargo operations only if they were located in an accessible cargo compartment that was equipped with a fire and smoke detection system, the cargo was separated from other cargo, and was shipped in compliance with RSPA's hazardous materials regulations.

In 1999, RSPA addressed several of the FAA's concerns identified in its 1998 NPRM by publishing a final rule (64 FR 45388; Aug. 19, 1999) that prohibited the following on aircraft:

- Chemical oxidizers in inaccessible cargo compartments without fire or smoke detection and fire suppression systems;
- Personal-use chemical oxygen generators on passenger-carrying aircraft; and
- Spent chemical oxygen generators on passenger and cargo aircraft.

In addition to the August 1999 final rule, RSPA informed NTSB by letter (included in the public docket for this rulemaking) that its June 5, 1997 final rule prohibited the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft, regardless of whether they have passed their expiration dates.

RSPA's final rule did not prohibit the transportation of newly manufactured devices not yet charged for the generation of oxygen. The FAA's 1998 NPRM, on the other hand, did contain such a proposal. The FAA, however, has decided not to adopt that prohibition because, as discussed below, it has determined that the proposed amendment is not necessary.

Discussion of Comments

The FAA received 14 comments. One comment was from the National Transportation Safety Board, and one from a group of individuals outside the aviation industry. Commenters from the aviation-related organizations included the following—

Regional Airline Association (RAA)
Air Transport Association (ATA)
Conference on Safe Transportation of Hazardous Articles, Inc., (COSTHA)
Air Line Pilots Association, International (ALPA)
International Air Transport Association (IATA)
British Airways
Drager Aerospace North America
Aviosupport, Inc.
Teamsters Airline Division
American Trans Air, Inc.
Boeing
Independent Pilots Association (IPA)

The comment from the group of non-industry individuals supported the proposal. Other commenters, however, either wanted the proposal withdrawn completely or turned over to RSPA for action, or they objected to various details of the NPRM. Several of these objections concerned matters that have since been disposed of by RSPA in its final regulation. Major points are discussed below.

Comment: ATA, Aviosupport, Inc., Boeing, and RAA stated that newly manufactured, never-been-charged containers are not hazardous materials and therefore should not be regulated. Aviosupport also stated that, to their knowledge, manufacturers charge oxygen generators as part of the assembly process and do not ship them empty.

FAA Response: After discussing the issue with RSPA, the FAA agrees that it is not necessary to regulate newly manufactured, never-been-charged devices. RSPA agrees with the Aviosupport comment that generators are not shipped empty to be charged elsewhere, and the FAA did not receive any rebuttal comments indicating otherwise and does not have any information to the contrary. Although the FAA's original goal was to reduce the risk of human error in a situation in which charged generators were improperly offered as never-been-filled, the FAA is satisfied that newly manufactured, never-been-charged devices will not be transported by aircraft. The FAA is therefore withdrawing the proposal.

Comment: ATA, RAA, ALPA, American Trans Air, Inc., COSTHA, and IATA wanted the NPRM to be withdrawn or referred to RSPA for action because it would overlap RSPA's regulations and go against the provisions in Executive Order 12866 regarding duplicative regulations.

FAA Response: The FAA agrees. RSPA addressed many of the FAA's concerns in its August 19, 1999, final rule, and the FAA has decided that it is not necessary to regulate newly manufactured, never-been-charged devices (as discussed in the response above). The FAA remains concerned about the possibility that chemical oxygen generators could fuel a fire that started in a cargo compartment. However, FAA believes that this issue can be resolved through improved packaging for these devices and is working with RSPA to address this concern.

Comment: IATA and Teamsters do not believe that the FAA defined ''separation'' of chemical oxygen generators from other cargo adequately.

FAA Response: The FAA agrees that its use of the term ''separation'' was not well defined. The FAA's proposed use of the term ''separation'' was not consistent with RSPA's use of the word. Given that RSPA already uses the term and specifies how to separate the material, the FAA recognizes that its separation proposal was confusing. The FAA's separation proposal was designed to preclude, as much as possible, the placement of chemical oxygen generators (and devices designed as chemical oxygen generators) close to other cargo. The proposal was intended to prevent those devices from being enveloped in a fire generated in other cargo and, upon ignition of the chemical reaction for producing oxygen, feeding an uncontrollable fire.

Since the NPRM was published, the FAA has reconsidered the proposed amendment. The FAA still believes that separating all chemical oxygen generators, as currently packaged, from potential sources of ignition is critical to reducing the risk of a catastrophic fire on an aircraft. The FAA has determined, however, that this separation is not necessary if chemical oxygen generators are placed in outer packaging that satisfies the FAA's testing criteria for materials to meet flame penetration resistance and thermal protection standards. RSPA is currently working with the FAA to develop a proposed rule that would require this kind of packaging, so the FAA's proposed rule that would require separation is not needed at this time.

Comment: ALPA and Aviosupport, Inc. point out that in the justification of the NPRM, the FAA cited safety concerns arising from improperly shipped chemical oxygen generators, and that better training in hazardous materials recognition is the better solution.

FAA Response: The FAA recognizes that training is an important aspect to reducing the amount of improperly shipped hazardous materials. The FAA currently is developing a separate NPRM that would improve training standards for air carriers, repair stations, and their contract employees.

Comment: ALPA points out that the FAA used a different definition of ''chemical oxygen generator'' than RSPA's definition.

FAA Response: The FAA agrees. Since there is no longer a need for a different definition, the FAA is withdrawing this proposal.

Comment: ALPA and Teamsters state that one member of a two-person crew on an all-cargo operation is not likely to leave the flight deck to enter a cargo compartment to put out a fire alone.

FAA Response: The FAA did not intend to require that members of two-person cargo crews fight fires. Rather, the operator's procedures would indicate whether fighting fires is within the scope of crewmembers' duties.

Conclusion

The FAA has determined that regulatory action is no longer necessary and, therefore, withdraws the NPRM entitled ''Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft'' published on August 27, 1998 (63 FR 45912; Aug. 27, 1998).

Withdrawal of this NPRM does not preclude the FAA from issuing another notice on the subject in the future or from committing to any future action.

Issued in Washington, DC on December 5, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–31255 Filed 12–11–02; 8:45 am]

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Federal Register

Thursday,
December 12, 2002

Part V

Federal Communications Commission

47 CFR Part 1

Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[OMD Docket No. 02–339; FCC 02–299]

Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules to implement the Debt Collection Improvement Act of 1996 (DCIA). The proposed amendments largely follow the implementing rules promulgated by the Department of Treasury. The Commission also proposes to adopt a rule whereby applications or other requests for benefits would be dismissed upon discovery that the entity applying for or seeking the benefit is delinquent in any debt to the Commission, and that entity fails to resolve the delinquency.

DATES: Comments are due February 10, 2003; reply comments are due March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at <*rdorsey@fcc.gov*>, or Laurence H. Schecker, Office of General Counsel, Administrative Law Division, at 1–202–418–1720, or by e-mail at <*lschecke@fcc.gov*>.

SUPPLEMENTARY INFORMATION: In this document, the Commission proposes to amend its rules governing the collection of claims owed the United States, 47 CFR Part 1 Subpart O, to implement the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (1996) (DCIA). The Commission also proposes to adopt a rule withholding action on applications and other requests for benefits upon discovery that the entity applying for or seeking benefits is delinquent in its non-tax debts owed to the Commission, and mandating dismissal of such applications or requests if the delinquent debt is not resolved.

I. Debt Collection Rules

The Commission's rules governing claims owed the United States were adopted in 1988 to implement the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (1982) (DCA), and the Deficit Reduction Act, Public Law 98–369, 98 Stat. 1153 (1984). The Commission's rules paralleled the implementing regulations issued in 1984 by the Department of Justice and the General Accounting Office known as the Federal Claims Collection Standards (FCCS). In 1996, faced with ''a rising tide of delinquent debts,'' 142 Cong. Rec. H4087 (Apr. 25, 1996) (remarks of Congressman Horn), Congress enacted the DCIA, revising federal debt collection procedures. Because our debt collection rules parallel the FCCS, we awaited revision of the FCCS before proposing to amend our rules. The Departments of Justice and Treasury have now issued final amendments to the FCCS. *Federal Claims Collection Standards*, 65 FR 70390, November 22, 2000 (FCCS), *codified at* 31 CFR. Chapter IX and Parts 900–904.

Based on the revised FCCS, we propose to amend our debt collection rules presently found at 47 CFR Part 1 Subpart O. Our proposal also incorporates the Federal salary offset procedures, governed by 5 U.S.C. 5514 and Office of Personnel Management (OPM) regulations. *See* 5 CFR 550.1104. The proposed revisions to our DCIA rules include numerous changes and amendments. Major changes contained in our proposed revisions are discussed below. In addition, many adjustments have been made to take into account debts arising under our auction rules. Other provisions have been redrafted for clarity but do not substantively change debt collection procedures, and are not discussed here.

The following major changes to the Commission's debt collection rules are proposed. The proposed rules reflect the increase in the principal claim amount from $20,000 to $100,000 or such amount as the Attorney General deems appropriate, that agencies are authorized to compromise or to suspend or terminate collection activity thereon without the concurrence of the Department of Justice. In addition, the minimum amount of a claim that may be referred to the Department of Justice is increased from $600 to $2,500. The proposed rules also reflect several new debt collection procedures under the DCIA, including but not limited to (a) transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection centers for collection (known as cross-servicing); (b) mandatory, centralized administrative offset by disbursing officials; (c) mandatory credit bureau reporting; and (d) mandatory prohibition against extending Federal assistance in the form of loan or loan guarantee to delinquent debtors. The proposed rules conform the Commission's definitions with those used by the Departments of Justice and Treasury in their regulations on the DCIA. Finally, we have added a new § 1.1935 adopting the new Treasury regulations adopting the DCIA administrative wage garnishment requirements. *See Administrative Wage Garnishment*, 63 FR 25136, May 6, 1996 (permitting agencies to garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed), *adopting* 31 CFR 285.11. We invite comment on all aspects of the proposed revisions to our debt collection rules.

II. Delinquent Debtors

Introduction. We have previously explained that the Commission is required to manage and collect substantial sums of money, including annual regulatory fees, application fees, civil monetary penalties, and auction payments, and oversees Universal Service Fund (USF) contributions. We envisioned a multi-step process to improve the management of the agency's accounts. The Commission established a Revenue Accounting and Management Information System (RAMIS) to support the agency's accounts receivable and to enable us to perform fee and debt sufficiency checks. We recently adopted the requirement that persons and entities doing business with the Commission obtain a unique identifying number called the FCC Registration Number (FRN), and supply it when doing business with the Commission. The Commission also established the Commission Registration System (CORES) to assign the FRN. Through these mechanisms, we are able to better track money owed to the Commission.

The ''Red Light'' Rule. This Notice proposes to extend and clarify policies already in place in our rules. Our regulatory and application fee rules already permit us as a matter of discretion to dismiss applications for failure to pay appropriate fees. 47 U.S.C. 158(c)(2), 159(c)(2). *See* 47 CFR 1.1109(c), 1.1109(d)(1); 1.1112(a)(1)(i); 1.1112(a)(2)(ii); 1.1157(a)(2); 1.1161(a)(1)(i); 1.1161(a)(2)(ii); 1.1164(e); and 1.1166(c). Our auctions rules provide that an applicant must certify that it ''is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency,'' 47 CFR 1.2105(a)(2)(x); *see also* 47 CFR 1.2105(a)(2)(xi), or its application will be dismissed. 47 CFR 1.2105(b). (These rules are not affected by the proposed red light rule.) The next step in the improvement of the management of the Commission's accounts is our proposal

that anyone delinquent in any non-tax debts owed to the Commission will be ineligible for or barred from receiving a license or other benefit until the delinquency has been resolved by payment in full or by the completion of satisfactory arrangements for payment. We propose to revise our regulatory and application fee rules to make it clear that we will withhold action on applications or other requests for benefits by delinquent debtors and ultimately dismiss those applications or other requests if payment of the delinquent debt is not made or other satisfactory arrangement for payment is not made. In addition, we propose to add a generally applicable rule (with some necessary exceptions, as discussed below) to be added as proposed rule 1.1910 as set forth further to withhold action on applications or other requests for benefits by debtors delinquent in debts other than application or regulatory fees, and to dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. We invite public comment on all aspects of the proposed ''red light rule'' as set forth further. We specifically seek comment on whether receipt of support from the universal service support mechanisms should be considered other benefits for these purposes, particularly in light the mandatory service obligations imposed by section 254(h).

Under the proposed rule changes, the Commission will not approve any applications or other authorizations until they determine that all delinquent debt to the Commission by entities using the same taxpayer identifying number (TIN) is paid or satisfactory arrangements are made for payment. Applications include requests to waive, defer, or reduce application fees or regulatory fees under 47 CFR 1.1117 and 1.1166, and petitions or applications for review under 47 CFR 1.1117, 1.1159, and 1.1167 related to applications or other requests requiring the filing of an FRN. *See also* 31 U.S.C. 7701(c)(2) (DCIA definition of doing business with the federal government); 47 CFR 1.8002(a) (indicating anyone doing business with the Commission must obtain an FRN).

An applicant's FRN will be used to determine all delinquent debt owed attributable to all entities using the same TIN. Entities may acquire multiple FRNs. However, only delinquent debt attributable to the same TIN will trigger our proposed red light rule. By delinquent debt we mean a claim or debt which has not been paid by the date specified in the initial written demand for payment, applicable agreement, instrument, or Commission rule or rules, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule. *See* proposed 47 CFR 1.1901(j). *See also* 31 CFR 900.2(b) (''a debt is ''delinquent'' if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.''). We note that pursuant to section 504(c) of the Communications Act, as amended, 47 U.S.C. 504(c), we do not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture had been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final. We propose that if a timely challenge has been filed either to the existence of or the amount of a debt, that debt will not be considered delinquent for purposes of the red light rule. *Cf.* 47 CFR 285.13(d)(2)(iii) (a debt is not delinquent for purposes of the denial of financial assistance to delinquent debtors under 31 U.S.C. 3720B if it is subject to time-filed administrative or judicial challenge). For purposes of Part 1, Subpart O only, an installment payment under 47 CFR 1.2110(g) will not be considered delinquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules set forth in this subpart in no way affect the Commission's rules on default or automatic license cancellation as may be amended. All Commission electronic systems will be linked with RAMIS, which will check the FRN provided on the filing for eligibility-based fee sufficiency and the existence of any non-tax delinquent debt. All FRNs provided with a filing will be checked for delinquent debt, and the delinquency of any entity covered by the same TIN will trigger this proposed rule.

We propose to withhold action on applications or other requests for benefits until delinquent debts have been resolved. The delinquent debtor will be notified that a fee and delinquent debt check revealed either a fee insufficiency or delinquent debt that must be resolved within 30 days of the notification. This resolution period is not intended to restrict our exercise of any right to recover or collect amounts due to the Commission. In no case would an application or other request for benefit be granted until the delinquent debt issue has been resolved. If the delinquency has not been resolved within 30 days of the date of the notification letter, we propose that the application or request for authorization will be dismissed.

Exceptions to the ''Red Light'' Rule. Several unique situations may require exceptions to the general rule. We invite comment on the exceptions proposed and whether there are any other special circumstances requiring departure from our general proposed rule.

We previously made exceptions for providing the FRN in the case of emergency authorizations and emergency special temporary authorities (STAs). We believe a similar adjustment is necessary here. Thus, we propose that emergency authorizations and STA applications involving safety of life or property, including national security emergencies, will not be subject to the red-light rule. Such applications should include the FRN. We propose that we will, however, examine any subsequent applications for regular authority in place of the emergency authorization or STA to determine if the applicant is a delinquent debtor, and will not grant such applications until such delinquencies are resolved.

Certain sections of the Communications Act contain congressionally mandated deadlines. *See* 47 U.S.C. 271(d)(3) (Bell operating company interLATA applications must be decided within 90 days); 47 U.S.C. 252(e)(5) (if a state commission fails to act on an interconnection agreement, the Commission shall issue an order preempting the state commission's jurisdiction within 90 days of notice of failure of the state to act); 47 U.S.C. 405(b)(1) (Commission must act on petition for reconsideration of an order concluding a hearing under section 204(a) or 208(b)); 47 U.S.C. 208(b)(1) (Commission must issue an order concluding an investigation of lawfulness of a charge, classification, regulation, or practice within 5 months after filing of complaint); 47 U.S.C. 614(h)(C)(iv) (Commission must decide cable must carry complaints within 120 days). Other sections of the Communications Act provide that if the Commission fails to act by a set date, the Commission is deemed to have approved the action sought. *See* 47 U.S.C. 160(c) (Commission must act on petition for forbearance within one year, extendable by an additional 90 days, or petition deemed granted). In addition,

certain sections of the Commission's rules provide that uncontested applications are granted automatically once a given period of time has passed. *See, e.g.*, 47 CFR 63.03 (a), which allows an applicant to transfer control of the domestic lines or authorization to operate on the 31st day after the date of public notice listing a domestic section 214 transfer of control application as accepted for filing as a streamline application. In these circumstances, if the applicant is found to be a delinquent debtor at the statutory or Commission imposed deadline, the application will be dismissed, consistent with the general rule. We think this result is unlikely, as we expect that most applicants will diligently check to determine whether they are delinquent in any debts owed to the Commission and resolve any such delinquencies in a timely manner. Nonetheless, dismissal of such applications for delinquencies is possible. We could alternatively adopt an exception to the general rule that would provide relief from the rule for applications involving statutory or Commission imposed deadlines. While we are not inclined to make such an exception, we seek comment on the handling of such situations. We seek comment on how we might reconcile our rule with these sections of the Communications Act or our own rules.

The proposed red light rule permits delinquent debtors to resolve the delinquency within 30 days. We propose that the 30-day resolution period would not apply to applications or requests for benefits where more restrictive rules govern treatment of delinquent debtors. For example, under existing rules auction participants must already certify that they are not delinquent in non-tax debt or their short form application will be dismissed and they will be ineligible to participate in an auction. *See* 47 CFR 1.2105(a)(2)(x) and (xi). We note, however, that the proposed red light rule would apply to subsequent applications filed by winning bidders, *e.g.*, the long-form application.

The Bankruptcy Code may require an exception to the red light rule. Section 208 of the Bankruptcy Code permits the trustee in bankruptcy to fulfill an obligation within 60 days, *see* 11 U.S.C. 108(b)(2), whereas we have proposed a 30-day period for delinquent debtors to resolve the delinquency before we will dismiss an application or other request for benefit. We seek comment on how we can reconcile the proposed rule and section 208 of the Bankruptcy Code. We also note that if we may have to examine whether section 525 of the Bankruptcy Code, 11 U.S.C. 525(a) prevents application of the red light rule when the applicant has filed for bankruptcy. In addition, we seek comment on whether any other sections of the Bankruptcy Code require modification of our proposed red light rule.

In some instances, such as tariffs, filings with the Commission go into effect immediately (or within one day), thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect. *See* 47 U.S.C. 203, 206. In the tariff situation, we have the ability to take appropriate action against a tariff after its effective date for noncompliance with any of our rules. *See* 47 U.S.C. 205. We propose to use that approach for tariffs that go into effect immediately on filing and where it is later discovered that the filer is a delinquent debtor. We propose not to apply this rule to multi-party tariffs where one party is discovered to be a delinquent debtor, as we do not wish to penalize the other parties to the tariff.

Finally, we previously noted that Freedom of Information Act (FOIA) and due diligence requests required unique treatment. FOIA requesters and due diligence requesters will not be pre-screened for delinquent debt under the proposed procedures. Our FOIA rules already address situations where FOIA requesters previously failed to pay FOIA fees. *See* 47 CFR 0.469(a)(2).

Effective Date of Red Light Rule. We propose that if we adopt the red light rule, it would apply to any applications or requests for benefits pending at the time the rule goes into effect. As noted, pending applications or requests for benefits are subject to a check for debt delinquency at any time before the request is granted. This approach is consistent with the general rule of applying regulations in effect at the time of the decision. We seek comment on the proposed application of the effective date.

As previously noted, the FRN is the key to checking for delinquent debt. The FRN became mandatory on December 3, 2001. Prior to that date, we encouraged entities doing business with the Commission to obtain and include the FRN in their filings with the Commission. While many applicants included the FRN prior to December 3, 2001, many did not. We propose that applications still pending if we ultimately adopt the red light rule that were filed prior to December 3, 2001 without an FRN will not be subject to the rule due to the administrative difficulties in checking for delinquent debt on those applications. Alternatively, we propose that parties will have 30 days from the effective date of the rule to amend those applications to include FRNs. We seek comment on whether any other exceptions to this proposed application of the rule are necessary.

Authority. We believe that ample authority exists for this proposed action under the Communications Act of 1934, as amended. *See* 47 U.S.C. 158(c)(2) and 159(c)(2) (''the Commission may dismiss any application or other filing for failure to pay in a timely manner any * * * fee or penalty under this section''); *see also* 47 U.S.C. 154(i) and 303(r). While the DCIA does not specifically prohibit the issuance of licenses or authorizations to delinquent debtors, it strongly counsels that debtors who are delinquent in payments to the government should not receive benefits from the federal government while the delinquency is outstanding. *Cf.* 31 U.S.C. 3720B (those delinquent in non-tax debt are ineligible for federal assistance in the form of a loan or loan insurance); 31 CFR 285.13(c)(1) (a person owing delinquent nontax debt is not eligible for Federal financial assistance). The FCCS rules implementing the DCIA direct the Commission to ''aggressively collect all debts arising out of [our] activities,'' and encourage agencies to ''consider suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures.'' 31 CFR 901.6(b). Withholding action upon an application or request for authorization until delinquencies have been resolved is consistent with the intent of the DCIA and in furtherance of the Commission's implementing rules.

III. Procedural Matters and Ordering Clauses

Initial Regulatory Flexibility Certification. We hereby certify, and tentatively conclude we will be able to so certify if we adopt these rules in final form, that the rules proposed in this Notice will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed amendment of our Part 1 Subpart O rules to conform to the DCIA streamline our debt collection rules reflecting the statutory language contained in the DCIA, and therefore a regulatory flexibility analysis is not required. *See* FCCS Rules, 65 FR 70395 (certifying under section 605(b) that the FCCS rules did not require a regulatory flexibility analysis). The proposed rule amendments requiring payment of delinquent debts before final action is taken on an application or other request for a federal benefit will

not affect a significant number of small entities. We estimate that there are approximately 3600 debtors currently delinquent in their debt to the Commission out of approximately 406,000 entities that hold an FRN. This means that potentially only one percent of entities doing business with the Commission could be affected by this rule. Of the 3600 delinquent debtors, it is impossible to determine how many are small entities, but we can reasonably posit that less than all 3600 are small entities. Consequently, less than one percent of entities subject to this rule are small entities. Therefore, we propose to certify pursuant to 5 U.S.C. 605(b) that the ''red light rule'' does not require a regulatory flexibility analysis. We invite comments on our initial regulation flexibility certification.

Ex Parte Matters. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b)

Comment Filing. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 10, 2003, and reply comments on or before March 12, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the Reference Information Center (Room CY–A257) of the Federal Communications Commission, The Portals, 445—12th Street, SW., Washington, DC 20554. Copies of comments and reply comments will also be available through the Commission's duplicating contractor.

Pursuant to Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 158(c)(2), 159(c)(2), and 303(r), and 5 U.S.C. 5514, this Notice of Proposed Rulemaking is hereby *adopted*.

The Commission's Consumer & Government Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Lists of Subjects in 47 CFR Part 1

Practice and procedures.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The Authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

2. Section 1.1112 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 1.1112 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee or delinquent fees and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

* * * * *

(c) Where an applicant is found to be delinquent in the payment of application fees, the Commission will withhold action on the application or filing made by a person or organization.

(1) Before taking such action, the staff will make a written request for the delinquent fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay or make satisfactory payment arrangements will result in the Commission's withholding action on any other application or request filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due or is delinquent, and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

3. Section 1.1116 is amended by revising paragraph (a) introductory text,

paragraph (b) and by adding paragraph (d) to read as follows:

§ 1.1116 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1108 (b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission. Filings by delinquent debtors will also be dismissed if the delinquent debt is not paid or satisfactory arrangements made. See 47 CFR 1.1910.

* * * * *

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to recission.

* * * * *

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Act, 31 U.S.C. 3717 and 3720A. See 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

4. Section 1.1118 is amended by revising paragraph (a) to read as follows:

§ 1.1118 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. These claims should be addressed to the same location as the original submission marked ''Attention Financial Operations.''

* * * * *

5. Section 1.1161 is amended by revising introductory text of paragraph (a) and revising paragraph (c) to read as follows:

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the current or delinquent regulatory fees. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

* * * * *

(c) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will withhold action on the application or filing made by a person or organization.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

6. Section 1.1164 is amended by adding paragrapn (f)(5) as follows:

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

* * * * *

(f) * * *

(5) An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.

7. Section 1.1167 is amended by revising paragraph (a) to read as follows:

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked ''Attention: Fee Supervisor''. Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

* * * * *

8. Subpart O of Part 1 is revised to read as follows:

Subpart O—Collection of Claims Owed the United States

General Provisions

1.1901 Definitions and construction.
1.1902 Exceptions.
1.1903 Use of procedures.
1.1904 Conformance to law and regulations.
1.1905 Other procedures; collection of forfeiture penalties.
1.1906 Informal action.
1.1907 Return of property or collateral.
1.1908 Omissions not a defense.
1.1909 [Reserved]
1.1910 Effect of insufficient fee payments or delinquent debts, or debarment.

Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

1.1911 Demand for payment.
1.1912 Collection by administrative offset.
1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
1.1914 Collection in installments.
1.1915 Exploration of compromise.
1.1916 Suspending or terminating collection action.
1.1917 Referrals to the Department of Justice.
1.1918 Use of consumer reporting agencies.
1.1919 Contracting for collection services.
1.1920–1.1924 [Reserved]

Salary Offset—Individual Debt

1.1925 Purpose.
1.1926 Scope.
1.1927 Notification.
1.1928 Hearing.
1.1929 Deduction from employee's pay.
1.1930 Liquidation from final check or recovery from other payment.
1.1931 Non-waiver of rights by payments.
1.1932 Refunds.
1.1933 Interest, penalties and administrative costs.
1.1934 Recovery when paying agency is not creditor agency.
1.1935 Obtaining the services of a hearing official.
1.1936 Administrative Wage Garnishment.
1.1937–1.1939 [Reserved]

Interest, Penalties, Administrative Costs and Other Sanctions

1.1940 Assessment.
1.1941 Exemptions.
1.1942 Other sanctions.
1.1943–1.1949 [Reserved]

Cooperation With the Internal Revenue Service

1.1950 Reporting discharged debts to the Internal Revenue Service.
1.1951 Offset against tax refunds.
1.1952 Use and disclosure of mailing addresses.

General Provisions Concerning Interagency Requests

1.1953 Interagency requests.

The authority citation for Subpart O continues to read:

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107; 31 CFR Parts 901–904; 5 CFR Part 550.

§ 1.1901 Definitions and construction.

For purposes of this subpart:

(a) The term *administrative offset* means withholding money payable by the United States Government to, or held by the Government for, a person, organization, or entity to satisfy a debt the person, organization, or entity owes the Government.

(b) The term *agency* means the Federal Communications Commission (Commission) (including the Universal Service Fund) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term *agency head* means the Chairman of the Federal Communications Commission.

(d) The term *application* includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.

(e) The terms *appropriate agency official* or ''designee'' means the Managing Director of the Commission or such other official as may be designated by the Managing Director to act in his behalf on this matter.

(f) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency. For purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. ''Claim'' and ''debt'' include amounts owing to the United States on account of extension of credit or loans made by, insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, taxes, and forfeitures issues after notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has order payment and such order is final (except those arising under the Uniform Code of Military Justice), and other similar sources.

(g) The term *creditor agency* means the agency to which the debt is owed.

(h) The term *debt collection center* means an agency of a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. The Financial Management Service (FMS), Fiscal Service, United States Treasury, is a debt collection center.

(i) The term *demand letter* includes written letters, orders, judgments, and memoranda from the Commission or on delegated authority.

(j) The term *delinquent* means a claim or debt which has not been paid by the date specified by the agency unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule. For purposes of this subpart only, an installment payment under 47 CFR 1.2110(g) will not be considered delinquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules set forth in this subpart in no way affect the Commission rules on default or automatic cancellation as may be amended (see 47 CFR 1.1902(f)).

(k) The term *disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.

(l) The term *employee* means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(m) The term *entity* includes natural persons, legal associations, applicants, licensees, and regulatees.

(n) The term *FCCS* means the Federal Claims Collection Standards jointly issued by the Secretary of the Treasury and the Attorney General of the United States at 31 CFR Parts 900–904.

(o) The term *paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(p) The term *referral for litigation* means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(q) The term *salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) The term *waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or fee, including, but not limited to, a debt due to the United States, by an entity or an employee to an agency and as the waiver is permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 31 U.S.C. 3711, or 32 U.S.C 710, 5 U.S.C. 8346(b), or any other law.

(s) Words in the plural form shall include the singular, and vice-versa, and words signifying the masculine gender shall include the feminine, and vice-versa. The terms *includes* and *including* do not exclude matters not listed but do include matters of the same general class.

§ 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (*see* 41 CFR Part 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (*See* 48 CFR Part 32). If not otherwise provided for in the FAR, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any,

contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims. The standards in the FCCS relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Commission shall promptly refer the case to the Department of Justice for action. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the standards in the FCCS.

(d) Tax claims are excluded from the coverage of this regulation.

(e) The Commission will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

(f) Nothing in this subpart shall supercede or invalidate other Commission rules, such as the Part 1 general competitive bidding rules (47 CFR Part 1, Subpart Q) or the service specific competitive bidding rules, as may be amended, regarding the Commission's rights, including but not limited to the Commission's right to cancel a license or authorization, obtain judgment, or collect interest, penalties, and administrative costs.

§ 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Public Law 97–365, 96 Stat. 1749 and Public Law 104–134, 110 Stat. 1321, 1358) have been implemented in governmentwide standards which include the Regulations of the Office of Personnel Management (5 CFR Part 550) and the Federal Claims Collection Standards issued jointly by the Secretary of the Treasury and the Attorney General of the United States (31 CFR Parts 900–904). Not every item in the above-described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Commission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

§ 1.1905 Other procedures; collection of forfeitures.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures permitted or required by other statutes or regulations. In particular, the assessment and collection of monetary forfeitures imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings. Fees and penalties prescribed by law, *e.g.*, 47 U.S.C. 158 and 159, and promulgated under the authority of 47 U.S.C. 309(j) (*e.g.*, 47 CFR Part 1, Subpart Q) may be collected as permitted by applicable law. Nothing contained herein is intended to restrict the Commission from exercising any other right to recover or collect amounts owed to it.

§ 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available (including, *e.g.*, Alternative Dispute Resolution), and/or for the Commission to exercise rights as agreed to among the parties in written agreements, including notes and security agreements.

§ 1.1907 Return of property or collateral.

Nothing contained in this regulation is intended to deter the Commission from exercising any other right under law or regulation or by agreement it may have or possess, or to exercise its authority and right as a regulator under the Communications Act of 1934, as amended, and the Commission's rules, and demanding the return of specific property or from demanding, as a non-exclusive alternative, either the return of property or the payment of its value or the amount due the United States under any agreement or Commission rule.

§ 1.1908 Omissions not a defense.

The failure or omission of the Commission to comply with any provision in this regulation shall not serve as a defense to any debtor.

§ 1.1909 [Reserved]

§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.

(a)(1) An application (including a petition for reconsideration or any application for review of a fee determination) or request for authorization subject to the FCC Registration Number (FRN) requirement set forth in subpart W of this chapter will be examined to determine if the applicant has paid the appropriate fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (see, *e.g.*, 31 CFR 285.13; 47 CFR Part 1, Subpart P).

(2) Fee payments, delinquent debt, and debarment will be examined based on the entity's taxpayer identifying number (TIN), supplied when the entity acquired or was assigned an FRN. See 47 CFR 1.8002(b)(1).

(b)(1) Applications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR Part 1, Subpart G.

(2) Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see paragraph 1.1901(g)), unless otherwise provided for in this regulation, *e.g.*, 47 CFR 1.1928 (employee petition for a hearing). The entity will be informed that action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to recission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and

the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.

(3) If a delinquency has not been resolved within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.

(4) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an adminstrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed to the Commission.

(5) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply where more restrictive rules govern treatment of delinquent debtors, such as 47 CFR 1.2105(a)(2)(x) and (xi).

(c) Applications, emergency applications or special temporary authority involving safety of life or property (including national security emergencies), will not be subject to the provisions of paragraphs (a) and (b) of this section. However, paragraphs (a) and (b) will be applied to permanent authorizations for these services.

§ 1.1911 Demand for payment.

(a) Written demand as described in paragraph (b) of this section, and which may be in the form of a letter, order, memorandum, or other form of written communication, will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate to resolve the debt. The specific content, timing, and number of demand letters depend upon the type and amount of the debt, including, *e.g.*, any notes and the terms of agreements of the parties, and the debtor's response, if any, to the Commission's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), the Commission will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with the FCCS. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation. Nothing contained herein is intended to limit the Commission's authority or discretion as may otherwise be permitted to collect debts owed.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, of the debtor to request review within the Commission;

(2) The applicable standards for assessing any interest, penalties, and administrative costs (§§ 1.1940 and 1.1941);

(3) The date by which payment is to be made to avoid late charges and enforced collection, which normally will not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within the Commission.

(c) The Commission will expend all reasonable effort to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. Exigent circumstances may necessitate other forms of delivery, including, *e.g.*, facsimile telecopier or electronic mail. There is no prescribed format for demand letters. The Commission utilizes demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) The Commission may, as circumstances and the nature of the debt permit, include in demand letters such items as the Commission's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the Commission's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(f) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, the Commission determines to pursue administrative offset, then the procedures specified in §§ 1.1912 and 1.1913, as applicable, will be followed. The availability of funds for offset and the Commission's determination to pursue that remedy, release the Commission from the necessity of further compliance with paragraphs (a), (b), (c) and (d) of this section.

(g) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if the Commission determines to pursue, or is required to pursue, offset, the procedures applicable to offset in §§ 1.1912 and 1.1913, as applicable, will be followed. The availability of funds or money for debt satisfaction by offset and the Commission's determination to pursue collection by offset shall release the Commission from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(h) Prior to referring a debt for litigation, the Commission will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will follow the requirements of Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government will be advised that this notice has been given.

(i) When the Commission learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Commission may immediately seek legal advice from its counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Commission determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim will be filed in most cases with the bankruptcy court or the Trustee. The Commission will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the Commission is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, the Commission will determine from its counsel whether it's payments to the debtor and payments of other agencies available for offset may be frozen by the Commission until relief from the automatic stay can be obtained from the bankruptcy court. The Commission will

also determine from its counsel whether recoupment is available.

§ 1.1912 Collection by administrative offset.

(a) *Scope.* (1) The term *administrative offset* has the meaning provided in § 1.1901.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, the Commission will seek legal advice from its counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) The Commission is required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Treasury for collection by centralized administrative offset. Debts which are less than 180 days delinquent also may be referred to the Treasury for this purpose. *See* FCCS for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Treasury as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4)(i) Before referring a delinquent debt to the Treasury for administrative offset, and subject to any agreement and/or waiver to the contrary by the debtor, the Commission shall ensure that offsets are initiated only after the debtor:

(A) Has been sent written notice of the type and amount of the debt, the intention of the Commission to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(B) The debtor has been given:

(1) The opportunity, unless otherwise waived by the debtor, to inspect and copy Commission records related to the debt;

(2) The opportunity, unless otherwise waived by the debtor, for a review within the Commission of the determination of indebtedness; and

(3) The opportunity to make a written agreement to repay the debt.

(ii) The Commission may omit the procedures set forth in paragraph (a)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iii) When the Commission previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see 31 CFR 901.2), the Commission need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before the Commission refers delinquent debts to the Treasury, OMD must certify, in a form acceptable to the Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) The Commission has complied with all due process requirements under 31 U.S.C. 3716(a) and its regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and

post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that the Commission conducts, at the Commission's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump-sum payment upon leaving Government service to satisfy an unpaid advance.

(2) The Commission will make reasonable effort to ensure that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section (subject to any waiver by the debtor); and

(ii) The payment authorizing agency has received written certification from the Commission that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4)When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing OPM written certification that a debtor has been afforded the procedures provided in § 1.1912(b)(4), the Commission may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph 1.1914(a)(4).

§ 1.1914 Collection in installments.

(a) Whenever feasible, the Commission shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, the Commission may accept payment in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g)). The Commission will require and obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments will be obtained in appropriate cases. The Commission may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Commission's option.

(d) The Commission may deny the extension of credit to any debtor who fails to provide the records requested or fails to show an ability to pay the debt.

§ 1.1915 Exploration of compromise.

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 902 of the Federal Claims Collection Standards (31 CFR Part 902). The Commission will also consider a request submitted by the debtor to compromise the debt. Such requests should be submitted in writing with full justification of the offer and addressing the bases for compromise at 31 CFR 902.2. Debtors will provide full financial information to support any request for compromise based on the debtor's inability to pay the debt. Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The Commission will evaluate an offer, using the factors set forth in 31 CFR 902.2 and, as appropriate, refer the offer with the appropriate financial information to the Department of Justice. Department of Justice approval is not required if the Commission rejects a compromise offer.

§ 1.1916 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 903 of the Federal Claims Collection Standards (31 CFR Part 903).

§ 1.1917 Referrals to the Department of Justice and transfer of delinquent debt to the Secretary of Treasury.

(a) Referrals to the Department of Justice shall be made in accordance with the standards set forth in Part 904 of the Federal Claims Collection Standards (31 CFR Part 904).

(b) The DCIA includes separate provisions governing the requirements that the Commission transfer delinquent debts to Treasury for general collection purposes (cross-servicing) in accordance with 31 U.S.C. 3711(g)(1) and (2), and notify Treasury of delinquent debts for the purpose of administrative offset in accordance with 31 U.S.C. 3716(c)(6). Title 31, United States Code Section 3711(g)(1) requires the Commission to transfer to Treasury all collection activity for a given debt. Under section 3711(g), Treasury will use all appropriate debt collection tools to collect the debt, including referral to a designated debt collection center or private collection agency, and

administrative offset. Once a debt has been transferred to Treasury pursuant to the procedures at 31 CFR 285.12, the Commission will cease all collection activity related to that debt.

(c) All non-tax debts of claims owed to the Commission that have been delinquent for a period of 180 days shall be transferred to the Secretary of the Treasury; and, upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim. A debt is considered delinquent for purposes of this section it is 180 days past due and is legally enforceable. A debt is past-due if it has not been paid by the date specified in the Commission's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

§ 1.1918 Use of consumer reporting agencies.

(a) The term *individual* means a natural person, and the term ''consumer reporting agency'' has the meaning provided in the Federal Claims Collection Act, as amended, 31 U.S.C. 3701(a)(3) or the Fair Credit Reporting Act, 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, or provide information to the Treasury who may disclose to a consumer reporting agency from a system of records, information that an individual is responsible for a claim. System information includes, for example, name, taxpayer identification number, business and home address, business and home telephone numbers, the amount of the debt, the amount of unpaid principle, the late period, and the payment history. Before the Commission reports the information, it will;

(1) Provide notice required by section 5 U.S.C. 552a(e)(4) that information in the system may be disclosed to a consumer reporting agency;

(2) Review the claim to determine that it is valid and overdue;

(3) Make reasonable efforts using information provided by the debtor in Commission files to notify the debtor, unless otherwise specified under the terms of a contract or agreement—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days from the date of the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) That information in the system of records may be disclosed to the consumer reporting agency; and

(iv) That unless otherwise specified and agreed to in an agreement, contract, or by the terms of a note and/or security agreement, or that the debt arises from the nonpayment of a Commission fee, penalty, or other statutory or regulatory obligations, the individual will be provided with an explanation of the claim, and, as appropriate, procedures to dispute information in the records of the agency about the claim, and to administrative appeal or review of the claim; and

(4) Review Commission records to determine that the individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan agreed to and signed by both the individual and the Commission's representative; or, if eligible,

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall: (1) Disclose to each consumer reporting agency to which the original disclosure was made a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act. Moreover, commercial debt accounts are subject to the Commission's rules concerning debt obligation, including Part 1 rules related to auction debt, and the agreements of the parties.

§ 1.1919 Contracting for collection services.

(a) Subject to the provisions of paragraph (b) of this section, the Commission may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts. In that regard, the Commission:

(1) Retains the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) Restricts the private collection contractor from offering, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Commission has granted such authority prior to the offer;

(3) Specifically requires, as a term of its contract with the private collection contractor, that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) Although the Commission will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors, the Commission may refer debts to private collection contractors pursuant to a contract between the Commission and the private collection contractor in those situations where the Commission is not required to transfer debt to the Secretary of the Treasury for debt collection.

(c) Agencies may fund private collection contractor in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) The Commission may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets, but it will first establish procedures that are acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) The Commission may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Commission for such services may be payable from the amounts recovered, unless otherwise prohibited by statute. In that regard, fees for those services will be added to the amount collected and are part of the administrative

collection costs passed on to the debtor. See § 1.1940.

§§ 1.1920 through 1.1924 [Reserved]

§ 1.1925 Purpose.

This section applies to individuals who are employees of the Commission and provides the standards to be followed by the Commission in implementing 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107 to recover a debt from the pay account of a Commission employee. It also establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage.* This section applies to the Commission and employees as defined by § 1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (31 CFR Parts 900–904).

(1) *Excluded debts or claims.* The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) This section does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Commissioner. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(c) *Time limit.* Under 31 CFR 901.3(a)(4) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 901.3(a)(4).

§ 1.1927 Notification.

(a) Salary offset deductions will not be made unless the Managing Director of the Commission, or the Managing Director's designee, provides to the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The Commission's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in Commission files (see the FCCS).

(7) The employee's right to a hearing conducted by an official arranged by the Commission (an administrative law judge, or alternatively, a hearing official not under the control of the head of the Commission) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail, return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for:

(1) Any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-Commission adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1.1928 Hearing.

(a) *Petition for hearing.* (1) An employee may request a hearing by filing a written petition with the Managing Director of the Commission, or designated official stating why the employee believes the determination of the Commission concerning the

existence or the amount of the debt is in error.

(2) The employee's petition must be executed under penalty of perjury by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to paragraph (a) (3) of this section, the Commission will nevertheless accept the petition if the employee can show, in writing, that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a) (3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the Commission and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent him or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Commission.

§ 1.1929 Deduction from employee's pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States will be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) The size of the installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay (*see* the FCCS). However, the installments will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions will be prorated for a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited to a final salary payment or lump-sum leave due the employee as of the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with §§ 1.1940 and 1.1941.

§ 1.1934 Recovery when the Commission is not creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the Commission of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the Commission, the creditor agency also must advise the Commission of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (a)(3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the Commission.

(5) If the employee is in the process of separating, the creditor agency must

submit its claim to the Commission for collection pursuant to § 1.1930. The Commission will certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from the Commission have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) *Responsibilities of the Commission*—(1) *Complete claim*. When the Commission receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next official established pay interval. The Commission will notify the employee that the Commission has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim*. When the Commission receives an incomplete debt claim from a creditor agency, the Commission will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review*. The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another.

(1) If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to a position served by a different paying agency before the debt is collected in full, the Commission must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the Commission designated in Appendix A of 5 CFR part 581 for a hearing official, and the Commission will then cooperate as provided by the FCCS and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR part 581 to arrange for a hearing official. Agencies must then cooperate as required by the FCCS and provide a hearing official.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under 31 CFR 550.1108 or a paying agency under 31 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

§ 1.1936 Administrative wage garnishment.

(a) *Purpose*. This section provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.

(b) *Scope*. (1) This section applies to Commission-administered programs that give rise to a delinquent nontax debt owed to the United States and to the Commission's pursuit of recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this section does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the Commission from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514, §§ 1.1925 through 1.1935, and other applicable laws.

(6) Nothing in this section requires the Commission to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions*. In addition to the definitions set forth in § 1.1901 as used in this section, the following definitions shall apply:

(1) *Business day means Monday through Friday*. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(2) *Certificate of service* means a certificate signed by a Commission official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

(3) *Day means calendar day*. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(4) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction

of health insurance premiums and any amounts required by law to be withheld.

(5) *Amounts required by law to be withheld* include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(6) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

(7) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(8) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) *General rule.* Whenever the Commission determines that a delinquent debt is owed by an individual, the Commission may initiate proceedings administratively to garnish the wages of the delinquent debtor as governed by procedures prescribed by 31 CFR 285. Wage garnishment will usually be performed for the Commission by the Treasury as part of the debt collection processes for Commission debts referred to Treasury for further collection action.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the Commission shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the Commission to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the Commission under terms agreeable to the Commission; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing.* Pursuant to 31 CFR 285.11(f)(1), the Commission hereby adopts by reference the hearing procedures of 31 CFR 285.11(f).

(g) *Wage garnishment order.* (1) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.,* within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Commission to proceed with garnishment, or as soon as reasonably possible thereafter.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the Commission's letterhead and signed by the head of the Commission or his/her delegate. The order shall contain only the information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the Commission shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form addressing matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the Commission that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The Commission may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in demonstrated financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in demonstarted financial hardship to the debtor, along with supporting documentation. The Commission will consider any information submitted; however, demonstrated financial hardship must be based on financial records that include Federal and state tax returns, affidavits executed under the pain and penalty of perjury, and, in the case of business-related financial hardship (*e.g.*, the debtor is a partner or member of a business-agency relationship) full financial statements (audited and/or submitted under oath) in accordance with procedures and standards established by the Commission.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''termination of the collection action'' occurs when the Commission has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

§§ 1.1937 through 1.1939 [Reserved]

§ 1.1940 Assessment.

(a) Except as provided in paragraphs (g), (h), and (i) of this section or § 1.1941, the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. The Commission will mail, hand-deliver, or use other forms of transmission, including facsimile telecopier service, a written notice to the debtor, at the debtor's most recent address available to the Commission, explaining the Commission's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement, or otherwise provided in the Commission's rules, as may be amended from time to time. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges. This provision is not intended to modify to limit the terms of any contract, note, or security agreement from the debtor, or to modify or limit the Commission's rights under its rules with regard to the notice or the parties' agreement to waive notice.

(b) The Commission shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by the terms of any contact, note, or security agreement, regulation, or law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) The Commission shall assess administrative costs incurred for processing and handling delinquent

debts. The calculation of administrative costs may be based on actual costs incurred or upon estimated costs as determined by the Commission. Commission administrative costs include the personnel and service costs (e.g., telephone, copier, and overhead) to notify and collect the debt, without regard to the success of such efforts by the Commission.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, the Commission will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), currently not to exceed six percent (6%) a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency. If the rate permitted under 31 U.S.C. 3717 is changed, the Commission will apply that rate.

(e) The Commission may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Commission will not extend this 30-day period except for good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, submitted and received before the expiration of the first 30-day period. The Commission may, on good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) The Commission retains the common law right to impose interest and related charges on debts not subject to 31 U.S.C. 3717.

§ 1.1941 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws. However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

§§ 1.1943 through 1.1949 [Reserved]

§ 1.1950 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–C or any other form prescribed by the Service as directed by the current instructions issued by the IRS for Form 1099–C. The Treasury will prepare the Form 1099–C for those debts transferred to Treasury for collection and deemed uncollectible.

§ 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1.1952 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this subpart or other authority, the Commission may send a request to the Secretary of the Treasury (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 1.1953 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Operations Center, FCC, 445 12th Street, SW., Washington, DC 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or

comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

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Part VI

Department of Housing and Urban Development

Notice of Public Interest (NOPI) for the Partnership for Advancing Technology in Housing (PATH); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4772–N–01]

Notice of Public Interest (NOPI) for the Partnership for Advancing Technology in Housing (PATH)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of public interest.

SUMMARY: The purpose of this notice is to inform potential applicants that the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development is interested in receiving ideas for cooperative agreements for research and activities in support of the Partnership for Advancing Technology in Housing (PATH) program. PATH is working to foster the development and use of advanced housing technologies, through partnerships between U.S. businesses and the federal government. These efforts, which improve the quality, affordability, durability, energy efficiency, and environmental performance of a home, help everyone—industry, consumers, and the environment. PATH encourages developing and adopting innovative housing components and systems, designs, and production methods as well as reducing the amount of time needed to move technologies to the market place.

ADDRESSES: Interested persons are invited to submit Summary Proposal Letters to the Department of Housing and Urban Development, Office of Policy Development and Research, 451 Seventh Street, SW., Room 8230, Washington, DC 20410, ATTENTION: Unsolicited Proposal (PATH)

FOR FURTHER INFORMATION CONTACT: Please submit any technical questions to: Mr. Dana Bres, P.E., Affordable Housing Research and Technology Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4370, ext. 5919, e-mail *dana_b._bres@hud.gov*. Administrative questions should be directed to Mr. Patrick Tewey, Director, Budget, Contracts, and Program Control Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1796, ext. 4098, email *patrick_j._tewey@hud.gov*. (These numbers are not toll-free.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

The PATH program is led by PD&R within the Department of Housing and Urban Development (*http://www.pathnet.org*). The PATH program is seeking interest in cost-shared, industry-led research projects and other projects in support of the PATH program goals.

A. The PATH program goals are:

- Develop new housing technologies (including processes)—this includes conducting basic and applied research, development of housing technology, development of evaluation measures for housing technology, evaluation of technologies on the marketplace, and long term analysis of housing technology;
- Disseminate new and existing technological information—this includes supporting regulatory acceptance of technologies, dissemination of information on promising but underutilized technologies, demonstrations of underutilized technologies, and provision of a clearinghouse for information on housing technology; and
- Study and establish mechanisms for sustained housing technology development—this includes forecasting of research needs, identification of research, and strategic planning and operations.

To focus program efforts, PATH sponsored roadmapping sessions to identify the advances critical to furthering the use of new technologies in the residential homebuilding industry. The initial roadmapping sessions were focused on: Reducing Energy Use In Existing Buildings; Information Technology to Accelerate and Streamline the Homebuilding Process; Advanced Panelized Systems; and, Whole House Building Process Redesign. Information on these roadmaps is available on the ToolBase Web sites at *http://www.toolbase.org/roadmaps.* PATH is sponsoring a manufactured housing roadmapping process at this time. In addition, the 2001 National Academy of Sciences report on the PATH program is available at: *http://www.nap.edu/catalog/10066.html.*

B. PD&R is interested in research and dissemination projects which:

- Conduct cooperative information gathering and dissemination in the U.S. residential construction industry. The work is targeted at improving the quality of and access to advanced technological information for the U.S. residential construction industry in a non-commercial manner by identifying the most reliable sources of technical information, assessing their accuracy and bias, and providing this information in an accessible and timely manner. (highest preference)
- Specifically implement the roadmaps (including manufactured housing) through research or demonstration projects that address PATH objectives. (highest preference)
- Address the subjects of roadmaps but not specific activities identified in roadmaps. (lesser preference)
- Address all other activities that support PATH objectives as defined above. (lowest preference)

Housing technology development and research efforts identified should be related to the final stages of the Research and Development life cycle, with results that can be implemented into a new or refined product within 18 to 36 months.

C. The funding will vary as a result of available funds and other program requirements. In the past several years, an average of six cooperative agreements have been made each year with most awards in the $100,000 to $300,000 range.

II. Eligibility

PATH cooperative efforts are open for participation by all (for-profit, not-for-profit, or non-profit) housing industry or industry related organizations (or teams of organizations). PD&R encourages small businesses, minority owned firms, HUB-Zone firms, and other similar organizations to participate in this program.

Unsolicited proposals funded under this program require a minimum 25 percent match.

III. Summary Proposal Letter Submission

In order to facilitate PD&R review and to minimize preparation time and costs for the submitter, a full-fledged proposal should not be sent to PD&R initially. Instead, two copies of a brief (up to three pages) Summary Proposal Letter should be submitted. The letter should contain the following:

- The name, address, and classification (academic, private for-profit, private non-profit, governmental, etc.) of the sponsoring organization or individual;
- A brief one or two-line title;
- The specific objective of the research;
- The problems/issues being addressed;

• The relationship of the research to the PATH program goals and priorities;

• Methodology to be employed in conducting the research;

• Products to be prepared (reports, etc.) and the specific audience(s) to whom these products are directed;

• If the proposed project involves research using human subjects (other than voluntary surveys or public observation) and there is any potential for physical, social, psychological, or financial harm to the subjects, a certification must be included that an Independent Review Board has approved the research design. Provide a description of procedures and membership of the Independent Review Board and show that it conforms to or has been registered under 24 CFR part 60;

• The approximate duration of the research in calendar months;

• An estimate of the staff months of professional services required, the total project cost and the percent to be provided by the offeror (cost sharing is required, other federal funds are not eligible for cost sharing);

• Brief statement justifying how the offeror is the unique source from which the work can be obtained or, if the content and nature of the proposal is the private, sole possession of the offeror, is of direct and immediate value to the government, and cannot be obtained from alternative, nonexclusive sources.

• The name, title, and telephone number of the project manager and each senior researcher; and

• A separate one-page resume for each person named in the Summary Proposal Letter that concisely outlines his or her qualifications for performing the research and commitment to the project.

Types of projects that are not eligible for funding include:

1. Proposals having little or no research demonstration content.

2. Work not directly related to the PATH program's role and mission.

3. Proposals for operating funds, working capital, plants, information technology, or other investment.

4. Proposals that solely or principally relate to or benefit a particular individual, local group, or community (*i.e.*, proposals that do not have a primary expectation of national application or replication of results).

5. Demonstration proposals that would require major statutory changes in order for the results to be applied.

6. Proposals for support of the development of consumer, business, or proprietary products, systems, or concepts that are later to be offered for sale at a profit. (In special instances, unmet needs of high national priority—*e.g.*, energy-conservation systems for housing—may be funded, but only on a solicited, competitive, public Request for Proposals basis).

7. Proposals that duplicate or overlap current or previous work.

8. Awards of cooperative agreements may not be made in response to an Unsolicited Proposal unless the offeror is the unique source from which the work may be obtained (not just a well-qualified, or even best-qualified, source), or the content and nature of the proposal is the private, sole possession of the offeror, is of direct and immediate value to the government, and cannot be obtained from alternative, nonexclusive sources. Even if HUD is interested in funding the proposal, a market search may be conducted to determine whether there are capable, alternative sources or means by which the government may obtain the proposed product or services (care being taken not to disclose the elements of the proposal asserted to be unique).

9. Proposals that require a disproportionate share of HUD's research funds.

10. Proposals that do not meet the 25 percent cost sharing requirement.

11. Proposals that are of generally the same subject matter as a current PD&R competitive Request for Proposals (RFP) or an invitation for assistance agreement (grant or cooperative agreement) applications. The period of ineligibility will generally be from the date of the first solicitation notice in *FedBizOpps* or the **Federal Register** until ninety (90) calendar days after competitive selection and award.

Summary Proposal Letters should be addressed to: Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th Street, SW, Room 8230, Washington, DC 20410, ATTENTION: Unsolicited Proposal (PATH).

IV. Policy Development and Research Review

Upon receipt the Summary Proposal Letter will be screened, using the criteria above to determine eligibility for further review. Government-wide regulations may require a market search for alternative sources. The offeror will be informed by letter of the results of this initial screening.

Those Summary Proposal Letters that pass the initial screening will be given a proposal number and assigned to the appropriate reviewer. If interest exists, the offeror may be invited to prepare a detailed proposal, the requirements of which will be spelled out in the decision letter. Receipt of an invitation from PD&R to submit a more detailed proposal does not imply that an award of a cooperative agreement for the proposed work is expected. The invitation is only an indication that the proposal is of sufficient merit to have passed preliminary review and to justify preparation by the offeror of a detailed proposal.

Dated: December 3, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–31365 Filed 12–11–02; 8:45 am]

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Federal Register

Thursday,
December 12, 2002

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Airspeed Indicating System Requirements for Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9636; Amendment No. 25–109]

RIN 2120–AH26

Airspeed Indicating System Requirements for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes concerning the airspeed indicating system. It adds airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply; a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff; and a requirement to limit the effects of airspeed lag. This amendment eliminates regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Effective January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov.*

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, Title 14, Code of Federal Regulations (CFR) part 25 contains the airworthiness standards for type certification of transport category airplanes. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators; and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, Joint Aviation Requirements (JAR)–25 contains the airworthiness standards for type certification of transport category airplanes. The Joint Aviation Authorities (JAA) of Europe developed these standards, which are based on part 25, to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, without a corresponding increase in the level of safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also preserve the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified many significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After beginning the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make noticeable progress towards fulfilling the harmonization goal. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for helping to resolve harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and

recommendations on the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties on potential new rules or revisions of existing rules.

There are 74 member organizations on the committee representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC sets up working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA invites participation in working groups from interested members of the public who have knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency continues with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Did the FAA Propose?

In Notice No. 01–05, the FAA proposed to revise § 25.1323 to add the additional airspeed system indication requirements of JAR 25.1323(c)(2), (3) and (4) (66 FR 26948, May 15, 2001).

JAR 25.1323(c)(2) and (c)(3), which the FAA proposed to adopt as a new §§ 25.1323(d) and (e), respectively, require the indicated airspeed to change perceptibly and in the same sense in certain speed regimes. The speed regimes where this requirement applies are the low speed regime from the stall warning speed to 1.3 V_S, and in the high speed regime from V_{MO} to $V_{MO} + 2/3(V_{DF} - V_{MO})$. At speeds below the stall warning speed and speeds above $V_{MO} + 2/3(V_{DF} - V_{MO})$, the indicated airspeed must not change in an incorrect sense. In other words, the indicated airspeed must not show a decrease in airspeed when the calibrated airspeed is increasing.

JAR 25.1322(c)(4), which the FAA proposed to adopt as a new § 25.1323(f), states that between the initiation of rotation and the achievement of a steady climbing condition during takeoff, there must not be an airspeed indication that would cause the pilot undue difficulty. The FAA considers an airspeed indication that would affect the average pilot's ability to maintain the intended takeoff flight path and takeoff speed profile as an airspeed indication that would cause undue difficulty. An example of such an airspeed indication would be a significant pause or variation in the rate of change in airspeed caused by the diminishing effect of the ground on the airflow pattern around the airplane as the airplane climbs away after takeoff.

In addition, a new requirement was proposed concerning airspeed lag. With the advent of electronic instruments in the cockpit, the pneumatic signals from the pitot and static sources are processed and digitized in the Air Data Computer (ADC) and then filtered and transported to the cockpit display. Data processing and filtering cause a time lag in displaying the airspeed on the cockpit display. This can be an important consideration in the airspeed indicating system calibration during ground acceleration. As stated in § 25.1323(b), the calibration for an accelerated takeoff ground run must determine the ''system error,'' which is the relation between indicated and calibrated airspeeds. The system error is the sum of the pneumatic lag in the pressure lines, airspeed lag due to time lags in processing the data, and static source position error.

Airspeed lag, which results in airspeed indication errors when the airspeed is changing, can be a safety issue during takeoff, because the airspeed is changing rapidly. Airspeed lag may result in the pilot rotating the airplane for takeoff at a speed higher than the scheduled rotation speed, resulting in an increased takeoff distance. For an aborted takeoff, airspeed lag may result in the pilot initiating the abort at a speed higher than that used in determining the accelerate-stop distance. A new § 25.1323(g) was proposed to ensure that the effect of airspeed indicating system lag would not introduce significant indicated airspeed bias during takeoff or significant errors in takeoff or accelerate-stop distances. In general, an airspeed indication error of 3 knots or an error of 100 feet in the takeoff or accelerate-stop distances would be considered significant under § 25.1323(g).

The FAA considers adding these requirements to part 25 necessary to harmonize part 25 with JAR–25 to ensure correct indication of changes in airspeed, and to codify current FAA policy. The JAA intends to revise JAR–25 in accordance with the harmonization goal. The JAA distributed Notice of Proposed Amendment (NPA) 25F–324, ''Airspeed Indicating System,'' for comment on January 1, 2002. The NPA proposals are expected to be included in Change 16 to JAR–25, anticipated to be published on March 1, 2003.

Adoption of this amendment is intended to benefit the public interest by standardizing the requirements, concepts, and procedures contained in the U.S. and European airworthiness standards without reducing, but potentially enhancing, the current level of safety.

What Is the Effect of the Revised Standard Relative to the Current Regulations?

The revised standard increases the level of safety relative to 14 CFR part 25 by incorporating the additional JAR requirements. The additional requirement regarding airspeed lag codifies current FAA policy.

What Is the Effect of the Revised Standard Relative to Current Industry Practice?

Since industry practice is to comply with both the FAR and the JAR, the revised standard neither adds any new or different objective to the current regulations, nor does it change the way that any current certification practice is applied. Instead, the intent of the new paragraphs is to clarify and codify the way that the FAA and JAA have traditionally applied the related rules.

What Other Options Were Considered and Why Were They Not Selected?

Various options regarding the split between rule and advisory material were discussed. The FAA considers the option chosen to best achieve the safety objective while ensuring flexibility in the means of compliance. The other options that were discussed are described below, along with the reasons for not selecting them.

The ARAC working group considered incorporating the JAR Advisory Material-Joint (ACJ) 25.1323(c)(2) and (c)(3) for the proposed speed requirements into the rule. The working group decided that adopting the JAR ACJ as the regulatory standard would be too prescriptive and would preclude the use of other means of compliance that could be found acceptable. The FAA

agrees with the working group's determination.

Another consideration was to include quantitative limits on the allowable level of airspeed bias and takeoff/accelerate-stop distance errors in the proposed airspeed lag requirement. The ARAC working group concluded, and the FAA agrees, that the ''one size fits all'' approach would not be appropriate because a specified speed bias may be a significant safety issue for one airplane type and not for another. Also, the FAA's ability to evaluate and approve alternative compliance approaches may be more difficult to consider if the standard consists of prescriptive, quantitative values.

Finally, the ARAC working group considered retaining the airspeed lag policy as policy only and not including it as a regulatory standard. The working group determined that this means of compliance did not have a specific regulatory standard against which it was applied. The FAA agrees with the working group's determination that a regulatory standard is necessary to assure that future certifications continue to consider airspeed lag issues.

Adopting this rule eliminates an identified SRD between the wording of part 25 and JAR–25, without affecting currently accepted industry design practices. The FAA expects more consistent interpretations of the rules and improved relations between regulatory authorities by eliminating this SRD.

Is Existing FAA Advisory Material Adequate?

The FAA plans to revise Advisory Circular (AC) 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes,'' to identify an acceptable means of compliance with the JAR requirements that have been added to § 25.1323(c). The revision will add the means of compliance currently accepted by the JAA as one acceptable means of showing compliance with these requirements. The FAA plans to incorporate the changes in the next update of AC 25–7A.

AC 25–7A already contains adequate advisory material concerning the airspeed lag issue. Accordingly, no revision is required to the AC to address the airspeed lag issue.

What Comments Were Received in Response to the Proposal?

Two commenters responded to the request for comments in Notice No. 01–05. Both agree not only with the proposal, but also with the goal of harmonization to reduce the differences between part 25 and JAR–25. One of the commenters provided additional specific comments, as discussed below.

The commenter notes that the proposed rule harmonizes § 25.1323 at JAR–25 Change 14, Orange Paper 96/1, and states that in order for harmonization to be fully achieved, the rule should have been harmonized with Change 15.

The FAA agrees. As noted in the preamble of Notice No. 01–05, harmonization with JAR–25 Change 15 depended on separate FAA rulemaking that was underway at that time. The other rulemaking has now been completed, having been adopted as Amendment 108 to part 25. Therefore, the term ''1.3 V_S'' in § 25.1323(d) has been changed to ''1.23 V_{SR}'' in this final rule to conform to the reference stall speed basis adopted by Amendment 108. Similar speed references in § 25.1323(c) were revised accordingly by Amendment 108.

The commenter also points out that the preamble to Notice No. 01–05 contains an incorrect reference to a speed of ''2/3 ($V_{DF} - V_{MO}$); this should be ''V_{MO} + 2/3 ($V_{DF} - V_{MO}$).'' The FAA concurs and the comment is duly noted.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this amendment indicates that its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined that this rule:

- Has benefits that do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures;
- Will not have a significant impact on a substantial number of small entities;
- Reduces barriers to international trade; and
- Does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5, ''Regulatory Policies and Procedures,'' prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. We provide the basis for this minimal impact determination below. We received no comments that conflicted with the economic assessment of minimal impact published in the notice of proposed rulemaking for this action. Given the reasons presented below, and the fact that no comments were received to the contrary, we have determined that the expected impact of this rule is so minimal that the final rule does not warrant a full evaluation.

Currently, airplane manufacturers must satisfy both the 14 CFR and the European JAR standards to certificate transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane, often with no increase

in safety. In the interest of fostering international trade, lowering the cost of airplane development, and making the certification process more efficient, the FAA, JAA, and airplane manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. This final rule results from the FAA's acceptance of an ARAC harmonization working group's recommendation, including the group's determination that the requirements of this rule will not impose additional costs to U.S. manufacturers of part 25 airplanes.

Specifically, this rule revises the airspeed indicating requirements of § 25.1323 to: (1) Add airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply; (2) require that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff; and (3) codify current FAA policy concerning airspeed lag. We consider that this rule will neither reduce nor increase the requirements beyond those that are already met by U.S. manufacturers to satisfy European airworthiness standards.

As this rule neither increases nor decreases certification requirements beyond those already in existence, we have determined there will be no additional cost associated with this rule to part 25 manufacturers. We have not tried to quantify the benefits of this amendment beyond identifying the expected harmonization benefit. This amendment eliminates an identified SRD between the wording of part 25 and JAR–25. The elimination of the SRD will provide for a more consistent interpretation of the rules and, thus, is an element of the potentially large cost savings of harmonization.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act.

If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.'' If we find, however, that the action will not have a significant economic impact on a substantial number of small entities, we are not required to do the analysis. In this case, the Act requires that we include a statement that provides the factual basis for our determination.

We have determined that this amendment will not have a significant economic impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The amendment requires that new transport category aircraft manufacturers meet just the ''more stringent'' European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard, as well as the existing part 25 requirement.

Second, all United States manufacturers of transport category airplanes exceed the Small Business Administration small entity criteria of 1,500 employees for aircraft manufacturers. Those U.S. manufacturers include:

- The Boeing Company,
- Cessna Aircraft Company,
- Gulfstream Aerospace,
- Learjet (owned by Bombardier Aerospace),
- Lockheed Martin Corporation,
- McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company),
- Raytheon Aircraft, and
- Sabreliner Corporation.

No comments were received that differed with the assessment given in this section. Since this final rule is minimally cost-relieving and there are no small entity manufacturers of part 25 airplanes, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979, 19 U.S.C. *et seq.*, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with that statute, we have assessed the potential effect of this final rule and have determined that it is consistent with the statute's requirements by using European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1538, 1571, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is considered to be a ''significant regulatory action.''

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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. We therefore determined that this final rule does not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have determined there are no new requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this

rulemaking action qualifies for a categorical exclusion.

Energy Impact

The FAA has assessed the energy impact of this final rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this final rule is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, we will apply the rule in the same way that it is being applied nationally.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Amend § 25.1323 by redesignating paragraphs (d) through (f) as paragraphs (h) through (j), and adding new paragraphs (d) through (g) to read as follows:

§ 25.1323 Airspeed indicating system.

* * * * *

(d) From 1.23 V_{SR} to the speed at which stall warning begins, the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense.

(e) From V_{MO} to V_{MO} + 2/3 (V_{DF} − V_{MO}), the IAS must change perceptibly with CAS and in the same sense, and at higher speeds up to V_{DF} the IAS must not change in an incorrect sense.

(f) There must be no indication of airspeed that would cause undue difficulty to the pilot during the takeoff between the initiation of rotation and the achievement of a steady climbing condition.

(g) The effects of airspeed indicating system lag may not introduce significant takeoff indicated airspeed bias, or significant errors in takeoff or accelerate-stop distances.

(h) Each system must be arranged, so far as practicable, to prevent malfunction or serious error due to the entry of moisture, dirt, or other substances.

(i) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(j) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

Issued in Renton, Washington, on December 3, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31341 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
December 12, 2002

Part VIII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48 and 75
Emergency Evacuations; Emergency Temporary Standard; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

RIN 1219 AB33

Emergency Evacuations; Emergency Temporary Standard

AGENCY: Mine Safety and Health Administration.

ACTION: Emergency temporary standard for underground coal mines.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) in response to the grave danger which miners are exposed to during mine fire, explosion, and gas or water inundation emergencies. The recent deaths of 14 miners at two underground coal mines confirm that miners working underground are exposed to grave danger during mine emergencies and demonstrate the need for MSHA to address proper training and mine emergency evacuation procedures in an ETS.

This ETS requires operators of underground coal mines to designate, for each shift that miners are working underground, a responsible person in attendance at the mine to take charge during mine fire, explosion, and gas or water inundation emergencies. In order to make an informed decision regarding an evacuation, this ETS also requires that the designated responsible person have current knowledge of various mine systems that protect the safety and health of miners.

In addition, this ETS requires the responsible person to initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. This ETS further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

This ETS also broadens the existing requirements for a program of instruction for firefighting and evacuation to address fire, explosion, and gas or water inundation emergencies. Under this ETS, operators must adopt a program of instruction which incorporates mine fire, explosion, and gas or water inundation emergencies into existing approved firefighting and evacuation plans and must train miners in those procedures. Finally, this ETS revises the part 48 training requirements to reflect that annual refresher training includes a review of mine fire, explosion, and gas or water inundation emergency evacuation and firefighting plans in effect at the mine.

DATES: This ETS is effective on December 12, 2002. Submit comments on this ETS on or before January 13, 2003. Public hearings will be held at 9 a.m. on February 4, 6, 11, and 13, 2003. The post-hearing comment period will close on February 28, 2003.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm*.

Information Collection Requirements: Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* If under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA. All comments may by sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

Hearings: (1) The hearing on Tuesday, February 4, 2003, will be held at the Holiday Inn Lexington—North, 1950 Newton Pike, Lexington, Kentucky, 40511 (phone: 859–233–0512).

(2) The hearing on Thursday, February 6, 2003, will be held at the Holiday Inn Grand Junction, 755 Horizon Drive, Grand Junction, Colorado, 81506 (phone: 970–243–6790).

(3) The hearing on Tuesday, February 11, 2003, will be held at the India Center, 800 Green Road South, Charleston, West Virginia, 25309 (phone: 304–744–0021).

(4) The hearing on Thursday, February 13, 2003, will be held at the Hyatt Regency, Pittsburgh International Airport, 1111 Airport Blvd. 15231 (phone: 724–899–1234).

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm*.

SUPPLEMENTARY INFORMATION: This ETS is issued in accordance with section 101(b) of the Mine Act, 30 U.S.C. 811. This ETS is effective immediately. The ETS establishes two new standards in subpart P, section 75.1501 Emergency Evacuations, and section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction. Subpart P is renamed ''Subpart P—Mine Emergencies.'' In addition, existing part 48, subpart A, section 48.8 is revised.

In accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. The preamble discusses specific provisions that may be included in the final rule and MSHA solicits comments on these provisions.

New section 75.1501 establishes that an operator must designate a responsible person to take charge in the event of a mine emergency which presents an imminent danger to miners involving a fire, explosion, or gas or water inundation. Section 75.1501 also requires that miners need to be trained about the requirements of this section.

New section 75.1502 revises redesignated section 75.1101–23 by including all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation, requires revisions to existing firefighting and evacuation plans to address these emergencies, requires training of miners regarding the mine emergency evacuation and firefighting plan, and requires that mine operators train miners in any revisions to the plan after its submission to MSHA for approval.

I. Basis for the Emergency Temporary Standard

A. Regulatory Authority

Section 101(b) of the Mine Act provides that:

> (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if [s]he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accordance with section 101(a), and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

Issuance of an ETS is an extraordinary measure provided for by the Mine Act to enable MSHA to ''react quickly to grave dangers which threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses.'' S. Rept. 181, 95th Cong., 1st Sess. 23 (1977). The language authorizing the issuance of a temporary mandatory standard for these purposes indicates that it is appropriate to address miner exposure to ''other hazards,'' as well as toxic substances or harmful agents. This broad scope is further indicated in the legislative history, which states that ''[t]o exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards—protecting miners from grave dangers.'' *Id.* The suggestion that a temporary mandatory standard is limited to new dangers in the mining industry is also dispelled in the legislative history which explains: ''That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case, the need for prompt action is that much more pressing.'' *Id.* In addition, the legislative history emphasizes that a record of fatalities or serious injuries is not necessary before an ETS can be issued because ''[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent.'' ''Waiting until those dangers manifest themselves as fatalities or disabling injuries or illnesses, frustrates the purpose of this [ETS] provision.'' *Id.* at 23–24.

B. Grave Danger

In response to the recent accidents of September 2001 at the Jim Walter Resources No. 5 Mine and of July 2000 at the Willow Creek Mine described elsewhere in this preamble, MSHA has determined that new safety standards are necessary to further protect miners when a mine emergency presenting an imminent danger to miners due to fire, explosion, or gas or water inundation occurs which requires an evacuation of miners. Miners and mine operators must be able to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety. A rapid and planned evacuation of all miners, who are knowledgeable about the mine's plan for mine emergencies, is essential to survival, and is one of the last safeguards that would allow miners to exit from the mine under extremely adverse conditions. The current lack of such knowledge and demonstrated inability to quickly initiate and properly conduct a mine evacuation, presents a grave danger to miners who work in underground coal mines when a mine fire, explosion, or gas or water inundation emergency occurs.

Miners who are not directed to leave the scene of a mine emergency and who do not have knowledge about the mine's emergency evacuation and firefighting plan face serious physical injury or death from the hazards detailed below.

Underground coal mines are dynamic work environments where the working conditions can change rapidly. Diligent compliance with safety and health standards and safety conscious work habits provide a substantial measure of protection against the occurrence of fire and explosions and resultant mine emergencies underground. In the high hazard work environment of underground coal mines, however, the danger of a deadly fire, explosion, or gas or water inundation hazard which can develop into a mine emergency is always present. For example, electricity or other sources of power can ignite methane gas or coal dust resulting in an explosion. Mining equipment can also be the source of a deadly fire that may involve fuel, lubricants and the surrounding coal. Caved, mined out areas which contain coal and accumulated gas can be the locations for explosions caused by rock falls, and in some instances, fires are started by spontaneous combustion. Moreover, when active mines are connected into previously mined-out areas, there is also the risk of exposure to an oxygen deficient atmosphere that can cause asphyxiation. Finally, when mining near other mined out areas, there may be a risk of water inundation.

MSHA standards are designed to prevent these types of hazards, but mine emergencies can and do occur after these hazards develop. The existence and development of mine emergencies is unpredictable. Underground coal mine emergencies can quickly expand from hazards presented in one isolated mining section to involve the entire coal mine.

The Secretary has therefore determined that miners are exposed to grave danger when they remain underground or re-enter affected mine areas at the time of a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation, without a responsible person at the mine initiating and conducting a mine evacuation. In addition, without timely knowledge, information and training about a mine's emergency evacuation and firefighting program of instruction specifically developed to cover mine fire, explosion, or gas or water inundation emergencies, miners are exposed to a grave danger because they are not prepared to take immediate action to evacuate the mine in the event of such a mine emergency.

II. Discussion of the Emergency Temporary Standards

A. Background

During the past three years, at least 14 miners have died in two accidents as a result of faulty mine evacuations.

Explosions at the Jim Walter Resources, Inc. No. 5 Mine on September 23, 2001, resulted in 13 fatalities. An initial roof fall and explosion occurred at 5:20 p.m. and resulted in injuries to four miners. One of the four miners was severely injured and could not be moved. Miners from other parts of the mine responded in an uncoordinated effort. In addition, the CO Room operator (monitoring the carbon monoxide monitoring system at the mine) after being notified about the explosion, attempted to locate the afternoon shift haulage foreman who he believed was working at the mine. This foreman was not working that shift. There was also some confusion about where the first explosion occurred.

By the time the second explosion occurred at 6:15 p.m., 12 additional miners headed towards the accident site and eight of those miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area. The 6:15 p.m. explosion occurred before those seven additional miners arrived in the area affected by the second explosion. It is uncertain whether the miner immobilized by the first explosion died as a result of the first or second explosion. It is certain, however, that 12 miners died when the second explosion occurred as they were attempting to reach the injured miner.

MSHA's accident investigation report determined that in addition to not

following proper evacuation procedures after the initial explosion, there was never a mine wide evacuation initiated at the mine, even after an explosion damaged critical ventilation controls. MSHA's accident investigation team found that gas detection equipment was not found on any of the miners or during the underground investigation in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and secure the safety of those entering unknown atmospheres especially when ventilation controls are damaged. MSHA's accident investigation report concluded that the lack of training and the failure to conduct fire and emergency drills relative to proper evacuation procedures ''affected the miners' response'' to the emergency situation of September 2001.

After careful review of this accident, MSHA has determined that had a designated responsible person knowledgeable about the mine safety systems taken charge of the evacuation and rescue effort, fewer miners would have been permitted to remain underground or re-enter the affected mine area during the mine emergency.

Under this ETS, all 32 miners underground at the mine who were not essential to an immediate response to the explosion would have been immediately evacuated from the mine. In addition, the designated person would have assured that the miners attempting a rescue were equipped with gas detection equipment. Moreover, miners would have understood from mine emergency evacuation and firefighting training that an evacuation was necessary and that they were not to re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions which killed two miners. Although firefighting activities began almost immediately after the first explosion, evacuation procedures did not begin immediately and conditions worsened before the fatal explosions occurred. After careful review of the accident, MSHA has determined that had the decision to evacuate been made sooner, *i.e.*, after it became evident that the fire was not controllable, and had the individuals present at the affected mine section been more aware of the urgent need for evacuation under emergency conditions, the fatalities might not have occurred. Some miners at the mine were equipped with personal emergency devices (PEDs) which are capable of carrying text messages to underground personnel. Many miners had evacuated the mine but these devices alerted the remaining miners to evacuate the mine. The message to evacuate, however, was not transmitted until after the third of four explosions occurred.

MSHA is also aware of two water inundations and one gas inundation where miners died. In 1968 in Hominey Falls, West Virginia, four miners died from a water inundation involving old workings and 21 miners were rescued. In Tower City, Pennsylvania in 1977 at Porter Tunnel, water from old workings injured one miner, entrapped one miner and resulted in nine fatalities. Finally, in 1978 at Moss #3 Mine in Duty, West Virginia, blackdamp (atmosphere depleted of oxygen) from old workings resulted in 5 fatalities.

B. Section-by-Section Discussion

Section 75.1501 Emergency Evacuations

Section 75.1501 is a new section which addresses mine emergency evacuations. Paragraph (a) provides that for each shift that miners work underground the mine operator shall designate a responsible person in attendance at the mine to take charge during mine fire, explosion, or gas or water inundation emergencies which present an imminent danger to miners. Paragraph (a) further provides that the designated responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. The purpose of these requirements is to ensure that during mine emergencies an informed decision is made by one responsible person regarding responses to mine emergencies, and that mine evacuations be conducted rapidly, efficiently, and safely. The accidents described in the background section to this preamble demonstrate the need for a designated person to take charge during mine emergencies.

In taking charge during an emergency, the designated person directs resources that may be required during the emergency and assures that all nonessential miners are evacuated safely. In addition, requiring that the designated responsible person be at the mine site during all shifts when miners are underground assures that no delays result from off-site telephone calls requesting instructions.

Furthermore, requiring that the designated responsible person have current knowledge of the aforementioned elements assures that informed decisions are made during a mine emergency. For example, having knowledge of the work areas and the assigned locations of miners and their movement during the work shift allows miners working in remote locations where electronic communication may not be readily available to be notified of an evacuation as soon as possible. The designated responsible person will be aware of their presence and location underground. Formal procedures may be needed to assure that the responsible person can quickly locate all underground miners.

Paragraph (b) of new section 75.1501 requires that the designated responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. Paragraph (b) further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

Although the MSHA standards have been successful in addressing hazards and reducing risks created by fires, explosions, and gas or water inundations, MSHA has determined that this ETS is necessary. Miners are exposed to grave danger when they remain underground or re-enter affected mine areas during mine emergencies which present an imminent danger to miners. In addition, MSHA understands that not every mine fire, explosion, or gas or water inundation hazard listed above may result in a mine emergency. For example, only unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not endanger miners and therefore may not constitute a mine emergency. It is when the hazards listed above present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated.

MSHA notes that the term ''imminent danger'' is defined in the Mine Act, Section 3(j). It means, ''the existence of any condition or practice in a coal or other mine which can be expected to cause death or serious physical harm before such condition or practice can be abated.'' This definition is well known and provides readily understandable criteria for the responsible person to decide to initiate a mine evacuation. To protect miners from the grave danger of remaining underground at that time, a

designated responsible person must be present to initiate and conduct an immediate evacuation and must assure that only persons who are properly trained and equipped and essential to respond to the mine emergency remain underground.

Paragraph (c) of new section 75.1501 requires the operator to instruct all miners about the requirements of this section and the identity of the responsible person designated by the operator for their workshift within 7 days of publication of this ETS. Paragraph (c) further provides that the mine operator must instruct miners of any change in the identity of the responsible person before the start of their workshift. MSHA has determined that this provision is necessary because, in order for a mine evacuation to be conducted without exposing miners to grave danger, miners need up-to-date information concerning mine emergency evacuations and the identity of the person or persons in charge of initiating and conducting such evacuations. The tragic accident at the Jim Walter No. 5 Mine shows that at least one miner with access to mine wide communications did not know which foreman was working the shift when the accident occurred and valuable time may have been lost while trying to locate that foreman.

Paragraph (d) of new section 75.1501 provides that the ability of any person to warn of an imminent danger which warrants an evacuation is not restricted by the provisions of section 75.1501. This provision is intended to recognize that there will be circumstances of imminent danger warranting a warning by someone other than the designated responsible person under section 75.1501(b). For example, at the Quecreek Mine inundation accident which occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling them to escape the mine unharmed. These actions are consistent with the approach of this paragraph (d) which recognizes that any person may warn others of an imminent danger. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued.

MSHA is soliciting comments on broadening the coverage of this section to include outbursts, massive roof falls, or other occurrences, for example the failure of a mine system designed to protect miner safety and health such as the ventilation control system, roof control system, or the mine communication system.

Section 75.1502—Mine Emergency Evacuation and Firefighting Program of Instruction

New Section 75.1502(a) requires that each operator of an underground coal mine adopt a mine emergency evacuation and firefighting program and begin training in those procedures as soon as possible but in no event not to exceed 30 days from the date of publication of this ETS. In addition, the program must be submitted to the District Manager of the Coal Mine Health and Safety District in which the mine is located for approval. Before any revision to the program is implemented, persons affected by the revision must be instructed on the revised provision.

The existing standard regarding evacuation procedures, section 75.1101–23, is located in subpart L. MSHA has determined that existing section 75.1101–23 should be redesignated as new section 75.1502 in subpart P and revised. New section 75.1502 focuses attention on safe evacuation procedures to be followed in the event of a fire, explosion, or gas or water inundation emergency.

Paragraph (a) of new section 75.1502 of this ETS revises and replaces redesignated section 75.1101–23(a). Under new paragraph (a), MSHA has expanded the existing program of instruction to include the proper evacuation procedures in the event of a mine emergency. This change reflects MSHA's determination that under the existing standards, miners are exposed to a grave danger caused by a mine emergency due to fire, explosion, or gas or water inundation. In addition, paragraph (a) of new section 75.1502 retains the requirements of existing section 75.1101–23(a) that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

Like existing section 75.1101–23, new section 75.1502 of this ETS provides a requirement for training of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, the location of escapeways, exits, and routes of travel to the surface. The training under section 75.1502 must begin as soon as possible but in no event later than 30 days from the date of publication of this ETS. Training is necessary to acquaint all miners with the emergency evacuation procedures for all mine emergencies which endanger miners due to fires, explosions, or gas or water inundations. The decision to require training reflects the Agency's evaluation of the existing training programs at underground coal mines and the results of an investigation of a mining accident where victims were unfamiliar with evacuation procedures and did not know not to re-enter the affected areas of the mine during a mine emergency.

Based on Agency experience, MSHA estimates that there are approximately 45,000 workers affected by this ETS. Because effective training related to evacuation procedures for the specified mine emergencies is essential to the safety and health of miners, MSHA has determined that there is a need for training of miners to acquaint all miners with the emergency response and evacuation procedures for all mine emergencies. In addition, in the event that any revisions are made to the mine emergency evacuation and firefighting program of instruction as a result of its submission to MSHA for approval, miners would need to be trained in those revisions.

Moreover, as part of this ETS, MSHA's existing training regulation in 30 CFR part 48 is being revised to specifically include annual refresher training of miners regarding mine emergency evacuation and firefighting plans. The training of new miners and experienced miner training under part 48 does not need to be revised, however, because existing section 48.5(b)(5) provides for training regarding emergency evacuation and firefighting plans for new miners and existing section 48.6(b)(5) provides for training regarding emergency evacuation and firefighting plans for experienced miners. Further discussion of the annual refresher training of miners regarding the mine emergency evacuation and firefighting plan is located elsewhere in this preamble.

Furthermore, unlike existing section 75.1101–23(a)(2), new section 75.1502(a) does not include an explicit provision that the approved program of instruction be given to all miners annually or newly employed miners within six months after the date of employment. Rather, as discussed above, section 75.1502(a) provides for the training of miners to acquaint all miners with the mine emergency evacuation procedures for the specified mine emergencies as soon as possible but not more than 30 days after the date of publication of this ETS.

In addition, new miner and experienced miner training is covered under existing sections 48.5 and 48.6, and annual refresher training of miners regarding mine emergency evacuation and firefighting plans are now covered under the revised part 48 training

regulations. Accordingly, inclusion of those training provisions within new section 75.1502 would be duplicative. Therefore, under this ETS, the level of safety afforded miners will be maintained or increased from the level of safety afforded under existing section 75.1101–23 because this ETS provides for the training of all miners for mine emergencies including explosions and gas or water inundations, not just mine fires, and continues to provide annual refresher training of miners while eliminating duplicate provisions and consolidating the training requirements under part 48. This modification of the training requirements under existing section 75.1101–23 does not represent a reduction in safety to miners because the training requirements of existing section 75.1101–23 are incorporated in new section 75.1502 and the revised and existing sections of part 48.

Paragraph (a) of new section 75.1502, like existing section 75.1101–23(a), requires that the program of instruction be submitted for approval to MSHA. The Agency has determined that in view of the emergency nature of this standard, operators must submit a mine emergency evacuation and firefighting program of instruction to MSHA within 30 days of the publication of this ETS. Paragraph (a) of new section 75.1502 further provides that all miners will be trained on any revisions made to the program of instruction after it has been approved by MSHA to ensure that miners are kept aware of any changes made to the mine emergency evacuation and firefighting plan after they have received initial training.

Because MSHA has determined that miners are exposed to grave danger under the specified mine emergencies which require evacuation, paragraphs(a)(1) through (a)(4) of new section 75.1502 broaden the scope of the approved program of instruction under existing section 75.1101–23(a)(1) through (3). Under new section 75.1502(a)(1), the approved program of instruction must include a specific plan to acquaint miners on all shifts with procedures for mine emergency evacuation for mine emergencies which endanger miners due to fire, explosion, or gas or water inundation. New paragraph (a)(2) also expands the existing requirements to include procedures for the evacuation of all miners not required for a mine emergency response. In addition, under new paragraph (a)(3), the procedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine fire is broadened to include the scene of the mine emergency. Finally, new paragraph (a)(4) retains the same requirements for procedures for the operation of fire suppression equipment.

Existing MSHA-approved plans already discuss in detail the use, location of firefighting equipment, and location of escapeways and exit routes, and other procedures. These topics should be expanded to cover mine explosion and gas and water inundation emergencies in addition to fire emergencies. MSHA believes that an effective plan consists of at least the following elements: Procedures to rapidly notify each underground miner in the event of an emergency; and assignments of personnel in preparation for an evacuation including procedures to assemble and account for all miners during an evacuation, procedures to direct underground water supplies, and procedures to deenergize electrical power as may be appropriate during an evacuation. Mine operators should also include within the plans the location and availability of communication systems underground, assignments of underground and surface personnel to coordinate the evacuation, and the design and layout of the mine ventilation system as it might affect miners in an evacuation.

In addition, any mine using an atmospheric monitoring system should integrate the alert and alarm response procedure into the firefighting and evacuation plan. The plan should be designed to assure that all miners are familiar with the escape routes and escape facilities from their work area, and are familiar with the operation and proper donning procedures of self-contained self-rescuers under emergency scenarios. The plan should also address the requirements of new section 75.1501, and make it clear to miners that they are required to evacuate unless they are essential for emergency response activities and they are properly equipped and trained.

MSHA is soliciting comments on the specific elements of the mine emergency evacuation and firefighting plan to be included in the final rule.

Finally, as required by the last sentence in section 75.1501(b), only properly trained and equipped persons essential to respond to the mine emergency may remain underground. Therefore, plans should address proper training and equipment to be used under various emergency scenarios. For example, the plan might state that miners must be equipped with gas detectors and qualified to use them when entering an area affected by a gas inundation.

Paragraph (b) of new section 75.1502, concerning firefighting, retains the same requirements as existing section 75.1101–23(b).

Paragraph (c) of new section 75.1502 essentially retains the same requirements as existing section 75.1101–23(c) with the exception that mine emergency evacuation drills are now required to ensure that miners are familiar with and are able to accomplish a mine evacuation in the event of a mine fire, explosion, or gas or water inundation emergency.

Revisions to Part 48—Annual Refresher Training of Miners

MSHA has determined to unify the training approach for mine emergency evacuation and for firefighting plans. The rule includes the initial immediate training requirement in section 75.1501 of this ETS. The rule also revises part 48 for annual refresher training of miners regarding mine emergency evacuation and firefighting plans specifically for underground coal mines.

Subpart A of 30 CFR part 48 prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, and providing annual refresher training.

The existing training requirements for new miners under § 48.5, and newly-employed experienced miners under § 48.6, do not need to be revised because emergency evacuation and firefighting training are provided under those existing sections. Annual refresher training under existing § 48.8, however, does not cover emergency evacuation or firefighting training. Therefore, § 48.8 is revised by this ETS to include a requirement that the annual refresher training include the mine emergency evacuation and firefighting plan. This training will acquaint all underground coal miners with the mine emergency evacuation procedures for mine emergencies involving fire, explosion, or gas or water inundations. MSHA specifically solicits comments on whether any conforming amendments should be made in the final rule to sections 48.5 and 48.6. Those conforming amendments would state that mine emergency evacuation and firefighting plans would be topics included. MSHA further solicits comments on whether the training provision should be included in part 48 or in new section 75.1502.

C. Feasibility

We have concluded that the requirements of the final rule are both technologically and economically feasible.

1. Technological Feasibility

MSHA believes that the ETS would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dept., AFL–CIO* v. *Hodgson*, 499 F.2d 467,478 (D.C. Cir. 1974).

This ETS addresses revisions of mine emergency evacuation plans and associated training. This ETS neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this ETS is technologically feasible.

2. Economic Feasibility

Underground coal mines would incur costs of approximately $0.26 million yearly to comply with this ETS. That these compliance costs represent well under 1 percent (about 0.004 percent) of annual revenues is sufficient evidence, MSHA believe, to conclude that this ETS is economically feasible for underground coal mines.

III. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has preliminarily determined that this ETS would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the Preliminary Regulatory Economic Analysis (PREA).

IV. Paperwork Reduction Act

The ETS contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The ETS has first year burden hours (those that occur only in the first year) and, annual burden hours which occur in the first year and every year thereafter.

In the First Year of the ETS

In the first year the ETS is in effect, there would be an increase of 5,010 burden hours and a related cost increase of $250,041. Table VII–1 in the PREA supporting this ETS shows that, with respect to first year-only burden hours and costs, there would be an increase of 4,304 burden hours and related costs of $211,565. Table VII–2 in the PREA shows that, with respect to every year that the ETS is in effect (including the first year), there would be an increase of 706 burden hours and related costs of $38,476.

In the Second Year of the ETS

After the first year of the ETS, those burden hours and related costs occurring only in the first year would no longer occur, and what remains are only the annual burden hours and related costs. Therefore, in the second year of the ETS, and for every year thereafter, there would be an increase of 706 burden hours and related costs of $38,476.

Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we invite public comments and are particularly interested in comments which:

1. Evaluate whether the collection of information (presented here and in the PREA for the ETS) is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on respondents, 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.

We have submitted a copy of this ETS to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, if under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA. All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA. Please send a copy of your comments to MSHA at the addresses listed in the **ADDRESSES** section of the preamble. Submit written comments on the information collection not later than February 10, 2003.

Our paperwork submission summarized above is explained in detail in the PREA that accompanies the ETS. The PREA includes the estimated costs and assumptions for each paperwork requirement related to the ETS. A copy of the PREA is available on our website at *http://www.msha.gov/REGSINFO.HTM* and can also be obtained in hardcopy from us. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Comments may be sent to the addresses listed in the **ADDRESSES** section of the preamble.

V. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this ETS and determined that it would not have an annual effect of $100 million or more on the economy. Therefore, we do not consider this ETS to be economically significant under section 3(f)(1) of Executive Order 12866.

In the PREA, MSHA has developed estimates of the safety benefits of this ETS, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this ETS been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this ETS. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this ETS could prevent 11 miners' lives from being lost every ten years, or an average benefit of the ETS of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

VI. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this ETS does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this ETS would not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in this PREA, compliance with this ETS by coal mine operators and contractors covered by this rulemaking would result in a compliance cost of approximately $0.26 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

We have concluded that small governmental entities would not be significantly or uniquely impacted by the ETS. The ETS would cover 664 underground coal mining operations.

B. Executive Order 13132: Federalism

We have reviewed this ETS in accordance with Executive Order 13132 regarding federalism and have determined that it does not have ''federalism implications.'' This ETS 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.''

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of the ETS on children. The Agency has determined that the ETS would have no adverse effect on children.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

We certify that the ETS would not impose substantial direct compliance cost on Indian tribal governments. Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we will provide the public, including Indian tribal governments that operate mines, the opportunity to comment on the requirements of the ETS.

E. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This ETS is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this ETS would not unduly burden the Federal court system. We drafted the ETS to provide a clear legal standard for affected conduct. Since the ETS serves as a proposed rule, we have asked for public comment to eliminate ambiguities or drafting errors.

G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the ETS for its energy impacts. The ETS would have no effect on the distribution or use of energy. The only impacts of the ETS on the supply of energy would be through its effect on the price of coal.

The estimated yearly cost of the ETS for the coal mining industry would be about $0.26 million.[1] The annual revenues of the coal mining industry in 2000 were approximately 17.7 billion.[2] The cost of the ETS for the coal mining industry would therefore be 0.001% of revenues. Even if we were to suppose that the increased cost caused by the ETS would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the ETS would have no significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the ETS to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in chapter V of the PREA, MSHA has determined that the ETS would not have a significant economic impact on a substantial number of small entities.

VII. Conduct of Public Hearings

As stated above, in accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. MSHA will hold hearings on the proposed rule at the locations and dates listed in the **ADDRESSES** section of the preamble. The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions. The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. The hearings will begin at 9 a.m. and end after the last scheduled speaker appears; and in any event, not later than 5 p.m. A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public.

The transcript will also be available on MSHA's Web page at *http://www.msha.gov*, under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

VIII. Close of Post-hearing Comment Period

The post-hearing comment period will close on February 28, 2003.

[1] Estimate obtained from Table IV–1 of the PREA.

[2] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 2000 PEIR data and U.S. Department of Energy, Energy Information Administration, *Coal Industry Annual 2000*, January 2002, p. 206.

List of Subjects

30 CFR Part 48

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Coal mines, Underground coal mining, Mine safety and health, Emergency medical services, Fire prevention, reporting and recordkeeping requirements.

Dated: December 9, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

Chapter I of title 30, parts 48 and 75, of the Code of Federal Regulations is amended as follows:

PART 48—[AMENDED]

1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Section 48.8 is amended by revising paragraph (b)(4) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(4) *Roof or ground control, ventilation, emergency evacuation and firefighting plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation. In addition, for underground coal mines the course shall include a review of the emergency evacuation and firefighting plans in effect at the mine.

* * * * *

PART 75—[AMENDED]

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Subpart P is amended by revising the heading and by adding § 75.1501 to read as follows:

Subpart P–Mine Emergencies

* * * * *

§ 75.1501 Emergency evacuations.

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) By December 19, 2002, the mine operator shall instruct all miners about the requirements of this section and the identity of the responsible person(s) designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person(s) before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

§ 75.1101–23 [Redesignated as § 75.1502]

5. Section 75.1101–23 is redesignated as 75.1502 and revised to read as follows:

§ 75.1502 Mine emergency evacuation and firefighting program of instruction.

(a) Each operator of an underground coal mine shall adopt a program for the instruction of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface, and shall begin training in those procedures as soon as possible but no later than January 13, 2003. In addition, such program shall be submitted for approval to the District Manager of the Coal Mine Health and Safety District in which the mine is located no later than January 13, 2003. Before implementing any revision to the mine emergency evacuation and firefighting program of instruction persons affected by the revision shall be instructed by the operator in its provisions. The approved program of instruction shall include a specific plan designed to acquaint miners on all shifts with procedures for:

(1) Mine emergency evacuation for mine emergencies that endanger miners due to fire, explosion, or gas or water inundation;

(2) Evacuation of all miners not required for a mine emergency response;

(3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and,

(4) Operation of the fire suppression equipment available in the mine.

(b) In addition to the approved program of instruction required by paragraph (a) of this section, each operator of an underground coal mine shall ensure that:

(1) At least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment;

(2) Each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment; and,

(3) The shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment.

(c) Each operator of an underground coal mine shall require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such evacuations at intervals of not more than 90 days.

(1) The operator shall certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine and made available on request to an authorized representative of the Secretary.

(2) For purposes of this paragraph (c), a mine emergency evacuation drill shall consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) of this section.

[FR Doc. 02–31358 Filed 12–11–02; 8:45 am]

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Federal Register

Thursday,
December 12, 2002

Part IX

The President

Proclamation 7634—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2002

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Vol. 67, No. 239
Thursday, December 12, 2002

Presidential Documents

Title 3—

The President

Proclamation 7634 of December 9, 2002

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2002

By the President of the United States of America

A Proclamation

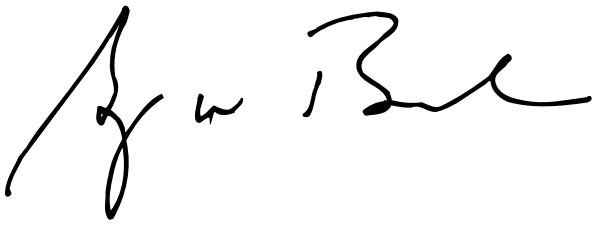
America's commitment to individual freedom and democracy provides the foundation for our society. As a Nation, we cherish the values of free speech, equal justice, and religious tolerance, and we steadfastly oppose the forces of cruelty, injustice, and tyranny. Since the founding of our country, the Bill of Rights has served to guide our people and our Government to ensure basic human rights and liberties. The United States is a country where all citizens have the opportunity to voice their opinions, practice their faith, and enjoy the blessings of freedom.

Today, countless people around the world cannot exercise their basic human rights. America has pledged to support all individuals who seek to secure their unalienable rights. Across the globe, we will continue to stand with those who fight for fundamental freedoms, whether they be democracy activists in Cuba, university faculty and students in Iran, opposition leaders in Zimbabwe, journalists in Belarus, or the people of North Korea who have never known freedom. We are leading a coalition of more than 90 nations to defeat terror and to secure liberty and opportunity for people throughout the world. Our fight against oppression demonstrates our Nation's dedication to a future of hope and understanding for all people. One year after the liberation of Afghanistan from the clutches of terror and tyranny, we are helping the Afghan people build institutions of democracy and tolerance that are essential to the country's future stability, security, and prosperity. And I hope the brave people of Iraq will soon realize their own dreams of peace and freedom.

In commemorating Human Rights Day, Bill of Rights Day, and Human Rights Week, we renew our pledge to uphold the vital principles of freedom, equality, and opportunity that have made our Nation strong. By working together to advance the rights of all people, we help to build mutual trust and peace for all individuals across this land and around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2002, as Human Rights Day; December 15, 2002, as Bill of Rights Day; and the week beginning December 10, 2002, as Human Rights Week. I call upon the people of the United States to honor the legacy of human rights passed down to us from previous generations and to resolve that such liberties will prevail in our Nation and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 1240/P.L. 107–329

To provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes. (Dec. 6, 2002; 116 Stat. 2815)

S. 2237/P.L. 107–330

Veterans Benefits Act of 2002 (Dec. 6, 2002; 116 Stat. 2820)

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