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Title 3—

The President

Proclamation 7710 of September 26, 2003

Minority Enterprise Development Week, 2003

By the President of the United States of America

A Proclamation

America's more than 3 million minority-owned businesses represent one of the fastest-growing segments of our Nation's economy. Through skill, hard work, and determination, these businesses are strengthening our Nation and our economy. During Minority Enterprise Development Week, we recognize these businesses, their owners, and their employees for their commitment to free enterprise and equal opportunity.

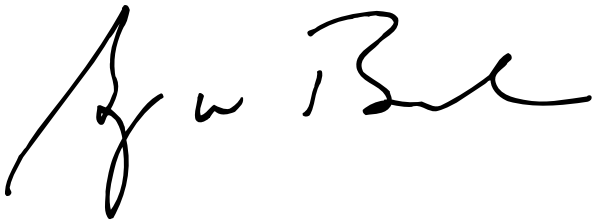
Most businesses in America—including those that are minority-owned—are small businesses. Small businesses are a path to the American Dream and must be accessible to all of our citizens. Through the Department of Commerce's Minority Business Development Agency and the Small Business Administration, we are promoting both the growth of minority-owned businesses and equal access to Federal contracts, capital, and management and technical assistance.

Small businesses also create most of the new jobs in our economy, and my Administration is acting to create an environment where small businesses grow and thrive. On May 28, I signed the Jobs and Growth Tax Relief Reconciliation Act of 2003, allowing entrepreneurs to keep more of their hard-earned money. My Administration is also pursuing an ambitious trade agenda. This year, I signed legislation implementing Free Trade Agreements with Chile and Singapore. These new Free Trade Agreements, and others that my Administration is seeking, not only will provide cheaper goods for consumers, but also will create new high-wage jobs for American workers.

I encourage all Americans to recognize the strength and importance of our country's minority entrepreneurs and their employees. The talents, skills, and dedication of these citizens enrich our communities, and we honor their contributions to our Nation.

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 September 28 through October 4, 2003, as Minority Enterprise Development Week. I encourage all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the many contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-six day of September, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206–AJ34

Federal Employees Health Benefits Children's Equity

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him/her to provide health benefits for his/her child(ren) and the employee does not provide documentation of compliance with the order.

DATES: Interim rules are effective October 31, 2003. OPM must receive comments on or before December 1, 2003.

ADDRESSES: Send written comments to Abby L. Block, Senior Advisor for Employee and Family Support, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Nataya Battle (202) 606–0004.

SUPPLEMENTARY INFORMATION: On October 30, 2000, Public Law 106–394, 114 Stat. 1629, was enacted. This law, the Federal Employees Health Benefits Children's Equity Act of 2000, mandates compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The law was effective upon enactment.

Before the enactment of Public Law 106–394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child(ren); however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee cannot cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into retirement (if eligible) and cannot make any of these changes after retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she cannot choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant cannot choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Notice is being waived to implement currently effective legislation. There is an immediate need for implementation of an interim regulation in order to expand the processing of child medical support court orders for children of Federal employees who become annuitants. Public Law 106–394 does not address what happens to the child medical support court order once the employee retires. As a result, the children of retirees are being harmed without regulation to authorize OPM to enforce the court orders that began while the parent was an employee. Public Law 106–394 has been in effect for three years and any further delay in effecting this regulation would be unnecessary and contrary to the public interest.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health benefits of certain Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR parts 890 and 892 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 revise paragraphs (e)(1) and (f)(3) and add new paragraphs (g)(3) and (g)(4) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(e) *Change to self only.* (1) Subject to two exceptions, an employee may change the enrollment from self and family to self only at any time. *Exceptions:*

(i) An employee participating in health insurance premium conversion may change to self only during an open season or because of and consistent with a qualifying life event as defined in Part 892 of this chapter.

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot make this change as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may change his or her existing enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot cancel his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(g) * * *

(3)(i) If an employing office receives a court or administrative order on or after October 30, 2000, requiring an employee to provide health benefits for his or her child or children, the employing office will determine if the employee has a self and family enrollment in a health benefits plan that provides full benefits in the area where the child or children live. If the employee does not have the required enrollment, the agency must notify him or her that it has received the court or administrative order and give the employee until the end of the following pay period to change his or her enrollment or provide documentation to the employing office that he or she has other coverage for the child or children. If the employee does not comply within these time frames, the employing office must enroll the employee involuntarily as stated in paragraph (g)(3)(ii) of this section.

(ii) If the employee is not enrolled or does not enroll, the agency must enroll him or her for self and family coverage in the option that provides the lower level of coverage in the Service Benefit Plan. If the employee has a self only enrollment, the employing office must change the enrollment to self and family in the same option and plan, as long as the plan provides full benefits in the area where the child or children live. If the employee is enrolled in a comprehensive medical plan that does not serve the area in which the child or children live, the employing office must change the enrollment to self and family in the option that provides the lower level of coverage in the Service Benefit Plan.

(4) Subject to two exceptions, the effective date of an involuntary enrollment under paragraph (g)(3) of this section is the 1st day of the pay period that begins after the date the employing office completes the enrollment request. *Exceptions:*

(i) If the court or administrative order requires an earlier effective date, the effective date will be the 1st day of the pay period that includes that date. Retroactive effective dates cannot be to a date that is more than 2 years earlier, or prior to October 30, 2000.

(ii) If after an involuntary enrollment becomes effective and the employing office finds that circumstances beyond the employee's control prevented him or her from enrolling or changing the enrollment within the time limits in this section, the employee may change the enrollment prospectively within 60 days after the employing office advises the employee of its finding.

* * * * *

■ 3. In § 890.304 revise paragraph (d)(1) and the section heading to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation or suspension.* (1)(i) An employee who participates in health insurance premium conversion as provided in Part 892 of this chapter may cancel his or her enrollment only during an open season or because of and consistent with a qualifying life event defined in § 892.101 of this chapter.

(ii) Subject to the provisions of paragraph (d)(iii) of this section, an enrollee who does not participate in premium conversion may cancel his or her enrollment at anytime by filing an appropriate request with the employing office. The cancellation is effective at the end of the last day of the pay period in which the employing office receives the appropriate request canceling the enrollment.

(iii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3), or an annuitant who was subject to such a court or administrative order at the time of his or her retirement, cannot cancel or suspend his or her enrollment as long as the court or administrative order is still in effect and the enrollee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee or annuitant provides documentation to

the agency that he or she has other coverage for the child or children.

* * * * *

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 890.306 Opportunities for annuitants to change enrollment or to reenroll; effective dates.

* * * * *

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

(f) * * *

(1) * * *

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

■ 5. In § 890.502 add a new sentence after the first sentence in paragraph (b)(2), redesignate paragraph (b)(4) as paragraph (b)(4)(i), and add a new paragraph (b)(4)(ii) to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

* * * * *

(4)(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

* * * * *

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 6. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Amend by revising § 892.207 to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (*See* § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.208 and § 892.209.

■ 8. Revise the section heading and add a new paragraph (c) to § 892.208 to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Add a new paragraph (c) to § 892.209 to read as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

[FR Doc. 03–24792 Filed 9–30–03; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 892

RIN 3206–AJ17

Health Insurance Premium Conversion

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on health benefits premium conversion. Premium conversion enables employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided in the Internal Revenue Code.

EFFECTIVE DATE: October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie Bodenheimer, (202) 606–0004, or e-mail to lrbodenh@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2000, OPM issued interim final regulations in the **Federal Register**

(65 FR 44644) to implement a health insurance premium conversion plan for employees participating in the FEHB Program. These interim regulations were effective on September 18, 2000, and are located at part 892.

The premium conversion plan is part of a ''cafeteria plan'' under section 125 of the Internal Revenue Code. OPM executed a separate plan document to comply with section 125 requirements, which is available on OPM's Web site: *http://www.opm.gov/insure/health*. OPM also issued separate instructions to personnel and payroll offices.

The premium conversion plan took effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are now covered by OPM's premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority previously implemented their own premium conversion plans. Employees of those entities are not covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an Executive Branch agency, have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agreed to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM amended its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion makes an allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency then uses that amount to pay the employee's premium. The allotment is automatic unless the employee elects to waive premium conversion.

We received comments from three Federal agencies and one Federal employee. One Federal agency had several questions and comments concerning consequences of employee failure to pay union dues when enrolled in a plan that requires such, the availability of belated open season enrollments, LWOP, insufficient pay, early plan termination, and part-time reemployed annuitants. Each of these issues (except reemployed annuitants) was addressed in the final regulation under *Qualifying Life Events* and on the Table of Permissible Changes for Premium Conversion Election. OPM has already provided guidance to agencies on issues relating to reemployed annuitants and will continue to do so through Benefits Administration Letters and the FEHB Handbook. Another commenter asked what the effective date would be for changes from self and family to self only or for cancellations. This document incorporates the change in effective dates for FEHB changes in enrollment first published on August 31, 1998. The answer to this question now would depend upon the employee's premium conversion status, as follows:

For employees participating in premium conversion, a change to self only or cancellation can be made only during the annual open season or because of the occurrence of a qualifying life event as described in section 892.101. A change to self only made during the annual open season is effective on the same date as any other open-season change. A cancellation made during the annual open-season is effective at midnight of the day before the first day of the first pay period that begins in the next year. As of 12:00:01 a.m. on the first day of the first pay period that begins on or after January 1 of the next following year, the enrollee is no longer covered.

A change to self only related to a qualifying life event is effective on the first day of the first pay period that begins after the date the employing office receives the employee's appropriate request. A cancellation made because of a qualifying life event is effective at midnight of the last day of the pay period in which the employing office receives the appropriate request to cancel the enrollment. For convenience, we have located all information on changes to self only and cancellation in part 892, which specifically applies to employees under premium conversion. Information on changes to self only is in section 892.208, and information on cancellation is in section 892.209.

For enrollees who are not participating in premium conversion (including employees who waived this benefit, annuitants, former spouses, and Temporary Continuation of Coverage (TCC) enrollees), a cancellation or change to self only is not considered an open-season change, even if it is submitted during open season. For effective dates *see* § 890.301(e)(2), or § 890.304(d)(ii).

Another commenter noted that premium conversion does affect Federal retirement plan benefits, specifically Social Security. The commenter correctly stated that the Federal Employees Retirement System (FERS) is a three-tiered retirement plan made up of Social Security Benefits, a Basic Benefit Plan, and Thrift Savings Plan Benefits. Since employee contributions to FEHB premiums are withheld pre-tax under premium conversion, the employee's taxable income is reduced. This is turn reduces the employee's Social Security taxes, which reduces career earnings, and thus reduces an individual's future Social Security benefits. The commenter requested that we disclose, discuss, and analyze this information so Federal employees make an informed decision. Our actuaries extensively analyzed the effect of premium conversion on future Social Security benefits. Based on that analysis, we concluded that most employees realize far greater savings than they lose in benefits. We provided information to agencies, in Benefits Administration Letters (BALs), and included several worksheets for employees to use to individually calculate savings and reductions in benefits. We also added a series of questions and answers on our Web site (http://www.opm.gov/insure) several of which specifically address the impact of premium conversion on Social Security benefits. A third commenter wondered why the rules for switching or canceling under premium conversion should be any different from current time frames in section 890.301. In order for employees to enjoy the tax benefit of premium conversion, our premium conversion plan must comply with Internal Revenue Service rules requiring an election to be irrevocable except during open season, or when a covered person experiences a qualifying life event. With this important exception, there is otherwise a great deal of

similarity between FEHB opportunities to change enrollment found at section 890.301 and premium conversion qualifying life events.

We have made editorial changes to section 892.101 to regroup and clarify qualifying life events. Within subpart B, we revised sections 892.203, 892.207, 892.208, 892.209, and 892.211. We amended the title for subpart D and revised 892.401(b) and added section 892.402 to include more specific information for employees who participate in premium conversion.

Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, ''Regulatory Planning and Review.'' Because this regulation has an economic impact exceeding $100 million annually, it is defined by that Executive Order as being ''economically significant.'' It is classified as a major rulemaking in accordance with the Congressional Review Act because of its economic impact.

Analysis of Costs and Benefits

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program are now paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government has become a more competitive employer and the tax liability of Federal employees decreased.

Costs of this regulation included a start-up cost in the first year to implement the program. In fiscal year 2003, the tax benefit to employees is estimated to be $848 million: $692 million in Federal income taxes; $113 million in Social Security taxes; and $43 million Social Security taxes. We expect that these estimates will increase by 7 percent a year in subsequent years.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and must also seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

List of Subjects in 5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Wages, and Taxes.

U.S. Office of Personnel Management

Kay Coles James,

Director.

■ Accordingly, OPM is adopting the interim rule (65 FR 44644) published on July 19, 2000, amending 5 CFR part 892:

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 1. The authority citation for part 892 is revised to read as follows:

Authority: 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

■ 2. In § 892.101 the definition of Qualifying life event is revised to read as follows:

§ 892.101 Definitions.

* * * * *

Qualifying life event means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125–4 and includes the following:

(1) Change in family status that results in an increase or decrease in the number of eligible family members as follows:

(i) Marriage, divorce, annulment, legal separation;

(ii) Birth, adoption, acquiring a foster child that meets the definition in § 890.101(a) or a stepchild, issuance of a court order requiring an employee to provide coverage for a child;

(iii) Last dependent child loses coverage, for example, the child reaches age 22 or marries, stepchild moves out of employee's home, disabled child becomes capable of self support, child acquires other coverage by court order; and

(iv) Death of a spouse or dependent.

(2) Any change in employment status that could result in entitlement to coverage; for example:

(i) Reemployment after a break in service of more than 3 days;

(ii) Return to pay status from non-pay status if employee previously elected to terminate coverage (if employee did not elect to terminate see § 892.101 (5);

(iii) Return to receiving pay sufficient to cover premium withholdings if coverage terminated;

(iv) Your spouse or dependent changes hours from either full-time to part-time status, or the reverse, which significantly affects their eligibility for coverage;

(v) Start or end of a period of unpaid leave of absence (leave without pay [LWOP], or other non-pay status) by you or your spouse. A period of unpaid leave is a continuous unpaid leave of absence of more than one pay period; and

(vi) Start or end of your spouse's employment that affects you or your spouse's eligibility for coverage.

(3) Any change in employment status that could affect the cost of insurance, including:

(i) Change from temporary appointment with eligibility for coverage under 5 U.S.C. 8906a to an appointment that permits receipt of government contribution; and

(ii) Change from full-time to part-time status or the reverse.

(4) An employee is restored to a civilian position after serving in uniformed services as described in § 890.304 (a)(vi)(vii).

(5) Start of non-pay status and end of non-pay status if employee did not terminate coverage (if coverage terminated see § 892.101 (2)(ii)).

(6) An employee enrolled in a health maintenance organization (HMO) or a covered family member moves or becomes employed outside the geographic area from which the carrier accepts enrollments, or if already lives

or works outside the area, moves further from this area.

(7) Transfer from a post of duty within the United States to a post of duty outside the United States, or the reverse.

(8) Separation from Federal employment when the employee or employee's spouse is pregnant.

(9) An employee becomes entitled to Medicare. (For change to self only, cancellation, or change in premium conversion status see § 892.101 (11)).

(10) An employee or eligible family member loses coverage under FEHB or another group insurance coverage including the following:

(i) Loss of coverage due to termination of membership in an employee organization sponsoring the FEHB plan;

(ii) Loss of coverage of employee or eligible family member due to discontinuance in whole or part of FEHB plan;

(iii) Loss of coverage under another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(iv) Loss of coverage under Medicaid or similar State-sponsored program of medical assistance for the needy; and

(v) Loss of coverage under a non-Federal health plan, including foreign, State or local government, or private sector group health plan as described in § 890.301 (i)(6).

(11) An employee or eligible family member gains coverage under FEHB or another group insurance plan, including the following:

(i) Another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(ii) Medicaid or similar State-sponsored program of medical assistance for the needy; and

(iii) A non-Federal health plan, including foreign, State or local government, or private sector group plan.

(12) A change in an employee's spouse or dependent's coverage options, for example:

(i) Employer starts offering a different type of coverage;

(ii) Employer stops offering the type of coverage that the employee's spouse or dependent has (if no other coverage is available);

(iii) A health maintenance organization (HMO) adds a geographic service area that now makes the employee's spouse eligible to enroll in that HMO;

(iv) Employee's spouse is enrolled in an HMO that removes a geographic area that makes the spouse ineligible for coverage under that HMO, but other health plans or options are available (if no other coverage is available see § 892.101 (10); and

(v) Change in the cost of coverage.

Subpart B—Eligibility and Participation

■ 3. Section 892.203 is revised to read as follows:

§ 892.203 When will my premium conversion begin?

If you are newly employed or newly eligible for FEHB in a covered Executive Branch agency (as described in § 892.201(a)), your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the 1st day of the first pay period beginning on or after your employing agency receives your enrollment.

■ 4. Section 892.207 is revised to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210). Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

■ 5. Section 892.208 is revised to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

If you are participating in premium conversion you may change your FEHB enrollment from self and family to self only under either of the following circumstances:

(a) During the annual open season. A change to self only made during the annual open season takes effect on the 1st day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A change to self only made because of a qualifying life event takes effect on the first day of the first pay period that begins after the date your employing office receives your appropriate request. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced and have no dependent children, changing to self only would be consistent with that qualifying life event. If both you and your spouse are Federal employees, and your youngest dependent turns age 22, changing from a self and family to two self only enrollments would be consistent and appropriate for that event.

■ 6. Section 892.209 is amended by revising paragraphs (a) and (b) as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season. A cancellation made during the annual open season is effective at midnight of the day before the first day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A cancellation made because of a qualifying life event takes effect at midnight of the last day of the pay period in which your employing office receives your appropriate request to cancel your enrollment. Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and you gain other insurance coverage because your spouse's employer provides health insurance for your spouse and you, then canceling FEHB coverage would be consistent with that qualifying life event. If you add an eligible family member, canceling coverage would generally not be consistent with that qualifying life event.

7. Section 892.211 is revised to read as follows:

§ 892.211 What options are available to me if I go on a period of leave without pay (LWOP) or other types of non-pay status?

(a) Your commencement of a period of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). (b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraph (b)(2), (b)(3), or (b)(4) of this section.

(2) Pre-pay. Prior to commencement of your LWOP you may allot through payroll deduction the amount that will be due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so. Contributions under the pre-pay option may be made through premium conversion on a pre-

tax basis. Alternatively, you may pre-pay premiums for the LWOP period on an after-tax basis.

(3) Direct pay. Under the direct pay option, you may pay your share of your FEHB premium on the same schedule of payments that would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) Catch-up. Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

■ 8. The title for Subpart D and paragraph (b)(1) of § 892.401 are revised to read as follows:

Subpart D—Reemployed Annuitants and Survivor Annuitants

§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?

* * * * *

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the Government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

* * * * *

■ 9. A new § 892.402 is added to read as follows:

§ 892.402 I am a survivor annuitant as well as an active Federal employee; am I eligible for premium conversion?

(a) If you are a survivor annuitant enrolled in FEHB who is receiving an annuity and you are employed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are eligible to participate in premium conversion.

(b)(1) If you wish to participate in premium conversion, you must notify your employing agency. Your employing agency will transfer in your FEHB coverage from the retirement system, and your employing agency will assume responsibility for contributing the government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you do not notify your employing agency that you wish to participate in premium conversion, you will keep your FEHB coverage as a survivor annuitant, but your contributions towards your FEHB premiums will be made on an after-tax basis. Your status as an annuitant under the retirement regulations and your right to continue FEHB as a survivor annuitant following your period of employment is unaffected.

[FR Doc. 03–24793 Filed 9–30–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–037–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Arizona and Texas to the list of regulated areas either because they were found during detection and delineating surveys to contain a bunted wheat kernel, or because they fell within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. The interim rule also removed certain individual fields and other areas in Arizona, New Mexico, and Texas from the list of regulated areas, either because detection and delineating surveys showed them to be free of Karnal bunt, or because they had not been used to produce Karnal bunt host crops within the last 5 years, or because they had been used to produce Karnal bunt host crops in 1 or more years following initial regulation and the crops have been tested and found free of Karnal bunt. The interim rule was necessary to help prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

EFFECTIVE DATE: The interim rule became effective on October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on October 3, 2002 (67 FR 61975–61980, Docket No. 02–037–1), we amended the regulations by adding certain areas in

Arizona and Texas to the list of regulated areas in § 301.89–3(f), either because they were found during detection and delineating surveys to contain a bunted wheat kernel, or because they fell within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We also removed certain individual fields and other areas in Arizona, New Mexico, and Texas from the list of regulated areas in § 301.89–3(f), either because recently completed detection and delineating surveys showed them to be free of Karnal bunt, or because they had not been used to produce Karnal bunt host crops within the last 5 years, or because they had been used to produce Karnal bunt host crops in 1 or more years following initial regulation and the crops have been tested and found free of Karnal bunt. The interim rule was necessary to help prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

Comments on the interim rule were required to be received on or before December 2, 2002. We received two comments by that date. The comments were from State departments of agriculture. Both commenters supported the interim rule. However, one commenter stated that it was important for APHIS to communicate the deregulation of the areas as described in the interim rule through immediate updates to all Karnal bunt fact sheets, maps, manuals, Web sites, and other resources for information.

Currently, APHIS has procedures in place for ensuring that this type of information is updated promptly. APHIS uses its Internet site, on which we make available materials such as press releases, maps, and fact sheets, to communicate the type of information noted by the commenter, and such updates are routinely communicated to APHIS personnel involved in regulatory programs. While it is perhaps most important that the deregulated areas be removed from the list of regulated areas in § 301.89–3(f), we do make every effort to ensure that related materials such as fact sheets, etc., are updated promptly.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 61975–61980 on October 3, 2002.

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

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

Done in Washington, DC, this 25th day of September, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–24874 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 03–21]

RIN 1557–AC76

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1156]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC74

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2003–48]

RIN 1550–AB79

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets

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

ACTION: Interim final rule with a request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are amending their risk-based capital standards by providing an interim capital treatment for assets in asset-backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The interim capital treatment allows sponsoring banking organizations to remove the

consolidated ABCP program assets from their risk-weighted asset bases for the purpose of calculating their risk-based capital ratios. Sponsoring banking organizations must continue to hold risk-based capital against all other risk exposures arising in connection with ABCP programs, including direct credit substitutes, recourse obligations, residual interests, long-term liquidity facilities, and loans, in accordance with each agency's existing risk-based capital standards. In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, hence, from total risk-based capital.

This interim capital treatment will be applicaable only for the regulatory reporting periods ending September 30 and December 31, 2003, and March 31, 2004. In addition, this interim capital treatment does not alter the accounting rules for balance sheet consolidation nor does it affect the denominator of the tier 1 leverage capital ratio calculation, which continues to be based primarily on on-balance sheet assets as reported under generally accepted accounting principles (GAAP). Thus, as a result of FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio.

The agencies also have issued a related notice of proposed rulemaking published elsewhere in today's **Federal Register**, in which the agencies are soliciting comments on a permanent risk-based capital treatment for the risks arising from ABCP programs.

DATES: This interim final rule is effective October 1, 2003. Comments on the interim final rule must be received by November 17, 2003.

ADDRESSES: Comments should be directed to:

OCC: You should send comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–21, 250 E Street, SW., Washington, DC 20219. Due to delays in the delivery of paper mail in the Washington area and at the OCC, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can make an appointment to inspect and photocopy the comments by calling the Public Information Room at (202) 874–5043.

Board: Comments should refer to Docket No. R–1156 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments also may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–48.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–48.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–48.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov,* Attention: No. 2003–48 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Mauricio Claver-Carone, Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

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

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

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654, David W. Riley, Project Manager, Supervision Policy, (202) 906–6669; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

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

facilitate the issuance of the commercial paper.[1]

In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, ''Consolidation of Variable Interest Entities'' (FIN 46), requiring the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[2] FIN 46 may result in the consolidation of many ABCP programs onto the balance sheets of banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, banking organizations normally have not been required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets will have to include all of these program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their September 30, 2003 balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower both the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

The agencies believe that the consolidation of ABCP program assets onto the balance sheets of sponsoring banking organizations could result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations that sponsor these programs. The agencies believe that sponsoring banking organizations generally face limited risk exposure to ABCP programs, which generally is confined to the credit enhancements and liquidity facility arrangements that they provide to these programs. In addition, operational controls and structural provisions, along with overcollateralization or other credit enhancements provided by the companies that sell assets into ABCP programs can further mitigate the risk to which sponsoring banking organizations are exposed. Because of the limited risks, the agencies believe that it is appropriate to provide an interim risk-based capital treatment that permits sponsoring banking organizations to exclude from risk-weighted assets, on a temporary basis, assets held by ABCP programs that must be consolidated onto the balance sheets of sponsoring banking organizations as a result of FIN 46.

The period during which the interim rule is in effect will provide the agencies with additional time to develop the appropriate risk-based capital requirements for banking organizations' sponsorship and other involvement with ABCP programs and to receive comments from the industry on a related proposal also published in today's **Federal Register**.

II. Interim Risk-Based Capital and Regulatory Reporting Treatment

The agencies are amending their risk-based capital standards to permit sponsoring banking organizations to exclude the assets of ABCP programs that must be consolidated under FIN 46 from risk-weighted assets when they calculate their tier 1 and total risk-based capital ratios for the quarters ending September 30, 2003, December 31, 2003, and March 31, 2004. Sponsoring banking organizations must continue to assess risk-based capital against any credit enhancements or long-term liquidity facilities that they provide to such ABCP programs. For example, banking organizations that sponsor ABCP programs generally assign any investment-grade equivalent credit enhancements that they provide to these programs to the 100 percent risk weight category.[3] Most liquidity facilities currently provided to ABCP programs are structured with a maturity of less than one year and, under the agencies' current risk-based capital rules, do not incur a capital charge.

Under this interim rule, for the third and fourth quarters of 2003, as well as for the first quarter of 2004, when reporting items 34 through 43 on Schedule RC–R (*Regulatory Capital*) of the Call Report and Schedule HC–R (*Regulatory Capital*) of the FR Y–9C, any consolidated ABCP program assets resulting from application of FIN 46 are to be reported in column A, ''Totals (*from Schedule RC*),'' as well as in column B, ''Items not Subject to Risk-Weighting.'' With respect to the TFR, thrifts should not include the subject program assets in any of the lines for assets to risk weight on Schedule CCR that comprise the subtotal on line CCR64.

Reporting in this manner will exclude the ABCP program assets from incorporation into the calculation of the risk-based capital ratios. Banking organizations should continue to report the notional amounts of any credit enhancements and liquidity facilities provided to ABCP programs in the risk-based capital schedule line items in which these exposures would be properly reported as of the June 30, 2003 reporting date. In addition, credit enhancements and liquidity facilities that sponsoring banking organizations provide to their ABCP programs are to be reported in Memorandum items 3.a.(1) and 3.b.(1) of Schedule RC–S (*Servicing, Securitization, and Asset Sale Activities*) of the Call Report and Schedule HC–S (*Servicing, Securitization, and Asset Sale Activities*) of the FR Y–9C consolidated reports, respectively. Thrifts should include any related credit enhancements on Schedule CC, lines CC455, CC465, or CC468, as appropriate.

In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, hence, also from total risk-based capital. Exclusion from capital of any minority interests associated with consolidated ABCP programs is required when the programs' assets are not included in an organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. When sponsoring banking organizations report item 6, ''Qualifying minority interest in consolidated subsidiaries,'' of

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

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

[3] Under the agencies' risk-based capital standards, banking organizations may, subject to supervisory approval, use their internal risk ratings system to assess the credit quality of non-rated direct credit substitutes provided to ABCP programs in order to determine the appropriate risk-based capital charge. Direct credit substitutes provided to ABCP programs that are the equivalent of nono-investment grade are assigned to either the 200 percent risk weight category or effectively deducted from risk-based capital.

Schedule RC–R of the Call Report and Schedule HC–R of the FR Y–9C, they should exclude the amount of minority interest associated with such consolidated ABCP programs. With respect to the TFR, when sponsoring savings associations report on line CCR125, ''Minority Interest in Includable Consolidated Subsidiaries,'' of Schedule CCR, they should exclude the amount of minority interest associated with such consolidated ABCP programs.

This interim risk-based capital (and the associated regulatory capital reporting) treatment will expire on April 1, 2004. If the agencies have not implemented an alternative risk-based capital approach for banking organizations that sponsor ABCP programs prior to the expiration of the interim treatment, then sponsoring banking organizations will be required to subject ABCP program assets that are consolidated under FIN 46 to the applicable risk-based capital treatment for on-balance sheet assets. The agencies reserve the authority to require sponsoring banking organizations to hold an alternative amount of risk-based capital against ABCP program assets at any time during the period this interim treatment is in effect in the event that an agency determines that the application of these risk-based capital requirements does not adequately address the risks present in a sponsoring banking organization's involvement with an ABCP program.

This interim risk-based capital treatment has no bearing on the accounting requirements as established by GAAP or the manner in which banking organizations report consolidated on-balance sheet assets. In addition, the interim capital treatment does not affect the denominator of the tier 1 leverage capital ratio calculation, which will continue to be based primarily on on-balance sheet assets as reported under GAAP. Thus, in accordance with FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio. In addition, in contrast to many other cases where minority interest in consolidated subsidiaries may be included as a component of tier 1 capital and, hence, incorporated into the tier 1 leverage capital ratio calculation, minority interest related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46 are not included in tier 1 capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization will be lower than if only its ABCP program assets were consolidated. However, the agencies anticipate that the exclusion of minority interests related to consolidated ABCP program assets will not significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the equity in ABCP programs generally is small relative to the capital levels of sponsoring banking organizations.

The agencies seek comment on all aspects of the interim rule. In a related notice of proposed rulemaking published elsewhere in today's **Federal Register**, the agencies are soliciting comments on the removal of the April 1, 2004 sunset provision contained in this interim final rule so that assets of ABCP programs consolidated under FIN 46 and any associated minority interest would continue to be excluded from risk-weighted assets and tier 1 capital, respectively, of sponsoring banking organizations for purposes of calculating the risk-based capital ratios. The proposed elimination of the sunset provision is conditional upon the agencies implementing appropriate risk-based capital requirements for all risk exposures arising from ABCP programs.

Thus, the agencies also have proposed that liquidity facilities with an original maturity of one year or less that banking organizations provide to ABCP programs be converted to on-balance sheet credit equivalent amounts using the 20 percent credit conversion factor (as opposed to the existing zero percent credit conversion factor) and assigned to the appropriate risk weight category according to the underlying assets or obligor, after consideration of any guarantees or collateral, or external credit ratings if the risk exposure is an asset-or mortgage-backed security. In general, this capital requirement on short-term liquidity facilities would be in addition to existing risk-based capital requirements for credit enhancements provided to ABCP programs.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies have determined that this interim rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. In addition, the interim rule would reduce regulatory burden with respect to the agencies' risk-based capital standards.

Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties. The agencies believe that it is important to make this interim final rule effective before banking organizations must calculate their regulatory risk-based capital ratios at the end of the third quarter 2003. If ABCP program assets are consolidated under FIN 46, then the resulting capital requirement might not be commensurate with the risk inherent in sponsoring banking organizations' involvement with such programs. The agencies are seeking public comment on the interim final rule and, in a related notice of proposed rulemaking, are seeking comment on an alternative risk-based capital treatment for the risk exposures arising from this activity.

In addition, under section 553(d)(3) of the Administrative Procedure Act, an agency may issue an interim rule or a final rule without delaying its effective date for 30 days from the date of publication if the agency finds good cause and publishes its finding with the rule. The agencies have determined that the issuance of this interim rule without delaying its effective date for 30 days from the date of publication will provide certainty for banking organizations in calculating their regulatory capital ratios for the third quarter 2003.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This interim rule is designed to temporarily offset the effect on risk-based capital ratios of FIN 46 with

respect to ABCP programs. The OCC has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, Section 202 of the Unfunded Mandates Act does not require the OCC to prepare a budgetary impact statement for this rule.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rule easier to understand.

List of Subjects

12 CFR Part 3

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

12 CFR Part 208

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

12 CFR Part 225

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

12 CFR Part 325

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

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter 1

Authority and Issuance

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

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

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

■ 2. In Appendix A to part 3:

■ a. In section 1, paragraphs (c)(3) through (c)(35) are redesignated as paragraphs (c)(4) through (c)(36); newly redesignated paragraphs (c)(30) through (c)(36) are redesignated (c)(31) through (c)(37); and two new paragraphs (c)(3) and (c)(30) are added;

■ b. In section 2, paragraph (a)(3) is revised; and

■ c. In section 4, two new paragraphs (j) and (k) are added.

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

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

* * * * *

(30) *Sponsor* means a bank that:

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

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

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

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

* * * * *

Section 2. Components of Capital.

* * * * *

(a) * * *

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

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A. This section 2(a)(3)(ii) of this appendix A is effective from July 1, 2003 to April 1, 2004.

* * * * *

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

* * * * *

(j) *Asset-backed commercial paper programs subject to consolidation.* (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

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

(3) If a bank either elects not to exclude such consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(4) This section (4)(j) of this appendix A is effective from July 1, 2003 until April 1, 2004.

(k) *Other variable interest entities subject to consolidation.* (1) If a bank that is required to consolidated the assets of a variable interest entity under generally accepted accounting principles, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(2) This section 4(k) of this appendix A is effective from July 1, 2003 until April 1, 2004.

* * * * *

Dated: September 4, 2003.

John D. Hawke, Jr.

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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

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

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

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

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

■ a. In section II.A.1.c., *Minority interest in equity accounts of consolidated subsidiaries,* two new sentences are added at the end of the paragraph.

■ b. In section III.B—

■ i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;

■ ii. In paragraph 3.a., a new paragraph xiv., *Sponsor,* is added; and

■ iii. A new paragraph 6 is added at the end of section II. B.

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

* * * * *

II. * * *

A. * * *

1. * * *

c. * * * In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

III. * * *

B. * * *

3. * * *

a. * * *

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

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

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

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

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

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

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

■ 2. In Appendix A to part 225, the following amendments are made:

■ a. In section II.A.1.c., *Minority interest in equity accounts of consolidated subsidiaries,* two new sentences are added at the end of the paragraph.

■ b. In section III.B.—

■ i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;

■ ii. In paragraph 3.a., a new paragraph xiv., *Sponsor,* is added; and

■ iii. A new paragraph 6 is added at the end of section III.B.

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

* * * * *

II. * * *

A. * * *

1. * * *

c. * * * In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not to be included in the organization's Tier 1 or total capital base if the organization excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

III. * * *

B. * * *

3. * * *

a. * * *

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

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the organization's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A banking organization that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from its risk-weighted assets provided that the bank holding company is the sponsor of the consolidated ABCP program. If a banking organization excludes such ABCP

program assets, the banking organization must apply the appropriate risk-based capital charge against any risk exposures of the organization arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C. and III.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 12, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

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

PART 325—CAPITAL MAINTENANCE

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

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

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

■ a. In section I.A.1.iii, the four undesignated paragraphs are designated (a), (b), (c), and (d), and a new paragraph (e) is added to that section.

■ b. In section II.B—

■ i. In paragraph 5.a., paragraphs (15) and (16) are redesignated (16) and (17);

■ ii. In paragraph 5.a., a new paragraph (15), *Sponsor,* is added; and

■ iii. A new paragraph 6 is added at the end of section II.B.

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

* * * * *

I. * * *

A. * * *

1. * * *

iii. * * *

(e) Minority interests in consolidated asset-backed commercial paper programs (as defined in section II.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section II.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

II. * * *

B. * * *

5. * * *

a. * * *

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

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

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

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of September 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

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

PART 567—CAPITAL

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

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

■ 2. Section 567.1 is amended by adding a definition of ''asset backed commercial paper program'' to read as folows:

§ 567.1 Definitions

* * * * *

Asset backed commercial paper program. The term *asset backed commercial paper program* (ABCP) means a program that issues commercial paper backed assets or exposures held in a bankruptcy-remote special purpose entity. The term *sponsor* of an ABCP means a savings association that either:

(1) Establishes an ABCP program;

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

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

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

* * * * *

■ 3. Section 567.5 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the consolidated assets are excluded from risk-weighted assets pursuant to § 567.6 (a)(3). This capital treatment for minority interests in consolidated ABCP programs will be effective from July 1, 2003 to April 1, 2004.

* * * * *

■ 4. Amend § 567.6 by adding new paragraphs (a)(3) and (4) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(3) *Asset-backed commercial paper programs.* (i) A savings association that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity

under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets, provided that the savings association is the sponsor of the ABCP.

(ii) If a savings association excludes such consolidated ABCP program assets from risk-weighted assets, the savings association must assess the appropriate risk-based capital requirement against any risk exposures of the institution arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with paragraphs (a)(1) and (2) and (b) of this section.

(iii) If a savings association either elects not to exclude consolidated ABCP program assets from its risk-weighted assets in accordance with paragraph (a)(3)(i) of this section, or otherwise is not permitted to exclude consolidated ABCP program assets, the savings association must assess a risk-based capital charge based on the appropriate risk weight of the consolidated ABCP program assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(iv) This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 to April 1, 2004.

(4) *Other variable interest entities subject to consolidation.* (i) A savings association that is required to consolidate the assets of a variable interest entity under generally accepted accounting principles must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(ii) This capital treatment for other variable interest entities subject to consolidation will be effective from July 1, 2003 to April 1, 2004.

* * * * *

Dated: September 9, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–23756 Filed 9–30–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 704, 712, 723, 742

Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans; Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its member business loan (MBL) regulations to provide greater flexibility to credit unions to meet the business loan needs of their members within statutory limits and appropriate safety and soundness parameters. Major changes include: (1) Reducing construction and development loan equity requirements; (2) allowing RegFlex credit unions to make their own decisions whether to require personal guarantees by principals; (3) allowing well-capitalized credit unions to make unsecured MBLs within certain limits; (4) providing that purchases of nonmember loans and nonmember participation interests do not count against a credit union's aggregate MBL limit, subject to an application and approval process; (5) allowing 100% financing on certain business purpose loans secured by vehicles; (6) providing that loans to credit unions and credit union service organizations (CUSOs) are not MBLs for purposes of the rule; and (7) simplifying MBL documentation requirements. Other provisions in the MBL regulation are simplified and unnecessary provisions are removed. In addition, NCUA is amending the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

DATES: This rule is effective October 31, 2003.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; Robert M. Fenner, General Counsel, or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On March 27, 2003, the NCUA Board issued a Notice of Proposed Rulemaking to amend the MBL rule and other rules as they relate to business lending. 68 FR 16450, Apr. 4, 2003. In the proposed rule, the Board provided some parity for federal credit unions (FCUs) with federally insured, state-chartered credit unions (FISCUs) that are exempt from NCUA's MBL rule because the Board had determined that their chartering states had developed MBL rules that minimize risk and accomplish the overall objectives of NCUA's rule. The parity provisions in the proposed rule addressed construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The proposed rule also revised certain provisions that have created unnecessary regulatory burden and clarified certain provisions that have caused confusion. These proposed amendments related to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value (LTV) requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposed that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit. Finally, the proposed rule expanded the current standard risk-based net worth (RBNW) component for MBLs in the PCA rule and authorized CUSOs to originate business loans.

In the preamble to the proposed rule, the Board noted that the proposed amendments to the MBL rule would allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the National Credit Union Share Insurance Fund. The Board cautions, however, that MBLs are not suitable for all credit unions. Credit union management must demonstrate a higher standard in planning, policies, procedures, controls, monitoring, credit risk, and diversification to safely establish a long-term strategy in member business lending.

B. Comments

General

NCUA received three hundred and ninety timely comment letters on the proposed rule. NCUA staff, however,

credited multiple comment letters from the same commenting organization as one comment letter for a total of three hundred and fifty-one letters. NCUA received comments from two hundred and seventy-six credit unions, twenty-five credit union trade organizations, one CUSO, two corporate credit unions, one corporate CUSO, one CUSO trade organization, two law firms, two consultants, one journalist, fourteen bank trade organizations, twenty banks, one federal agency, one association of state supervisors, three credit union members, and one letter from two members of the U.S. House of Representatives.

Two hundred and ninety-two commenters generally supported the Board's proposal. Many of these commenters stated the changes would improve the ability of credit unions to meet the small business loan needs of their members. Others noted that credit union members need an affordable source of funds to finance and grow their small businesses. They said the proposed rule allows credit unions the ability to serve all of their members' financial needs. Some commenters stated small business owners need every available resource to continue to operate in a competitive economy and that low cost MBLs would allow many businesses to continue their efforts at economic success. They also noted small businesses are the backbone of our nation's economy and are often owned and operated by credit union members. One commenter stated that, as an ex-banker, he felt strongly that many small businesses face unmet credit needs today due to minimum loan amount requirements by large banks and bank holding companies.

Commenters also found that the proposed rules reduce some of the expense burden associated with the current regulations and provide a more manageable solution to business lending. These commenters stated credit unions, their members, and small businesses will benefit from these changes. Several commenters said the current rules are overly restrictive vis-à-vis the competitive marketplace and that the restrictions have forced members to take their small business loan needs to other financial institutions, although they would prefer to do business with the credit union. One commenter stated that the need for small business capital is a niche that credit unions should be allowed and encouraged to fill. This commenter also noted that as not-for-profit cooperatives, credit unions exist to fulfill the legitimate demands of their members, including their demand for MBLs.

NCUA also received a letter from two members of Congress on the House Financial Services Committee stating that, as authors of the Credit Union Membership Access Act (CUMAA), they were pleased to see that the NCUA Board used the latitude that was appropriately conferred upon the agency by law in preparing these beneficial changes. 12 U.S.C. 1757a, Public Law 105–219, 112 Stat. 913 (1998). The congressional representatives urged the Board to fully utilize the discretionary authority conferred on it by Congress to facilitate credit union lending in this important and oftentimes underserved area, and to refrain from imposing any limitations upon credit union member business lending not explicitly called for by Congress when it enacted CUMAA.

Thirty-three bank-affiliated commenters strongly opposed the proposed changes to NCUA's MBL rule, stating the proposed amendments are contrary to congressional intent to limit business lending by credit unions. These commenters stated the proposed amendments significantly erode congressional intent when it adopted CUMAA and that Congress made it perfectly clear that credit unions should be focused on consumer lending, not commercial lending. These commenters also stated the proposed rule will divert credit union resources to financing commercial enterprises, while relaxing safety and soundness regulations associated with MBLs.

Three bank commenters stated it is a tremendous mistake to encourage the growth of tax-exempt businesses, particularly when that growth comes at the expense of tax-paying businesses. One commenter stated its organization does not oppose the liberalization of the current MBL rule but does oppose continued tax exempt status for credit unions engaged in commercial lending. Three bank commenters stated the rule creates additional unfair competition with America's small community banks because small business loans are an essential part of their loan portfolio and are what they call their ''bread and butter'' loans. They noted that, without business loans, their existence is jeopardized. Two bank commenters stated credit unions should not be in commercial lending at all.

The U.S. Department of Treasury submitted a comment letter supporting the commitment of credit unions to their members through MBL programs, but objecting to certain provisions of the proposed rule. The Treasury Department objected to the proposed treatment of participation interests, suggesting that the proposal would undermine the intent of Congress with respect to limitations on credit union business lending. The Treasury Department also commented that the proposed removal of the personal guarantee requirement and the proposed authority to make unsecured MBLs may raise safety and soundness concerns by eliminating key provisions that have limited credit risk on MBLs.

Other Suggestions

Commenters offered numerous suggestions to amend the MBL rule that are outside the scope of the issues on which the Board sought comment. The most significant comments dealt with altering the MBL rule so that it could be better aligned with lending programs offered by the Small Business Administration (SBA); changing the LTV definition; and clarifying other provisions in the current MBL rule. NCUA is reviewing these comments and will assess whether to amend the MBL rule further at a future date, in compliance with its responsibilities under the Administrative Procedure Act, 5 U.S.C. 553, to offer the public the opportunity to review and comment on any proposed amendments.

C. Section-by-Section Analysis

Loans to Credit Unions and CUSOs, Sections 723.1(c), 704.11(b)

Paragraph (c) of § 723.1 clarifies that loans made by federal, natural person credit unions to other natural person credit unions and CUSOs are not MBLs because the Federal Credit Union Act grants FCUs express authority to lend to credit unions and CUSOs, in addition to their authority to make MBLs. 12 U.S.C. 1757(5)(C), (D). It also permits FISCUs to exclude loans to credit unions and CUSOs in calculating their aggregate MBL limit if the state supervisory authority determines that FISCUs have authority to lend to credit unions and CUSOs separately from the general authority to grant loans to members. In the absence of authority similar to that in the Federal Credit Union Act, a FISCU's loans to credit unions and CUSOs are subject to the MBL rule.

The final rule includes a corresponding amendment to NCUA's corporate credit union rule to conform to the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs be included in the MBL rule's aggregate loan limit, 12 CFR 704.11(b)(4).

Forty-six commenters specifically supported the clarification that loans to credit unions and CUSOs are not MBLs. Two of these commenters supported

this exclusion from the MBL limit because they stated a credit union should be allowed to use the entire percentage of its MBL cap to make MBLs, as intended. Many of the commenters stated the clarification eliminates confusion when calculating MBL caps. They noted credit unions are already restricted in the aggregate amount they can lend to a CUSO by law or regulation and are permitted by law to make loans to other credit unions. One commenter noted many smaller credit unions receive deposits from larger credit unions and many credit unions make loans to each other. This commenter stated these loans represent the cooperative spirit of credit unions and are not MBLs. Three commenters stated credit unions may lend to other credit unions or CUSOs for investment purposes; excluding such loans from the MBL rule preserves those investment options while affording a credit union more opportunity to grow a business loan portfolio aimed at the commercial or agricultural needs of the membership.

Two commenters stated the language in the proposed rule wrongly provided for FISCUs to exclude loans to credit unions and CUSOs only if there is independent authority for such loans under state law. They noted the state's authority may be statutorily specific, statutorily implied, by regulation, or by agency interpretation and that the provision should be revised accordingly. The Board agrees and revised the language in the final rule to address this concern by removing the requirement that there be independent authority in state law.

Ten commenters agreed that corporate credit union loans to corporate CUSOs should not be subject to the aggregate MBL limits. Some of these commenters supported the change because these loans serve as investments for corporate credit unions and corporate credit unions are the liquidity providers for the credit union movement. The Board notes that, while they need not include loans to corporate CUSOs in calculating their aggregate MBL loan limit, corporate credit unions remain subject to § 704.11(c), which specifically requires them to comply with certain due diligence requirements in the MBL rule for loans to corporate CUSOs.

Loan Participations, Section 723.1(d), (e)

Paragraph (d) of § 723.1 requires a credit union to subject purchased business loans or participation interests in business loans that another lender made to members of the purchasing credit union to parts 723 and 702 as if the credit union had originated the loans to its members. Paragraph (e) of § 723.1 permits a credit union to exclude purchased business loans or participation interests in business loans that another lender made to nonmembers of the purchasing credit union from the MBL aggregate limit under the conditions set forth in § 723.16.

Section 723.1(d) of the proposed rule provided that any interest obtained in a participation loan would be excluded in determining the purchasing credit union's aggregate MBL limit but that the participation interest would otherwise be treated the same as a business loan made by the credit union. The effect of this proposal was to subject purchased participation interests in business loans to all of the safety and soundness requirements of NCUA's rules, without requiring the purchasing credit union to count participation interests in loans originated by other lenders against its aggregate MBL limit. While the proposal did not specifically address purchases of whole loans, authorized for RegFlex credit unions pursuant to 12 CFR part 742, the same logic would apply to those purchases.

Credit union commenters were largely supportive of the proposal, although some questioned the basis for distinguishing between loans originated by a credit union and those purchased from another lender. Banks and their representatives argued that the proposal was inconsistent with congressional intent to limit business lending by credit unions, and that it presented unfair competition to community bankers. The U.S. Treasury Department commented that the proposed treatment of participation interests would create a ''loophole'' to escape the aggregate limit on individual credit unions established by Congress. On the other hand, two congressional sponsors of the CUMAA urged NCUA to use its maximum flexibility to enable credit unions to meet their members' business loan needs.

The Board has made two changes from the proposed rule to address the concerns raised by the commenters and ensure that the treatment of loan purchases and participation interests does not result in circumvention of the aggregate limit. First, the final rule provides that, if a credit union holds an interest in a business purpose loan of its member, the interest will be treated the same irrespective of whether it was made by the credit union or purchased from another lender. If a loan is to a credit union's own member for more than $50,000, and not otherwise excluded from the definition of an MBL, the credit union must treat it as an MBL for all purposes, including the aggregate limit. This change is accomplished by adding a new subsection (d) to § 723.1, ''What is a Member Business Loan?'' The new subsection clarifies that purchased member loans and member participation interests are MBLs for all purposes under the final rule.[1] Second, with respect to nonmember loans and nonmember participation interests, the final rule provides that they will be treated the same as an MBL for all purposes except the aggregate MBL limit. The total of such nonmember loans, when added to member loans, may exceed the aggregate limit on member loans only if approved by the NCUA Regional Director pursuant to an application and review process. Section 723.1(e) reflects this change and contains a cross reference to new § 723.16(b) that establishes the application process. The reasons for this treatment of nonmember loans are addressed in detail in the discussion of § 723.16 below.

Construction and Development Lending, Section 723.3

Section 723.3 sets a new borrower equity requirement and establishes exceptions to the limits imposed on construction and development MBLs. This section requires a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. It also creates specialized standards for financing the construction of single-family residential properties by professional homebuilders by excluding these MBLs from the aggregate construction and development MBL aggregate limit and the borrower equity requirement under certain circumstances.

Ninety-four commenters welcomed the reduced borrower equity requirement of 25%. Many of these commenters stated this minimum equity interest requirement should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project. Some commenters stated the lowered equity interest requirement will help credit unions assist more small business owners and put credit unions on equal footing with other financial institutions. Twenty-two commenters said the revision will provide flexibility for both the borrower and the credit union without negatively impacting safety and soundness. One

[1] In addition to the provisions of part 723, credit unions may also be subject to the requirements or authorities granted in other applicable regulations governing loan participations, eligible obligations, and loan purchases by RegFlex designated credit unions. 12 CFR 701.22, 701.23, 742.5.

commenter noted that lowering the equity requirement reduces the additional burden on credit unions to secure a waiver from the 35% equity interest requirement.

Eight commenters recommended an even lower percentage for the mandatory equity requirement to be competitive with the market. One stated the requirement should be set at 20% and another suggested that the rule permit waivers to 20%. One commenter asked that the rule allow for a lower percentage when a government agency has provided a guarantee or advance commitment on the loan. Another stated that the proposal was a step in the right direction but would prefer if the minimum equity requirement was lowered to 10% if principals give their personal liability and guarantee. A few commenters raised concerns about the equity requirement in relation to the current rule's definition of LTV. They suggested that the agency adopt the FFIEC Interagency Guidelines for Real Estate Lending that establish supervisory limits on LTV ratios on construction and development MBLs. 12 CFR part 34, subpart D, appendix A.

The final rule retains the equity requirement as proposed. The Board continues to regard the borrower equity interest in construction and development projects and the MBL rule's LTV section, § 723.6, as important tools for safe and sound business lending, just as it did when the Board first adopted these requirements in 1991. ''Collateral requirements are imposed as a hedge against the potential for borrower default. Additionally, LTV ratios implicitly produce powerful incentives to encourage borrowers to repay, *e.g.*, to protect the borrower's equity interest in the property. These incentives do not exist with high LTV ratios, where the borrower has little, if any, equity at risk. Accordingly it is critical that sufficient equity be available to protect the lender's interest.'' 56 FR 48421, 48423, Sep. 25, 1991. The Board also continues to view construction and development loans as containing the largest overall risks to business lending. *See id.* at 48424. It believes, therefore, that the requirement for a borrower to have a 25% equity interest in a construction or land development project is appropriate. A credit union, however, may apply for a waiver of this requirement. 12 CFR 723.10.

The FFIEC Interagency Guidelines for Real Estate may provide more flexibility for other financial institutions because, for example, the Guidelines do not require any equity interest but establish LTV limits for certain transactions. Some of the relevant FFIEC supervisory limits are set as follows: 65% LTV for raw land; 75% LTV for land development; and 80% LTV for commercial construction loans. 12 CFR part 34, subpart D, appendix A. As noted above, however, comments directed at the rule's LTV definition are not relevant to this current rulemaking because the Board did not seek public comment on any changes to that definition. These comments, as well as the suggestion to review the FFIEC Interagency Guidelines for Real Estate Lending, remain under consideration and may be addressed by future rulemaking.

Finally, commenters asked for clarification about the borrower's equity requirement and whether it is based on the cost amount of the project or the appraised value of the project upon completion. In NCUA legal opinion 01–0422, dated June 7, 2001, the Office of the General Counsel stated that a borrower's equity interest in a project may include down-payment money and the value of land owned by the borrower on which the project is to be built, less any liens. The legal opinion letter also states that, because construction and development projects are typically very speculative in nature, appraisals that attempt to determine the future market value of the completed project tend to be unreliable. Accordingly, NCUA believes it is more prudent to use the market value of the project at the time the loan is made to determine the value of the financed project. This includes the appraised value of land owned by the borrower on which the project is to be built, less any liens, plus the cost to build the project. To adopt the agency's position and clarify this issue for commenters, the final rule states that credit unions must use the current market value of the project in determining its value.

Section 723.3 reduces the regulatory burden for members engaged in the business of constructing single-family residential properties. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, the final rule provides that such a loan is not subject to the aggregate 15% of net worth limit of § 723.3(a) or the 25% equity interest requirement. These loans need only comply with the LTV requirements of § 723.7. Second, the final rule grants this same relief from the aggregate net worth limit and the equity interest requirement for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner.

When making construction and development loans that are exempt from the equity requirements in § 723.3 but subject to the LTV requirements of § 723.7, credit unions must use the market value of the project at the time the loan is made, as discussed above, when determining the appropriate LTV limits.

Eleven commenters supported the exemptions for the financing of single-family residential properties. Several of these commenters stated that the Federal Credit Union Act charges credit unions to extend credit for provident purposes. They found the exclusions for the construction of single family residences enable credit unions to assist their members in achieving home ownership because increased credit union construction financing will enhance the marketplace for readily saleable homes in every community. In short, they stated this regulation opens a door for credit unions to increase the types of service they can offer to their communities.

Two commenters asked for clarification on these provisions because they were unclear as to the number of loans a member homebuilder may have with the credit union under these exclusions. The final rule allows the homebuilder to have as many loans as it has sales contracts with future homeowners, plus one loan for a home for which the homebuilder does not yet have a sales contract, subject to the loans to one borrower limit in § 723.8. When the credit union applies the rule's exceptions to its first speculative-type loan made to a homebuilder, that loan remains exempt from the 25% equity requirements and excluded from the 15% net worth limit of § 723.3 until the builder pays off the loan. Once it is fully paid, the credit union may exclude a new speculative loan made to the builder from the 15% net worth limitation and subject the loan to the LTV requirements of § 723.7. This is contrasted with an outstanding speculative loan to the builder. The credit union cannot exclude an outstanding speculative loan it made during the time the builder was repaying the first exempt loan because any additional speculative loans to the builder during that time must have been made under all of the conditions of § 723.3.

Three commenters noted that the proposed § 723.3(b) excluded certain construction loans if the prospective homeowner contracted to purchase and reside in the property, but that typically

prospective homeowners do not contract to reside in a property. They asked, therefore, that this wording be removed. The Board agrees and amended the final rule accordingly. These commenters also asked the Board to expand the exclusion to one-to-four family dwellings. The final rule maintains the more restrictive provision as proposed, limiting the exclusions to single-family residences. The Board has determined not to extend the exclusion to multi-family dwellings as these dwellings have an investment component for the purchaser.

Direct Experience Requirement, Section 723.5

The final rule amends this section by requiring that the person meeting the rule's mandatory two years of direct experience requirement have sufficient experience given the complexity and risk exposure of the credit union's MBLs. It also requires that a third party meeting the experience requirement be independent from the transaction, but establishes three exceptions from this standard.

Seventy-four commenters supported the agency's intent for this proposal. Most of these commenters stated that the rule would make it easier to find individuals qualified to act as an MBL officer by allowing credit unions to engage the services of a third party with direct experience in MBLs under certain conditions so as to avoid potential conflict of interest. They also stated that it allows credit unions to make MBLs without creating a costly infrastructure to meet the experience requirement. The Board wants to clarify that credit unions have been able to use third parties to meet the experience requirement since the 1991 final MBL rule. 56 FR 48421, Sept. 25, 1991. This rulemaking bolsters the experience requirement by ensuring that the individual's experience is relevant to the types of MBLs the credit union makes and that the individual does not have interests that conflict with the credit union's interests.

Six commenters asked for clarification regarding the agency's standard for the requisite lending experience. In 1999, the Board stated that the ''experience requirement can be met by either general business lending experience or experience with granting loans for a particular purpose or secured by a particular collateral.'' 64 FR 28721, 28723, May 27, 1999. The final rule has a more specific standard requiring a credit union to obtain the services of someone with experience tailored to the credit union's needs. Individuals who meet the requirements of this section must have lending experience directly related to the type of MBLs the credit union intends to offer. These individuals must be familiar with the proper underwriting, analysis, and origination of loans of a particular type in order to understand their complexity and risk exposure. For example, an individual with experience solely in taxi cab loans does not have the requisite experience necessary to underwrite a loan to the taxi company for a gas station, because the individual will be unfamiliar with related issues that may impact the loan, such as environmental laws applicable to underground storage tanks. Likewise, an individual who only has experience with financing residential real estate for homebuilders does not have sufficient lending experience for the land development and construction, or purchase, of a commercial strip center.

Thirty-three commenters found the prohibition against a third party having an interest or involvement in the transaction too restrictive. Most of these commenters stated that the proposal limited a credit union's ability to use third-party service providers and should not be adopted in the final rule. They stated that, while improper personal financial gain cannot be tolerated, a paid third party's interest and involvement is necessary to provide the assistance many credit unions need to make MBLs. One commenter opposed the requirement stating that it would preclude smaller credit unions from having agreements with larger credit unions that have experience underwriting MBLs and then selling participations to that credit union. Two commenters suggested that, in any transaction in which a third party is retained, a credit union should obtain written disclosures of actual or potential relationships and fee arrangements the third party may have in the transaction. Another commenter stated that the proposal was worded too broadly. The Board agrees that the proposal required some revision. The final rule amends the proposed language to more accurately reflect the Board's concerns by establishing a general conflicts of interest standard and exceptions to the standard.

In order for a credit union to engage in business lending in a safe and sound manner, it is crucial for the credit union to maintain strong internal controls and to have independent, experienced personnel involved in making lending decisions that are in the best interests of the credit union. The credit union must perform its own due diligence, both when the credit union makes MBLs and when it purchases MBLs or MBL participation interests, through the services of an individual who meets the requirements in § 723.5. The final rule does not prevent a third party who has the direct experience necessary for a credit union to make MBLs from providing services to the credit union such as document preparation, annual reviews, or loan servicing.

The final rule generally prevents a credit union from relying on a seller's due diligence and experience when the credit union is purchasing MBLs or participation interests in MBLs from the seller. Regardless of whether the seller is, for instance, another credit union or CUSO, the purchasing credit union cannot meet the direct experience requirements of § 723.5 by depending on the advice of the experienced individual(s) who performed the underwriting for the originating lender unless: (1) Staff for the purchasing credit union performed the loan analysis for the originating credit union; or (2) the CUSO exception in § 723.5(b)(3) applies. The final rule bars a credit union from using a third party who has an interest in either the sale of the loan or the collateral securing the loan. It does not bar a smaller credit union from subsequently selling participations to a larger credit union that had advised the credit union when it originated the MBL.

Under the CUSO exception in paragraph (b)(3), a credit union may comply with § 723.5 when purchasing a participation interest or eligible obligation from a CUSO, if the experienced individual is employed by a CUSO in which the credit union has a ''controlling financial interest'' as determined under the Generally Accepted Accounting Principles, even though the CUSO is both the originator and underwriter of the loan.

Member Business Loan Policy, Section 723.6

This section is amended to require credit unions to adopt analysis and documentation requirements within their MBL policies that are consistent with appropriate underwriting and due diligence standards for the types of MBLs the credit union makes, without detailing required documents. Documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested. The final rule also makes a technical amendment to 12 CFR 704.11(c) to reflect the redesignation of paragraphs in § 723.6.

One hundred and twelve commenters supported the proposal. The vast majority of these commenters noted it would greatly expedite the MBL process

by eliminating unnecessary documentation and reducing staff time spent on MBL documentation. Many commenters stated it is appropriate for a credit union to adopt documentation requirements in its own policy relative to the types of loans being made. They said that simpler transactions should be subject to fewer documentation requirements than more complex ones, as long as reasonable standards of safety and soundness are met. The final rule adopts the revisions to § 723.6 as proposed.

Loan-to-Value Ratio, Section 723.7

The final rule makes several amendments to this section. First, the final rule uses plain English to describe the LTV requirements instead of a chart. Second, the final rule retains the personal liability and guarantee requirement but no longer requires RegFlex credit unions to obtain these guarantees from principals. Third, the final rule permits credit unions to make unsecured MBLs, in addition to credit card line of credit programs offered to nonnatural person members, if: (1) The credit union is ''well-capitalized'' as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of $100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The final rule reorganizes the waiver provisions of § 723.10 and permits credit unions to apply for waivers from the unsecured MBLs to one borrower limitation and the aggregate unsecured loan limitation under this section. Finally, § 723.7 excludes MBLs made for the purchase of consumer-type vehicles from the rule's LTV requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle (SUV) that is used for commercial purposes.

A few commenters favored removing the LTV chart for a plain English description of the LTV requirements. One commenter stated, however, that credit unions may misunderstand the rule's clarification that government guarantees may not be used in place of the collateral requirements of § 723.7. While the Board recognizes the distinction between the rule's collateral requirements and advance commitments or loan guarantees issued by government agencies, the Board believes it is helpful to maintain this clarification in the final rule. As stated in § 723.7(a)(2), the MBL rule does not permit guarantees as replacements for collateral requirements. Borrowers must meet the LTV requirements on the total loan amount from the credit union even if a portion of the loan amount is guaranteed by a government agency. This measure provides the credit union the necessary security in the event the borrower fails to meet the terms of the government guarantee or commitment. The Board notes this provision does not introduce a new requirement but merely clarifies the existing rule. The final rule also contains a correction by replacing ''minimum'' with ''maximum'' to describe the LTV ratio limits prescribed in § 723.3(a) that are unchanged from the 1999 version of the rule.

Section 723.7(b) requires the personal guarantee of all principals in the case of an MBL to a corporate or other organizational member. The only exception is for certain not-for-profit organizations. The proposed rule would have deleted this requirement and allowed the board of directors of each credit union to determine whether to require personal guarantees through its business loan policies. The proposal noted that states that have received exemptions from the NCUA rule have not required personal guarantees and that there is no indication of increased losses or other safety and soundness problems in those states.

While most commenters supported this proposal, a number of commenters, including some credit unions, objected. The views expressed by these commenters included: (1) That the personal guarantee requirement is one of the key reasons that credit union MBLs have been less risky than those of other lenders; (2) that if the principals are not willing to stand behind an MBL, the credit union should not grant it; (3) that without the guarantee requirement future loss experience will be greater; and (4) increased loss experience will be to the detriment of credit unions generally, not just those comparatively few credit unions that choose to make MBLs. Commenters also noted that the exemptions granted to individual states are relatively new and suggested additional monitoring of those states is warranted before eliminating the requirement altogether.

In response to the comments, and after further consideration of the safety and soundness implications of the proposal, the Board has determined to remove the personal guarantee requirement only for those credit unions having RegFlex status under 12 CFR part 742. The personal guarantee requirement is removed for both federal and federally insured state-chartered credit unions meeting the standards of Part 742. RegFlex credit unions generally have a net worth ratio of 9% or more and a high supervisory rating. The Board believes there is little additional safety and soundness risk to the credit union system in allowing RegFlex credit unions that have MBL programs to make their own decisions about requiring personal guarantees. This change is reflected by amending § 723.7(b), the personal guarantee requirement, to state that it does not apply to RegFlex credit unions, and by amending NCUA's RegFlex rule, at § 742.4, to add § 723.7(b) to the list of regulatory requirements from which RegFlex are exempt. Credit unions that do not have RegFlex status may apply for a waiver from the personal guarantee requirement, as permitted in § 723.10(e).

The Board notes the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not impose a legal requirement on national banks and savings associations to obtain principals' personal guarantees before extending credit to a business, but that personal guarantees are nonetheless an industry practice. The Board also notes that the SBA requires personal guarantees under its microloan, 7(a), and 504 loan programs. The Board, therefore, encourages RegFlex credit unions to consider personal guarantees as a risk mitigation tool.

Thirty-seven commenters supported the provision on unsecured MBLs as proposed. Some of these commenters thought the proposal would enable credit unions to expand the potential number of MBL borrowers they could serve and allow them to be competitive with other financial institutions. One commenter stressed how valuable the increase in the unsecured lending authority is to credit unions that partner with the SBA because SBA guidelines allow lenders to make an SBA loan to a business with sufficient ability to repay the loan, even when there is not enough collateral to cover the whole request. Accordingly, the commenter stated, SBA lenders could often be faced with a loan amount in excess of the value of the collateral, so credit unions need sufficient unsecured lending limits to fund this uncollateralized gap.

Sixty-nine commenters stated that the provisions on unsecured MBLs are too restrictive. These commenters offered various suggestions to relax the limits placed on unsecured loans to one borrower and the aggregate amount of unsecured loans a credit union is permitted to make. Three commenters opposed allowing credit unions to make unsecured MBLs.

Section 723.7(c) of the final rule adopts the provisions on unsecured lending as proposed. While many credit

unions have requested that the final rule provide greater latitude, the Board finds it prudent to maintain the proposed limits in order to monitor the manner in which credit unions engage in unsecured business lending. The Board also believes that, until it has the opportunity to evaluate the progress of credit unions with unsecured MBLs, the waiver process is sufficient for those credit unions seeking to exceed the rule's current limitations. The waiver process affords NCUA Regional Directors the opportunity to review the safety and soundness considerations of each applicant's lending program on a case-by-case basis.

Ninety-four commenters supported the exemption from the LTV requirements for consumer-type vehicle MBLs. Many of the commenters stated the change is long overdue because the distinctions between a car loan for business purposes and a car loan for consumer purposes are slim. One commenter stated it supported the proposal because the exclusion includes leases of these vehicles and more than one vehicle to an individual, association, organization or business entity. Eleven commenters asked for clarifications on the vehicles covered under the exemption or an expansion of the exemption. Nine of these commenters asked that the Board extend the exemption to any titled vehicle.

Section § 723.7(e) retains the standard proposed by the Board because it believes that the vehicles covered present little or only minimally greater risk than a comparable consumer loan. The Board opposes extending this exemption to all titled vehicles because there is not a readily available market for all types of titled vehicles as there is for consumer-type cars, vans, pick-up trucks, and SUVs. In taking advantage of this rule exception for certain vehicle MBLs, credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board notes that sound lending practices require that LTV ratios and the term of the loan be consistent with the depreciation schedule of any vehicle used for a particular type of business.

As stated in the proposed rule's preamble, the Board intends this exclusion to be used to finance business use or combined personal/business use vehicles and not, for example, to finance fleet purchases. One commenter asked the Board to clarify the concept of a fleet of cars. A fleet is defined as ''a group of vehicles, as taxicabs * * *, owned or operated as a unit.'' *Webster's II New Riverside University Dictionary* (1994) at 486. The final rule clarifies that a fleet of vehicles is not included in the vehicle exception to the LTV requirements because, when a business requires the use of a fleet of vehicles, it is likely these vehicles will depreciate far more quickly than vehicles used for personal use or a combined personal/business use.

Reserves for Classified Loans, Sections 723.14 and 723.15

The final rule deletes and reserves §§ 723.14 and 723.15, which addressed the classification of MBLs for losses and reserving requirements, because NCUA's Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions (FICUs) No. 02–3 provides FICUs the appropriate guidance. 67 FR 37445, May 29, 2002. Six commenters specifically supported the deletion of these provisions.

Effect of Purchased Loans and Purchased Participation Interests, Section 723.16

In the CUMAA, Congress established an aggregate limit on MBLs made by individual FICUs. A credit union is exempt from the aggregate limit if it: (1) Was chartered for the purpose of making MBLs; (2) has a history of primarily making MBLs; (3) serves predominantly low income members; or (4) is a community development financial institution. For credit unions that are not exempt, the amount of the aggregate limit is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's assets. Thus, for credit unions with a net worth ratio of 7% or more, the limit is 12.25% of assets. Also, certain loans, such as those below $50,000 in amount and those covered by a government guarantee, are excluded from the MBL definition. 12 U.S.C. 1757A.

The statutory language establishing the aggregate limit provides that ''no insured credit union may make any member business loan that would result in the total amount of such loans outstanding'' in excess of the limit. 12 U.S.C. 1757a(a) (emphasis added). The Board believes that this language lends itself to several possible interpretations. The narrowest interpretation would apply the limit only to loans made by a credit union to its members and not to loans and loan interests purchased from another lender. A second interpretation would apply the limit to all business loans to a credit union's members, whether made by the credit union or purchased from another lender, but not to purchases of loans or loan interests where the borrower is not a member. The most inclusive interpretation would apply the limit to all business loans, whether made or purchased, and irrespective of whether the borrower is a member.

All FCUs are authorized to purchase participation interests in loans made by other lenders to credit union members. 12 U.S.C. 1757(5)(E); 12 CFR 701.22. The borrower need not be a member of the purchasing credit union, only a member of a participating credit union. 12 CFR 701.22(d)(2). In addition, an FCU generally may purchase eligible obligations of its members from any source if the loans are those the FCU is empowered to grant. 12 U.S.C. 1757(13); 12 CFR 701.23(b). Also, although not specifically addressed in the proposed MBL rule, credit unions eligible for NCUA's regulatory flexibility program are authorized to purchase whole loans from other FICUs, including business purpose loans, irrespective of whether the borrower is a member of the purchasing credit union. 12 CFR 742.5.

In the proposed rule, the Board requested comment on the least constraining interpretation of the aggregate limit on MBLs, that is, only business loans made by a credit union to its members would have counted against the aggregate limit. The Board believes this proposal is consistent with the plain language of the Federal Credit Union Act establishing a limit on member business loans made by a FICU. The Board also believes the proposal is consistent with the congressional intent that credit unions not make business loans at the expense of the consumer loan needs of members and that the credit union system not take on undue risk as a result of over-concentration of MBLs. *See* Senate Report 105–193 for a discussion of congressional intent.

In the proposal, the Board addressed the concern that purchasing MBLs might divert a credit union from its responsibility to extend consumer loans and minimize risk related to concentration of MBLs. The Board noted that a credit union's member-elected board of directors would meet its own members' loan demands first and purchase loans made by other lenders only as a means of placing excess funds to maximize returns to their member shareholders. The proposed rule addressed the safety and soundness concerns both by requiring that the purchasing credit union perform its own due diligence on all purchased loans and loan interests and by treating a purchase as a business loan asset for all other purposes, such as loan-to-one-borrower limits and risk-based net worth requirements.

As previously stated, credit unions and credit union related commenters were supportive of the proposal, but some questioned the basis for distinguishing between originations and purchases. Banks and their representatives argued that the proposal was inconsistent with a congressional intent to limit business lending by credit unions. The U.S. Treasury Department suggested that the proposed treatment of participation interests would create a ''loophole'' to escape the aggregate limit on individual credit unions established by Congress. On the other hand, two congressional sponsors of CUMAA urged NCUA to use its maximum flexibility to enable credit unions to meet their members' business loan needs.

As explained in the discussion of § 723.1(d) and (e) above, the Board has addressed the commenters concerns by making certain changes to the proposed rule. First, the Board has determined that business purpose loans to members should be included in the aggregate limit whether the loan was made by the credit union or purchased from another lender. Thus, for example, if a credit union forms a CUSO to originate business loans to the credit union's members and then purchases those loans from the CUSO, the purchased loans will count against the credit union's limit. This change is addressed in § 723.1(d) of the final rule.

On the other hand, purchases of nonmember loans and participation interests, as authorized under certain conditions in NCUA's rules and some state laws and rules, do not involve the provision of member loan services, and the acquired loan assets are not MBLs. The Board continues to believe that these purchases will be made only as a productive method of placing excess funds after member loan demands are met, and that they need not count against the purchasing credit union's aggregate MBL limit. The Board believes it is important to avoid unnecessary interference with the ability of credit unions to place their excess funds in the manner that best serves the credit union, its members, and the credit union system. A credit union that has, for example, 10% of its assets in MBLs and no further current business loan demand, should be able to place excess funds in participation interests of loans made by another credit union without being concerned that it will bar the purchasing credit union from meeting its own members' future loan needs. Purchasing participation interests, or whole loans in the case of a RegFlex credit union, provides a better rate of return for the credit union and its members as compared to a typical investment asset, provides for risk diversification within the credit union system, and fosters the cooperative spirit that has traditionally existed and continues to exist among credit unions. Purchased nonmember participation interests, however, remain as loans on the credit union's balance sheet even though, under this regulatory standard, they are not MBLs for purposes of the aggregate MBL cap.

Recognizing that a purchased business loan or participation interest of a nonmember is a business loan asset with all of the attendant risks, the final rule does adopt the proposed rule's treatment of these assets as MBLs for purposes of the safety and soundness requirements of NCUA's regulations. A participating credit union, therefore, must otherwise comply with Part 723 and subject these loans to the PCA risk-weighting standards under Part 702 for MBLs as though the credit union had originated the loans. Thus, for example, the purchasing credit union will be required to do its own independent underwriting review and treat the loan the same as an MBL for purposes such as loan-to-one-borrower limits and construction and development loan limits. This change is accomplished, as previously discussed, by adding a new subsection (e) to § 723.1, ''What is a Member Business Loan? '' This subsection provides that purchased nonmember loans and participation interests are treated the same as MBLs for all purposes under the rule except the aggregate limit.

With respect to the aggregate limit on MBLs for individual credit unions and to address concerns that the proposed rule would have created a loophole enabling credit unions to escape the limit, the final rule requires Regional Director approval of any transaction that would cause the total of purchased nonmember business loans and nonmember participation interests, when added to the credit union's MBLs, to result in an amount in excess of the credit union's aggregate limit on MBLs. If the credit union is a FISCU, the request must be submitted to the state supervisory authority for approval. If the state supervisory authority approves the request, the state supervisor will forward it to the regional director for approval. This is consistent with the treatment of waiver requests for FISCUs under the MBL rule. An application submitted pursuant to this requirement must include a copy of the credit union's business loan policies. The application must confirm that the credit union adheres to all aspects of NCUA's MBL rules with respect to purchases of nonmember business loans and participation interests, except the aggregate MBL limit. The application must include the credit union's proposed loan limit on nonmember loans and nonmember participation interests. Finally, the application must attest that the purchase is not being used, in conjunction with one or more other credit unions, in a manner that has the effect of trading MBLs that would otherwise exceed the aggregate limit. Upon receipt of a completed application, the Regional Director will issue a decision within thirty days. In the case of a FISCU, the regional director will issue a decision within 30 days of receipt of a completed application and the state supervisory authority's approval.

The application requirement responds to commenter concerns that some credit unions may use the authority to purchase nonmember loans as a device to swap loans and evade the aggregate limit. This process will enable NCUA and the state supervisors to ensure that the authority to purchase nonmember loans and participation interests is not used to trade loans and circumvent the aggregate limit. Further, it will ensure that purchasing credit unions have conducted their own independent review and otherwise complied with the safety and soundness requirements of the regulations. The Board notes that the final rule does not permit a credit union to seek approval to exceed the aggregate limit on MBLs for member loans or member participation interests made by the credit union or purchased from another lender. The application requirement regarding nonmember business loans and participation interests is set forth in § 723.16(b) of the final rule.

Net Member Business Loan Balance (NMBLB), Section 723.21

The final rule adopts the phrase ''net member business loan balance'' as a new definition in § 723.21 and uses it in various sections in the rule, including §§ 723.1, 723.3, 723.8, and 723.16. The NMBLB definition is:

[T]he outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales

accounting under generally accepted accounting principles.

The NMBLB definition reflects NCUA's interpretation of various provisions in the MBL rule since the 1999 MBL rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit. The Board notes that, because the NMBLB definition excludes participation interests sold without recourse from the selling credit union's MBL limits, neither the originating credit union nor a participating credit union count participations against their MBL aggregate cap provided, as discussed above, the loan participation is not in a loan made to a member of the participating credit union and the participating credit union has obtained a waiver, if required under the circumstances. The Board also notes the final rule includes language clarifying that participations sold without recourse must qualify for true sales accounting under GAAP so that the rule accurately reflects the agency's interpretation over the last several years.

The proposed rule contained a substantially similar definition using a different term, ''outstanding member business loan balance.'' Several commenters found the definition confusing because the term's use of the word ''outstanding'' did not accurately reflect the calculations required as part of the definition. In effect, the proposed definition required a netting of the various exclusions in the definition. The Board has changed the term to ''net member business loan balance'' and simplified the definition to make it easier to understand.

Seventy-four commenters approved of the proposed definition. Most of these commenters stated it will enable credit unions to easily ascertain the factors involved in calculating the MBL threshold and various limit calculations, as well as providing more flexibility in making MBLs. Three stated the new term recognizes the balances that represent true risk to a credit union. Two bank commenters opposed the new term.

One commenter asked the Board to provide examples to assist credit unions in calculating multiple business purpose loans to one borrower. This commenter asked how much a credit union reports as an MBL when it has $35,000 in business purpose loans to a member and makes a $40,000 business purpose loan to the same member—$40,000, $25,000 or $75,000? The credit union would count the $40,000 loan as an MBL and would comply with all of the requirements of Part 723 in making this loan because the loan caused the aggregate amount of business purpose loans to the member to exceed the $50,000 threshold in § 723.1(b)(3). The credit union, therefore, must comply, for example, with the rule's direct experience requirements and the LTV standards when making the loan, as well as count the MBL against the credit union's aggregate MBL limit in § 723.16. When the member pays down the amount of the total business purpose loans owed to the credit union so that the aggregate amount falls below the $50,000 threshold, the credit union is no longer required to report the $40,000 loan as an MBL.

For purposes of the loans-to-one borrower limitation under § 723.8, the same calculation applies. The $40,000 MBL applies towards the member's one borrower limit of the greater of 15% of the credit union's net worth or $100,000, until the aggregate amount of business purpose loans held by the member is less than $50,000. The member, however, is still subject to the Federal Credit Union Act's limitation on the total amount of loans made to one borrower of no more than 10% of the credit union's unimpaired capital and surplus. 12 U.S.C. 1757(5)(A)(x).

Another commenter asked for clarification on the manner in which a loan that has a partial guarantee from the SBA is analyzed with the NMBLB definition. As discussed in the 1999 final rule's preamble, a credit union only counts the amount of the loan that is not guaranteed by the SBA towards the $50,000 threshold in § 723.1(b)(3) to determine if a business purpose loan is an MBL. 64 FR 28721, 28722, May 27, 1999. Consistent with this interpretation, a credit union that makes a $100,000 business purpose loan, of which 75% of the loan amount is guaranteed by a government agency, counts only $25,000 towards the MBL threshold. 12 CFR 723.1(b)(3). Because this amount of $25,000 is less than $50,000, the loan is not an MBL and is not subject to Part 723.

This example demonstrates loan analysis for purposes of Part 723:

Loan 1 to Company in January 2003: $40,000.

Loan 2 to Company in February 2003: $80,000 with a 75% government guarantee.

- Loan 1 is not an MBL because it is under the $50,000 threshold.
- Loan 2 has an NMBLB of $20,000 (25% of $80,000) but when added to Loan 1, the amount of business purpose loans to the member exceeds $50,000, so Loan 2 is an MBL and must comply with all of the requirements of Part 723.
- FCU must obtain a lien on Company's collateral valued at $100,000 in order to make Loan 2.
- FCU counts $20,000 against its aggregate MBL limit and $20,000 towards Company's limit on loans to one borrower.
- FCU must factor the entire loan amount of Loan 2, $80,000, as an MBL into the standard RBNW calculation of the PCA rule until the loan is fully paid.

Loan 1 is paid down to $15,000 in April 2003.

- Loan 2 is no longer an MBL for purposes of Part 723 because the total amount of business purpose loans to Company is $35,000.

Loan 3 is a participation purchased in a loan made to Company on May 2003: $25,000

- Loan 3 is an MBL because combined with the NMBLBs of Loans 1 and 2, Company's aggregate NMBLBs is $60,000.

Loan 4 Unsecured Line of Credit to Company in June 2003: $15,000.

- Loan 4 is an MBL because Company's aggregate NMBLBs for all four loans totals $75,000, which exceeds the $50,000 threshold.
- As of June 2003, FCU counts Loan 3's NMBLB of $25,000 and Loan 4's NMBLB of $15,000 against its aggregate MBL cap and against Company's loans-to-one borrower limit.
- For PCA purposes, FCU calculates the standard RBNW based on the outstanding balances on Loans 2, 3, and 4 in accordance with § 702.106(b).

One commenter asked that NCUA amend its Form 5300 call report instructions to reflect the changes in the final rule. NCUA will amend the call report after the agency gives the public notice and an opportunity to comment on any proposed changes in accordance with the Administrative Procedure Act and the Paperwork Reduction Act of 1995. The Board anticipates that this process will take several months.

The final rule deletes and reserves § 723.9, which addressed calculation of the limit on loans to one borrower, because the NMBLB definition contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

Effect of Final Rule on Approved State Rules

State supervisory authorities may continue to seek exemptions for their FISCUs from NCUA's MBL rule as set

forth in § 723.20. The seven states that have already received an exemption from the Board will now have three options after the effective date of this rulemaking: (1) State supervisors may rescind their current MBL rules and require their charters to comply with NCUA's new rule; (2) they may maintain their rules as the Board had approved them; or (3) they may seek approval from the Board to adopt any variances from those rules the Board previously approved, in accordance with the process outlined in § 723.20. Commenters asked that the Board adopt a process for NCUA staff approval for any of the seven states that want to update their rules to the new NCUA rule. As noted in the 1999 final rule's preamble, the Board must approve a state's rule before a FISCU is exempt from NCUA's MBL rule. 64 FR 28721, 28728, May 27, 1999. The Board, therefore, is responsible for reviewing any state rule amendments to make a determination as to whether the state regulation, as a whole, minimizes the risk and accomplishes the overall objectives of NCUA's rule. The Board's intent is that any revisions to exempted state rules that simply update those rules to parallel changes in NCUA's rule will be approved on an expedited basis.

Section 702.106, Standard Risk-Based Net Worth Component for MBLs

The final rule expands the standard risk-based net worth (RBNW) component for MBLs to three tiers, from the current two. The bottom tier is risk-weighted at 6% and consists of the amount of MBLs less than or equal to 15% of total assets. The middle tier is risk-weighted at 8% and consists of the amount of MBLs greater than 15%, but less than or equal to 25%, of total assets. The top tier is risk-weighted at 14% and consists of the amount of MBLs in excess of 25% of total assets.

Twenty-six commenters stated the expansion of the standard PCA RBNW component dividing the portfolio of MBLs into three tiers is justified by the consistently low loss history of MBLs since 1998 as well as their unique characteristics. Commenters stated the proposal is a reasonable way to protect the safety and soundness of a credit union and accurately reflects the true underlying risk of MBLs. Several of these commenters noted that this measure offers appropriate relief with regard to RBNW requirements. First, they noted that, those credit unions that were chartered primarily to extend business loans or that have history of primarily extending business loans will benefit from the 3-tiered risk weights by assisting such credit unions in managing the business loan portfolio and RBNW. Additionally, they stated purchased participations will be subject to PCA. Credit unions that plan to engage in significant participation activity will benefit from the new risk portfolios and may better manage participations and maintain adequate net worth. Fifty-two commenters stated the change is not useful as it could be because it overstates the risk. They offered alternatives to the proposed standards. The Board disagrees that the proposal overstates risks and incorporates the rationale articulated in the proposed rule's preamble regarding the appropriateness of the final rule's standard RBNW component into this rulemaking. 68 FR 16450, 16453, Apr. 4, 2003.

Five commenters stated that NCUA should allow for further risk reduction under PCA for MBLs that provide balloon or call provisions under which a loan matures within five years. They also asked that NCUA permit credit unions to include loans with five years or less in maturity in the lowest risk-weighted tier when calculating PCA. The suggestions of these commenters fail to take into account the credit risk of MBLs as well as their interest rate risk; regardless of a loan's maturity, credit risk still exists. The final rule, therefore, retains the provisions the Board proposed.

One commenter noted that the NMBLB definition may cause some confusion for credit unions when calculating the standard RBNW requirement under § 702.106(b) because the PCA rule requires risk-weighting of ''member business loans outstanding.'' For purposes of Part 702, when a credit union classifies a loan as an MBL under Part 723 at the time it makes or purchases a loan or participation interest, that loan remains an MBL for calculating the RBNW requirement until the loan is paid off. This is another issue that the Board will clarify in its future amendments to the Form 5300 call report.

CUSO Business Loan Origination, Section 712.5

The final rule adds business loan origination to the CUSO regulation's list of permissible activities in paragraph (c) of § 712.5.

Seventy-five commenters supported the amendment to the CUSO rule. Many of these commenters stated that by authorizing CUSOs to originate business loans, credit unions will be able to benefit from economies of scale by pooling their investments in a business lending CUSO, thus permitting them to offer MBLs to members that may otherwise be unavailable through the credit union or other lenders. Eight bank commenters opposed the proposal and stated NCUA should reject it because it circumvents the statutory aggregate MBL limit placed on credit unions.

Four commenters asked that the final rule elaborate on the word ''originate.'' They stated it is arguably appropriate that a CUSO conduct functions such as taking business loans applications, conducting analysis, preparing documentation, arranging for title searches or similar services, loan servicing, and review and related services. They also stated that it may also be appropriate for a CUSO to fund loans. Accordingly, they asked that the Board define the term ''originate'' to establish what activity is permissible through a CUSO. The final rule allows CUSOs to make business purpose loans, just as CUSOs are permitted to engage in consumer mortgage loan origination, meaning to fund or make consumer mortgage loans under § 712.5(d). This is separate from the already recognized authority of CUSOs to engage in loan support services that include loan processing and servicing under § 712.5(j).

The U.S. Treasury Department stated in its comment that it did not object to allowing CUSO business loan origination in itself but expressed concern that the proposed rule excluded participation interests in CUSO-originated MBLs purchased by credit unions from counting towards the MBL cap. As detailed in the discussion regarding § 723.16 above, the final rule does not permit a credit union to exclude any participation interest it has purchased in a loan made to one of the credit union's members. This includes loan participations originated by a CUSO.

Four commenters noted that a revision to the loan participation rule, 12 CFR 701.22, was necessary to make it clear that FCUs may purchase MBL participations from their CUSOs. On June 26, 2003, the Board proposed an amendment to § 701.22(a)(4) which will clarify that CUSOs, as credit union organizations, are eligible organizations in which credit unions may enter into participation agreements. 68 FR 39866, Jul. 3, 2003. FISCUs are subject to applicable state law on this issue.

Two commenters asked the Board to clarify that CUSOs are not subject to the MBL limitations in Part 723. These commenters are correct in that CUSOs are not required to comply with the various requirements and limitations in Part 723 when originating business loans. The Board reminds FCUs that, when entering into eligible obligation or

participation agreements with CUSOs or other eligible organizations, FCUs must comply with all applicable regulations, including the MBL rule. *See* 12 CFR 701.22, 701.23.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). The final member business loan relaxes some of the rule's existing standards or clarifies current requirements. In addition, less than 5% of small credit unions grant member business loans. The NCUA Board, therefore, has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule liberalizes current requirements and standards applicable to all federally insured credit unions and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 712

Credit, Credit unions.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 742

Credit unions.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

Secretary of the Board.

■ For the reasons stated in the preamble, NCUA revises 12 CFR chapter VII as set forth below:

PART 702—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. Amend § 702.106 as follows:

■ a. Revise paragraph (b) to read as set forth below; and

■ b. Revise Table 4 following paragraph (h) to read as set forth below:

§ 702.106 Standard calculation of risk-based net worth requirement.

* * * * *

(a) * * *

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to fifteen percent (15%) of total assets;

(2) Eight percent (8%) of the amount of member business loans outstanding greater than fifteen percent (15%), but less than or equal to twenty-five percent (25%), of total assets; and

(3) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

* * * * *

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TABLE 4 -- §702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	*Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting*	*Risk weighting*
(a) Long-term real estate loans	0 to 25.00% over 25.00%	.06 .14
(b) MBLs outstanding	0 to 15.00% >15.00% to 25.00% over 25.00%	.06 .08 .14
(c) Investments	*By weighted-average life*: 0 to 1 year >1year to 3 years >3 years to 10 years >10 years	.03 .06 .12 .20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets)	(1.00)
A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.		

■ 3. Revise Appendix A to Subpart A of Part 702 to read as follows:

APPENDIX A – EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, §702.106
(EXAMPLE CALCULATION IN BOLD)

Risk portfolio	***Dollar balance***	***Amount as percent of quarter-end total assets***	*Risk weighting*	***Amount times risk weighting***	***Standard component***
Quarter-end total assets	**200,000,000**	**100.0000 %**			
(a) Long-term real estate loans	**60,000,000**	**30.0000 % =**			**2.20 %**
Threshold amount: 0 to 25%		**25.0000 %**	.06	**1.5000 %**	
Excess amount: over 25%		**5.0000 %**	.14	**0.7000 %**	
(b) MBLs outstanding	**35,000,000**	**17.5000 % =**			**1.10 %**
Threshold amount: 0 to 15%		**15.0000 %**	.06	**0.9000 %**	
Intermediate tier: >15% to 25%		**2.5000 %**	.08	**0.2000 %**	
Excess amount: over 25%		**0.0 %**	.14	**0.0 %**	
(c) Investments	**50,000,000 =**	**25.0000 % =**			**1.51 %**
Weighted-average life:					
0 to 1 year	**24,000,000**	**12.0000 %**	.03	**0.3600 %**	
>1 year to 3 years	**15,000,000**	**7.5000 %**	.06	**0.4500 %**	
>3 years to 10 years	**10,000,000**	**5.0000 %**	.12	**0.6000 %**	
>10 years	**1,000,000**	**0.5000 %**	.20	**0.1000 %**	
(d) Low-risk assets	**4,000,000**	**2.0000 %**	.00		**0 %**
Sum of risk portfolios (a) through (d) above	**149,000,000**	**74.5.000%**			
(e) Average-risk assets	**51,000,000**	**25.5000 %**[a/]	.06		**1.53 %**
(f) Loans sold with recourse	**40,000,000**	**20.0000 %**	.06		**1.20 %**
(g) Unused MBL commitments	**5,000,000**	**2.5000 %**	.06		**0.15 %**
(h) Allowance	**2,040,000.00** [b/]	**1.0200 %**	(1.00)		**(1.02) %**
Sum of standard components: **RBNW requirement** [c/]					**6.67 %**

[a/] The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above (i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).

[b/] The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.

[c/] A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.

■ 4. Revise Appendix D to Subpart A of Part 702 to read as follows:

APPENDIX D – EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, §702.107(b) (EXAMPLE CALCULATION IN BOLD)

Remaining maturity	***Dollar balance of MBLs by remaining maturity***	***Percent of total assets by remaining maturity***	*Alternative risk weighting*	***Alternative component***
Fixed-rate MBLs 0 to 3 years	**6,000,000**	**3.0000 %**	.06	**0.1800 %**
> 3 years to 5 years	**4,000,000**	**2.0000 %**	.09	**0.1800 %**
> 5 years to 7 years	**2,000,000**	**1.0000 %**	.12	**0.1200 %**
> 7 years to 12 years	**0**	**0.0000 %**	.14	**0.0000 %**
> 12 years	**0**	**0.0000 %**	.16	**0.0000 %**
Variable-rate MBLs 0 to 3 years	**17,000,000**	**8.5000 %**	.06	**0.5100 %**
> 3 years to 5 years	**4,000,000**	**2.0000 %**	.08	**0.1600 %**
> 5 years to 7 years	**2,000,000**	**1.0000 %**	.10	**0.1000 %**
> 7 years to 12 years	**0**	**0.0000 %**	.12	**0.0000 %**
>12 years	**0**	**0.0000 %**	.14	**0.0000 %**
Sum of above equals Alternative component*				**1.25 %**

* Substitute for standard component if lower.

■ 5. Revise Appendix H to Subpart A of Part 702 to read as follows:

APPENDIX H -- EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS (EXAMPLE CALCULATION IN BOLD)

Risk portfolio	***Standard component***	***Alternative component***	***Lower of standard or alternative component***
(a) Long-term real estate loans	**2.20 %**	**2.85 %**	**2.20 %**
(b) MBLs outstanding	**1.10 %**	**1.25 %**	**1.10 %**
(c) Investments	**1.51 %**	**1.37 %**	**1.37 %**
(f) Loans sold with recourse	**1.20%**	**1.03%**	**1.03%**
			Standard component
(d) Low-risk assets			**0 %**
(e) Average-risk assets			**1.53 %**
(g) Unused MBL commitments			**0.15 %**
(h) Allowance			**(1.02) %**
RBNW requirement* Compare to Net Worth Ratio			**6.53 %**

* A credit union is "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement

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PART 704—CORPORATE CREDIT UNIONS

■ 6. The authority citation for part 704 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

■ 7. Amend § 704.7 paragraph (e)(2) by revising the sentence as follows:

§ 704.7 Lending.

* * * * *

(e) * * *

(2) Corporate CUSOs are not subject to part 723 of this chapter.

* * * * *

■ 8. Amend § 704.11 by removing paragraph (b)(4).

■ 9. Amend § 704.11(c) by revising the letter (l) to the letter (j).

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 10. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

■ 11. In § 712.5, redesignate paragraphs (c) to (q) as paragraphs (d) to (r) and add new paragraph (c) to read as follows:

* * * * *

(c) Business loan origination;

* * * * *

PART 723—MEMBER BUSINESS LOANS

■ 12. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 13. Amend § 723.1 as follows:

■ a. Add the phrase ''the net member business loan balances are'' after the word ''when'' in paragraph (b)(3);

■ b. Add paragraphs (c), (d), and (e).

§ 723.1 What is a member business loan?

* * * * *

(c) *Loans to credit unions and credit union service organizations.* This part does not apply to loans made by federal credit unions to credit unions and credit union service organizations. This part does not apply to loans made by a federally insured, state-chartered credit union to credit unions and credit union service organizations if the credit union's supervisory authority determines that state law grants authority to lend to these entities other than the general authority to grant loans to members.

(d) *Purchase of member loans and member loan participations.* Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this rule and the risk weighting standards of part 702 of this chapter to the same extent as if made directly by the credit union to its member.

(e) *Purchases of nonmember loans and nonmember loan participations.* Any interest a credit union obtains in a nonmember loan, pursuant to § 701.22 or part 742 of this chapter or other authority, is treated the same as a member business loan for purposes of this rule and the risk weighting standards under part 702 of this chapter, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in § 723.16(b) of this part.

■ 14. Amend § 723.3 by revising paragraph (a) and paragraph (b) to read as follows:

§ 723.3 What are the requirements for construction and development lending?

* * * * *

(a) The aggregate of the net member business loan balances for all construction and development loans must not exceed 15% of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property.

(b) The borrower must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made, except that this requirement will not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. Instead, the collateral requirements of § 723.7 will apply; and

* * * * *

■ 15. Revise § 723.5 as follows:

§ 723.5 How do you implement a member business loan program?

(a) *Generally.* The board of directors must adopt specific business loan policies and review them at least annually. The board must also use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. Credit unions do not have to hire staff to meet the requirements of this section but must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

(b) *Conflicts of Interest.* Any third party used by a credit union to meet the requirements of paragraph (a) of this section must be independent from the transaction and is prohibited from having a participation in the loan or an interest in the collateral securing the loan that the third party is responsible for reviewing, with the following exceptions:

(1) The third party may provide a service to the credit union related to the transaction, such as loan servicing;

(2) The third party may provide the requisite experience to the credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; or

(3) A credit union may use the services of a CUSO that otherwise meets the requirements of paragraph (a) of this section even though the CUSO is not independent from the transaction, provided the credit union has a controlling financial interest in the CUSO as determined under Generally Accepted Accounting Principles.

§ 723.6 [Amended]

■ 16. Amend § 723.6 as follows:

■ a. Add the phrase ''secured and unsecured'' before the word ''business'' in paragraph (c);

■ b. Add ''§ 723.7(c)(2) and'' after the words ''subject to'' in paragraph (e);

■ c. Add the phrase ''consistent with appropriate underwriting and due diligence standards, which also addresses the need for periodic financial statements, credit reports, and other data when necessary to analyze future loans and lines of credit, such as, borrower's history and experience, balance sheet, cash flow analysis, income statements, tax data, environmental impact assessment, and comparison with industry averages, depending upon the loan purpose'' after the word ''loan'' in paragraph (g);

■ d. Remove paragraphs (h) and (i) and redesignate paragraphs (j) to (m) as (h) to (k).

■ 17. Revise § 723.7 to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (c), (d), and (e), must be secured by collateral as follows:

(1) The maximum loan-to-value ratio for all liens must not exceed 80% unless

the value in excess of 80% is covered through private mortgage insurance or equivalent type of insurance, or insured, guaranteed, or subject to advance commitment to purchase by an agency of the federal government, an agency of a state or any of its political subdivisions, but in no case may the ratio exceed 95%;

(2) A borrower may not substitute any insurance, guarantee, or advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state for the collateral requirements of this paragraph.

(b) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) or those where the Regional Director grants a waiver, must provide their personal liability and guarantee. Federal credit unions and federally insured state-chartered credit unions that meet RegFlex standards, as determined pursuant to Part 742 of this Chapter, are exempt from this requirement and may make their own determination whether to require the personal liability and guarantee of principals.

(c) You may make unsecured member business loans under the following conditions:

(1) You are well capitalized as defined by § 702.102(a)(1) of this chapter;

(2) The aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of $100,000 or 2.5% of your net worth; and

(3) The aggregate of all unsecured outstanding member business loans does not exceed 10% of your net worth.

(d) You are exempt from the provisions of paragraphs (a), (b), and (c) of this section with respect to credit card line of credit programs offered to nonnatural person members that are limited to routine purposes normally made available under those programs.

(e) You may make vehicle loans under this part without complying with the loan-to-value ratios in this section, provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle and not part of a fleet of vehicles.

■ 18. Revise § 723.8 to read as follows:

§ 723.8 How much may one member or a group of associated members borrow?

Unless your Regional Director grants a waiver for a higher amount, the aggregate amount of net member business loan balances to any one member or group of associated members must not exceed the greater of:

(a) 15% of the credit union's net worth; or

(b) $100,000.

■ 19. Remove and reserve § 723.9.

■ 20. Revise § 723.10 to read as follows:

§ 723.10 What waivers are available?

You may seek a waiver for a category of loans in any of the following areas:

(a) Appraisal requirements under § 722.3;

(b) Aggregate construction and development loans limits under § 723.3(a);

(c) Minimum borrower equity requirements for construction and development loans under § 723.3(b);

(d) Loan-to-value ratio requirements for business loans under § 723.7(a);

(e) Requirement for personal liability and guarantee under § 723.7(b);

(f) Maximum unsecured business loans to one member or group of associated members under § 723.7(c)(2);

(g) Maximum aggregate unsecured member business loan limit under § 723.7(c)(3); and

(h) Maximum aggregate outstanding member business loan balance to any one member or group of associated members under § 723.8.

■ 21. Remove and reserve § 723.14.

■ 22. Remove and reserve § 723.15.

■ 23. Revise § 723.16 to read as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

(a) *General.* The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

(b) *Effect of nonmember loans and nonmember participations.* If a credit union holds any nonmember loans or nonmember loan participation interests that would constitute a member business loan if made to a member, those loans will affect the credit union's aggregate limit on net member business loan balances as follows:

(1) The total of the credit union's net member business loan balances and the nonmember loan balances must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the NCUA regional director.

(2) To request approval from the NCUA regional director, a credit union must submit an application that:

(i) Includes a current copy of the credit union's member business loan policies;

(ii) Confirms that the credit union is in compliance with all other aspects of this rule;

(iii) States the credit union's proposed limit on the total amount of nonmember loans and participation interests that the credit union may acquire if the application is granted; and

(iv) Attests that the acquisition of nonmember loans and participations is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.

(3) A federal credit union must submit its request for approval to the regional director (a corporate federal credit union submits its request to the Director of the Office of Corporate Credit Unions). A state chartered federally insured credit union must submit the request to its state supervisory authority. If the state supervisory authority approves the request, the state regulator will forward the application and its decision to the regional director (or if appropriate, the Director of the Office of Corporate Credit Unions). An approved application is not effective until it is approved by the regional director (or in the case of a corporate federal credit union the Director of the Office of Corporate Credit Unions). The regional director will issue a decision within 30 days of receipt of a federal credit union's completed application or within 30 days of receipt of a completed application and the state supervisory authority's approval for a state chartered federally insured credit union.

■ 24. Add the following definition to § 723.21:

§ 723.21 Definitions.

* * * * *

Net Member Business Loan Balance means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 25. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756 and 1766.

■ 26. Amend § 742.4(a) by removing the words ''§ 703.12(c); and § 703.16(b) of this chapter'' and replacing them with ''§ 703.12(c), § 703.16(b), and § 723.7(b) of this chapter.''

[FR Doc. 03–24760 Filed 9–30–03; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AF09

Business Loans

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: Statutory amendments to the Small Business Act require changes to SBA rules concerning guarantee fees and ongoing service fees paid by SBA participating lenders in SBA's 7(a) loan program. This direct final rule implements the statutory changes.

DATES: This rule is effective November 17, 2003, without further action, unless adverse comment is received by October 31, 2003. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Address written comments to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or to le.oliver@sba.gov. You also may submit comments electronically to http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, charles.thomas@sba.gov.

SUPPLEMENTARY INFORMATION: The Small Business Investment Company Amendments Act of 2001, Public Law 107–100, 115 Stat. 966 (2001 Act) became effective on December 21, 2001. This direct final rule is necessary to amend SBA regulations in order to incorporate changes made by the 2001 Act to the Small Business Act (the Act) concerning SBA's 7(a) business loan program.

Section 6(b)(a)(1) of the 2001 Act adds section 7(a)(18)(C) to the Act, 15 U.S.C. 636(a)(18)(C), to provide for a temporary reduction in the guarantee fee payable to SBA by participating lenders in the 7(a) loan program for all 7(a) loans with a maturity over 12 months as set forth in this final rule.

TEMPORARY REDUCTION IN SBA GUARANTY FEE

(Effective 10/01/02–9/30/04)

SBA loan SBA's amount	SBA's standard guaranty fee	SBA's guaranty fee under 2 year reduction
Up To $150,000	2% of SBA's Guaranty Portion	1% of SBA's Guaranty Portion.
More Than $150,000 Up to $700,000	3% of SBA Guaranty Portion	2.5% of SBA's Guaranty Portion.
More Than $700,000	3.5% of SBA's Guaranty Portion	3.5% of SBA's Guaranty Portion (No Change).

The 2001 Act does not change the existing authority of a lender to pass the guarantee fee on to the borrower pursuant to section 7(a)(18)(A) of the Act, 15 U.S.C. 636(a)(18)(A), nor does it change the provision whereby the lender can retain 25 percent of the guaranty fee for loans of $150,000 or less.

Section 6(a)(2) of the 2001 Act also amended section 7(a)(23)(A) of the Act, 15 U.S.C. 636(a)(23)(A), to provide for a temporary reduction to the annual fee (lender's annual service fee) payable to SBA by participating lenders. Pursuant to the 2001 Act, the temporary reduction to the annual service fee that the lender must pay SBA is equal to 0.25 percent (reduced from 0.5 percent) of the outstanding balance of the SBA guaranteed portion of a loan. The 2001 Act does not change the prohibition under section 7(a)(23)(B) of the Act, 15 U.S.C.636(a)(23)(B), against the lender charging the borrower for the lender's annual service fee.

These two fee reductions are temporary and are applicable only to 7(a) loans approved on or after October 1, 2002, through September 30, 2004.

SBA is revising § 120.220 of its regulations to implement these provisions. Because the 2001 Act provisions are temporary, the regulations implementing these provisions are temporary and will be promulgated as separate paragraphs in order to make clear which regulatory provisions will continue to apply after the temporary regulations sunset on September 30, 2004. Thus, paragraph (a)(2) covers the amount of the guarantee fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004. Paragraph (f)(2) covers a lender's annual service fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities.

However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, and based on the following facts, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section 6 of the 2001 Act provides for a two-year reduction in the guarantee fee paid by lenders to SBA for loans equal to or less than $700,000 and with a maturity of greater than 12 months. The SBA has determined that approximately 4,500 lenders made SBA-guaranteed 7(a) loans in FY 2002 and were thus impacted by the reduced guarantee fee.

Based on SBA's size standards, lenders with $150 million or less in assets are considered small. However, while the SBA does develop and maintain data on the number and dollar volume of SBA lending by participating lender, it does not maintain the data by the relative asset size of the lender. Thus, based on an analysis of SBA loan volume by lender, SBA, as part of its lender oversight responsibilities, generally considers lenders with SBA assets of $10 million or more as large lenders, and SBA believes that classification is reasonably consistent with SBA size standards centered on total lender assets. (SBA invites comment on the use of $10 million or more in SBA assets in this context as a reasonable determinant of lender size.) As a result of this analysis, SBA estimates that about 4,250 of its 4,500 lending participants have SBA assets of less than $10 million and, for the purposes of RFA, may be considered small lenders and could potentially benefit annually from SBA's reduced guaranty fees. However, SBA notes that these 4,250 small lenders approved only about 11,000 SBA loans in FY 2002 or an average of about 2.6 each. (SBA's analysis indicates that its 250 largest lenders accounted for approximately 41,000 loans or 84 percent of SBA's loan volume.)

For loans of $150,000 or less, SBA estimates that the one percent reduction in SBA's guarantee fee in FY 2002 saved the 4,250 small lending entities about $3.9 million in the aggregate or an average of about $900 each. For loans greater than $150,000 up to $700,000, SBA estimates that the .5 percent reduction in SBA's guarantee fee in FY 2002 saved small lending entities about $9.3 million in the aggregate or an average of about $2,200 each. However, while the potential total savings to these entities as a result of the reductions in the SBA guarantee fee in FY 2002 was approximately $13 million, or about $3,100 each, lenders generally pass the cost of the SBA guarantee fee on to the small business borrowers. As a consequence, SBA anticipates that its reduced guarantee fee also generally is passed on to borrowers. As a result, SBA estimates the actual monetary impact on small lending entities due to the reduced SBA guarantee fee will not be significant. (The SBA estimates that approximately 47,000 of its 52,000 borrowers in FY 2002 benefited from the reduced guarantee fee with savings that ranged from less than $100 up to several thousand dollars each, depending on the size of the loan.)

Section 6 also reduces SBA's annual servicing fee from 0.5 percent to .25 percent of the outstanding balance of the SBA guaranteed portion of a loan, which is a fee paid by lenders and cannot be passed on to SBA borrowers. The SBA thus estimates that the approximately 4,250 small lending entities that approved about 11,000 SBA loans in FY 2002 saved an estimated total of $3.8 million in SBA servicing fees as a result of the reduced servicing fee, which comes to an average savings of about $900 each.

Based on this analysis, SBA certifies that within the meaning of RFA, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 120

Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—[AMENDED]

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), and 697(a)(2).

■ 2. Amend § 120.220 by redesignating paragraphs (a) and (f) as (a)(1) and (f)(1), revise newly designated paragraphs (a)(1) and (f)(1), and by adding paragraphs (a)(2) and (f)(2) to read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(a) *Amount of guarantee fee.*

(1) *In general.* Except to the extent paragraph (a)(2) of this section applies, for a loan with a maturity of twelve (12) months or less, the guarantee fee which the Lender must pay to SBA is one-quarter (¼) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 2 percent of the guaranteed portion of a loan if the total amount of the loan is not more than $150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than $150,000 but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total loan amount is more than $700,000.

(2) *For loans approved October 1, 2002, through September 30, 2004.* For a loan with a maturity of twelve (12) months or less, the guarantee fee which the Lender must pay to SBA is one-quarter (¼) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 1 percent of the guaranteed portion of the loan if the total loan amount is not more than $150,000,

(ii) 2.5 percent of the guaranteed portion of a loan if the total loan amount is more than $150,000, but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion if the total loan amount is more than $700,000.

* * * * *

(f) *Lender's annual service fee payable to SBA.*

(1) *In general.* Except to the extent paragraph (f)(2) of this section applies, the lender shall pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

(2) *For loans approved from October 1, 2002, through September 30, 2004.* The lender shall pay SBA an annual service fee equal to 0.25 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

Dated: September 24, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–24728 Filed 9–30–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 030707164–3230–02]

RIN 0625–AA63

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends existing regulations, due to changes in the industry, by updating the watch assembly requirements for purposes of the duty refund. We also amend 15 CFR part 303 to reflect the new designations that were created with the addition of the Department of Homeland Security.

DATES: This rule is effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: The Departments of Commerce and the Interior (the Departments) issue this rule to amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (68 FR 45177, August 1, 2003) and is not repeated here.

The Departments amend the definitions for Creditable wages and Non-91/5 watches and watch movements, subpart A, 303.2(a)(13) and (14) respectively, to allow wages to be creditable towards the duty refund for watches containing preassembled movements provided (1) that the producer is unable to purchase the movements unassembled and (2) that it completes in the insular possession all other assembly operations required to make the movement into a watch (*see* discussion, below). In order for wages to be considered creditable for watch assembly operations which incorporate preassembled movements, the Departments also amend subpart A, 303.5(b)(6) to require producers who completely assemble watches in the insular possessions, with the exception of the movement, to maintain documentation that demonstrates that the preassembled movement the insular producer purchased could not have been purchased in an unassembled condition. This documentation must be available, along with other relevant company records, for review during the annual audit and verification of the data from the Annual Application (Form ITA–334P). Producers are still required to meet the Bureau of Customs and Border Protection and the Departments' assembly requirements for purposes of the duty exemption.

Finally, this rule amends 15 CFR part 303 to reflect the new designations that were created with the addition of the Department of Homeland Security.

ITA received one comment in response to the proposed rule and request for comments. The commenter expressed support in totality for the new rule without revision. Accordingly, the Departments adopt the provisions in the proposed rule without change.

Administrative Law Requirements

Administrative Procedure Act. The Departments waives the 30-day delay in effectiveness for this rule because this rule relieves a restriction. (*See* 5 U.S.C. 553(d)(1)). This rule provides more flexibility in the types of movements that can be used in the watch assembly than was allowed prior to the adoption of this rule. Also, this rule allows a duty refund benefit for watches assembled with partially or completely assembled movements if the movement cannot be purchased unassembled. Because, this rule relieves restrictions for watch manufacturers, the 30-day delay in effectiveness is waived and this rule is effective upon publication.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule on small entities. As a result, a final regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This rulemaking contains revised collection of information requirements that have been approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. Send comments regarding the burden estimate or any other aspect of the collection of information to U.S. Department of Commerce, ITA Information Officer, Washington, DC 20230 and the Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that the rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

■ For reasons set forth above, the Departments amend 15 CFR part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

■ 1. The authority citation for 15 CFR part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167.

■ 2. Title 15 CFR part 303 is amended by removing ''U.S. Customs Service'' or ''Customs Service'' wherever it appears and adding ''Bureau of Customs and Border Protection'' in its place.

■ 3. Title 15 CFR part 303 is amended by removing ''Department of the Treasury'' wherever it appears and adding ''Department of Homeland Security'' in its place.

■ 4. Section 303.2 is amended by revising the first sentence of paragraph (a)(13) and the first sentence of paragraph (a)(14) as set forth below.

§ 303.2 Definitions and forms.

(a) * * *

(13) *Creditable wages* means all wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus wages paid for the repair of non-91/5 watches up to an amount equal to 50% of the firm's total creditable wages, and for wages paid for the complete assembly of watches in the insular possession, with the exception of the movement, only in situations where the desired movement can not be purchased in an unassembled condition. * * *

(14) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement cannot be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful work in the territories (as elsewhere defined in these regulations).

* * * * *

■ 5. Section 303.5(b)(6) is revised to read as set forth below.

§ 303.5 Application for annual allocation of duty-exemptions.

* * * * *

(b) * * *

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and''

* * * * *

James J. Jochum,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 03–24903 Filed 9–30–03; 8:45 am]

BILLING CODES 3510–DS–P and 4310–93–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9080]

RIN 1545–BC47

Reduction of Tax Attributes Due to Discharge of Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Reduction of tax attributes due to discharge of indebtedness.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on July 18, 2003 (68 FR 42590). These regulations relate to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code.

EFFECTIVE DATE: This correction is effective July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under sections 108 and 1017 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9080) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the temporary regulations (TD 9080) which are the subject of FR Doc. 03–18145, is corrected as follows:

§ 1.108–7T [Corrected]

■ 1. On page 42592, column 3, § 1.108–7T, paragraph (a)(2), line 2 thru 7, the language ''section 108(b)(5), however, to reduce first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD income, the'' is corrected to read ''section 108(b)(5), however, to apply any portion of the excluded COD income to reduce first the basis of depreciable property. To the extent the excluded COD income is not so applied, the''.

■ 2. On page 42593, column 1, § 1.108–7T(d), paragraph (i) of *Example 3*, line 3, the language ''trade debts of $200,000 and a depreciable'' is corrected to read ''debts of $200,000 and a depreciable''.

■ 3. On page 42593, column 1, § 1.108–7T(d), paragraph (i) of *Example 3*, line 14, the language ''trade creditors in exchange for release of'' is corrected to read ''creditors in exchange for release of''.

■ 4. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 19, the language ''requirements of section 354(a)(1)(A) and (B).'' is corrected to read ''requirements of section 354(b)(1) (A) and (B).''.

■ 5. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 2, the language ''to X's trade creditors, under section'' is corrected to read ''to X's creditors, under section''.

■ 6. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 7, the language ''owed the trade creditors for $100,000, the fair'' is corrected to read ''owed the creditors for $100,000, the fair''.

■ 7 . On page 42593, column 2, § 1.108–7T(d), paragraph (ii) of *Example 4*, line 2, the language ''distribution of Y stock to X's trade creditors,'' is corrected to read ''distribution of Y stock to X's creditors,''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–24912 Filed 9–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2003–T–024]

RIN 0651–AB68

Reorganization of Correspondence and Other General Provisions

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (''Office'') published in the **Federal Register** of August 13, 2003 (68 FR 48286), a final rule amending its rules to separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the

Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; by e-mail to mary.hannon@uspto.gov; by facsimile transmission addressed to her at (703) 872–9280; or by mail marked to her attention and addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (''Office'') published in the **Federal Register** of August 13, 2003 (68 FR 48286), a final rule amending its rules to separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. This document corrects a typographical error in the final rule.

In FR Doc. 03–20489, published on August 13, 2003 (68 FR 48286), make the following correction:

§ 2.198 Filing of correspondence by ''Express Mail.''

■ 1. On page 48291, in the first column, in § 2.198, line 2, correct ''(a)(1)(i) and (ii)'' to read ''(a)(1)(i) through (vii).''

Dated: September 24, 2003.

Lynne G. Beresford,

Deputy Commissioner for Trademark Examination Policy.

[FR Doc. 03–24812 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims for Domestic Mail

AGENCY: Postal Service.

ACTION: Delay of effective date of final rule.

SUMMARY: The effective date of October 1, 2003, for changes to domestic indemnity claims regulations published in the **Federal Register** on September 2, 2003 (Vol. 68, No. 169, pages 52100–52104) is delayed until further notice. As a result, 39 CFR part 111 is not amended at this time.

DATES: This delay is effective upon publication.

SUPPLEMENTARY INFORMATION: The Postal Service will issue a further document regarding the effective date of these policy and procedure changes.

Neva R. Watson,

Attorney, Legislative, Office of Legal Policy and Ratemaking Law.

[FR Doc. 03–24915 Filed 9–30–03; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Parts 224, 261 through 268

Release of Information and Records Management Changes

AGENCY: Postal Service .

ACTION: Final rule.

SUMMARY: The Postal Service revises organizational names and titles relating to the policies for the release of information and records management, and revises the fee structure relating to the furnishing of documents and records to members of the public under the Freedom of Information Act (FOIA). These revisions (1) Update organizational names and titles that changed as a result of agency restructuring, (2) reflect to whom the public should address issues relating to the release of information and records management, and (3) change the fee structure to permit the recovery of current costs incurred in the furnishing of records to the public.

DATES: This rule is effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Faruq at 202–268–2608.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2003, the Postal Service published a proposed rule in the **Federal Register** (68 FR 47527). In that notice, we proposed:

- Revising the organizational names and titles in the policies relating to releasing information and managing records.
- Revising the fee structure for furnishing documents and records to members of the public under the Freedom of Information Act (FOIA).

Discussion of Comments

The Postal Service received comments from one party regarding the proposed rule changes.

Comments: The party objected to fee increase amounts, the unification of the rate structure, and the change to half-hour assessments.

Response: The FOIA requires fees to be based upon direct operating costs of providing FOIA services, which recoup full allowable direct costs incurred. The Postal Service has not updated its FOIA fees since 1987, a period of 16 years. During that time, personnel costs have risen substantially.

The fee increases, along with the unification of the rate structure, are based on the weighted average salaries of employees responsible for providing FOIA services. The class of Postal Service personnel providing FOIA services is Executive and Administrative Salary Schedule (EAS) employees, levels EAS 1 through EAS 26. The administrative/clerical and professional/executive categories did not work appropriately in an EAS environment. The levels and job duties performed can vary considerably, such as between Headquarters and field units, with some positions having both administrative and professional aspects. The rate structure for providing FOIA services was unified to appropriately align with Postal Service employee classifications. In addition, this will likely reduce the FOIA fees charged, because most personnel processing FOIAs are EAS positions that more typically would be classified as professional, and thus would assess fees at the higher category.

The use of half-hour increments to assess fees will be easier to implement administratively, and is consistent with other agencies' fee regulations. In addition, on average, FOIA fees should not increase, because charges will be to the nearest half hour, as opposed to being rounded upward. Fees for computer searches were updated to reflect current costs and current technology. Certain computer fees remain charged at 15-minute increments because it is less administratively burdensome to track those time increments for computer searches than for manual searches. Computer personnel fees may involve programming necessary to retrieve data in response to specific requests. Programming varies in degrees of technical complexity, and is reflected in separate fee categories.

Changes to References

After issuing the proposed rule, the Postal Service identified several incorrect references. We corrected those references in this final rule.

List of Subjects

39 CFR Part 224

Organization and functions (Government agencies).

39 CFR Parts 261, 262, and 263

Archives and records.

39 CFR Part 264

Archives and records, Security measures.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

39 CFR Parts 266 and 268

Privacy.

39 CFR Part 267

Archives and records, Classified information, Privacy, Security measures.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR parts 224, 261, and 262 through 268 as follows:

PART 224—[AMENDED]

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 5 U.S.C. App.3; 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended).

§ 224.1 [Amended]

■ 2. Amend § 224.1, as follows:

■ a. In paragraph (a), remove the words ''a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General and the Office of the Treasurer and the Records Office. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group.'' and add in their place the words ''Chief Financial Officer and Executive Vice President. The group includes the following: Vice President, Chief Technology Officer; Vice President, Finance Controller; Vice President, Treasurer; Vice President, Supply Management; Manager, Corporate Financial Planning; Manager, Internal Control; and Manager, Finance Administration.''

■ b. Remove paragraph (f).

PART 261—[AMENDED]

■ 3. The authority citation part 261 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 261.2 [Amended]

■ 4. In § 261.2, paragraph (b), revise the first sentence to read as follows:

§ 261.2 Authority.

(a) * * *

(b) 39 CFR 262.2 assigns to the Postal Service Records Office, located under the Privacy Office responsibility for the retention, security, and privacy of Postal Service records and the power to authorize the disclosure of such records and to order their disposal by destruction or transfer.* * *

§ 261.4 [Amended]

■ 5. Amend § 261.4 as follows:

■ a. In paragraph (a), remove the words ''manager, Administration and FOIA, under the Chief Financial Officer and Senior Vice President,'' and add in their place the words ''Manager, Records Office, under the Privacy Office,''.

■ b. In paragraph (a) remove the word ''finance'' and add in its place the words ''Consumer Affairs''.

■ c. Revise paragraph (b) to read as follows:

§ 261.4 Responsibility.

(a) * * *

(b) The Chief Privacy Officer, under the Vice President and Consumer Advocate, is responsible for administering records and information management policies and for the compliance of all handbooks, directives, and instructions in support of this policy.

* * * * *

PART 262—[AMENDED]

■ 6. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

§ 262.2 [Amended]

■ 7. Amend § 262.2 as follows:

■ a. Redesignate paragraphs (a), (c), and (d) as paragraphs (c), (d), and (e).

■ b. Add new paragraph (a).

■ c. Revise paragraph (b).

■ d. In newly redesignated paragraph (e), remove the words ''Manager, Corporate Accounting'' and add in their place the words ''Records Office'' and remove the word ''official'' and add in its place the words ''Records Office is''.

The addition and revision read as follows:

§ 262.2 Officials.

(a) Chief Privacy Officer. The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records with the power to authorize the disclosure of such records and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise. The CPO directs the activities of the Privacy Office and the Records Office.

(b) Manager, Records Office. The Manager, Records Office, manages the Records Office, and is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The Manager, Records Office, may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

* * * * *

§ 262.4 [Amended]

■ 8. Amend § 262.4 as follows:

■ a. In paragraph (a), remove the words ''office of Corporate Accounting'' and add in their place the words ''Records Office''.

■ b. In paragraph (b), first sentence, remove the words ''office of Corporate Accounting'' and add in their place the words ''Records Office''.

§ 262.5 [Amended]

■ 9. In § 262.5, paragraph (d)(2), last sentence, remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

PART 263—[AMENDED]

■ 10. The authority citation for 39 CFR Part 263 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 263.3 [Amended]

■ 11. Amend § 263.3 as follows: In paragraph (a), remove the words ''The Office of Corporate Accounting'' and add in their place the words ''Records Office''.

§ 263.4 [Amended]

■ 12. In § 263.4, remove the words ''Corporate Accounting'' and add in their place the words ''the Records Office''.

§ 263.5 [Amended]

■ 13. Amend § 263.5 as follows:

■ a. Remove the words ''Corporate Accounting'' and add in their place the words ''Records Office''.

■ b. Remove the digits ''5240''.

■ c. Remove the words ''to the Records Specialist''.

■ d. Remove the digits ''4869'' and add in their place the digits ''2608''.

PART 264—[AMENDED]

■ 14. The authority citation for part 264 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 264.3 [Amended]

■ 15. In § 264.3, paragraph (a), remove the words ''Corporate Accounting'' from both the heading and the first sentence, and add in their place the words ''Records Office''.

PART 265—[AMENDED]

■ 16. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.3 [Amended]

■ 17. Amend § 265.3 as follows:

■ a. In paragraph (a), remove the words ''§ 262.2 (a)'' and add in their place the words ''§ 262.2 (c)''.

■ b. In paragraph (b), remove the words ''*Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA'' and add in their place the words ''*Manager, Records Office.* The Postal Service Manager, Records Office, under the Privacy Office''.

§ 265.4 [Amended]

■ 18. Amend § 265.4 as follows:
■ a. Remove the words ''USPS Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.
■ b. Remove the digits ''5202''.

§ 265.5 [Amended]

■ 19. In § 265.5, remove the designation ''.gov'' and add in its place the designation ''.com/foia''.

§ 265.6 [Amended]

■ 20. Amend § 265.6 as follows:
■ a. In paragraph (b), introductory text, remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.
■ b. In paragraph (b)(3)(ii), remove the words ''940 of the *Domestic Mail Manual* (DMM)'' and add in their place the words ''R900 of the *Domestic Mail Manual* (DMM)''.
■ c. In paragraph (d)(1), first sentence, remove the words ''upon payment of the fee prescribed in § 265.9 (e)(3) and (g)(5),''.
■ d. In paragraph (d)(1), first sentence, remove the reference ''(d)(4)'' and add in its place the reference ''(d)(5)''.
■ e. In paragraph (d)(1), third sentence, remove the references ''(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)'' and add in their place the references ''(d)(5)(i), (d)(5)(iii), or (d)(5)(iv)''.
■ f. In paragraph (d)(1), remove last sentence.
■ g. In paragraph (d)(4)(i), remove the references ''(d)(3)(iii)'', ''(d)(4)(i)'', and ''(d)(4)(iii)'' and add in their place the references ''(d)(4)(iii)'', ''(d)(5)(i)'', and ''(d)(5)(iii)'', respectively.
■ h. In paragraph (d)(4)(ii), remove the references ''(d)(3)(iii)'', ''(d)(4)(i)'', and ''(d)(4)(iii)'' and add in their place the references ''(d)(4)(iii)'', ''(d)(5)(i)'', and ''(d)(5)(iii)'', respectively.
■ i. In paragraph (d)(5)(ii)(F), remove the references ''(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)'' and add in their place the references ''(d)(5)(i), (d)(5)(iii), or (d)(5)(iv)''.
■ j. In paragraph (d)(5)(iv), remove the reference ''(d)(4)(i)'' and add in its place the reference ''(d)(5)(i)''.
■ k. In paragraph (d)(9)(i), remove the references ''(d)(4)(i) and (d)(4)(iii)'' and add in their place the references ''(d)(5)(i) and (d)(5)(iii)''.

§ 265.7 [Amended]

■ 21. Amend § 265.7 as follows:
■ a. In paragraph (a)(2), remove the words ''USPS Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.
■ b. In paragraph (a)(2), remove the digits ''5202''.
■ c. In paragraph (a)(2), last sentence, remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

§ 265.9 [Amended]

■ 22. Amend § 265.9 as follows:
■ a. In paragraph (b)(1)(i), remove the words ''each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.'' and add in their place the words ''a manual search is $32 per hour (fractions of an hour are rounded to the nearest half hour)''.
■ b. In paragraph (b)(1)(ii), first sentence, remove the words ''runs and operator salary, as calculated in accordance with the Information Services Price List'' and add in their place the words ''and personnel cost''.
■ c. In paragraph (b)(1)(ii), second sentence and last sentence, remove the words ''list is'' and add in their place the words ''fees are''.
■ d. In paragraph (b)(2)(ii), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.
■ e. In paragraph (b)(2)(iii), remove the phrase ''the per-page fee shall be charged'' and add the phrase ''the $.15 per-page fee shall be charged''; and
■ f. In paragraph (b)(2)(iii), add to the third sentence the words ''or her'' following the word ''his''.
■ g. In paragraph (b)(3), remove the first two sentences and add one new sentence in its place.
■ h. Remove paragraph (e)(3).
■ i. In paragraph (g)(1), remove the words ''Fees shall not be'' and add in their place the words ''No fees shall be''.
■ j. In paragraph (g)(1), remove the last sentence.
■ k. In paragraph (g)(2)(i), second sentence, remove the words ''the standard rates set out in the Information Services Price List'' and add in their place the words ''fee for computer searches''.
■ l. In paragraph (g)(2)(i), last sentence, remove the words ''(including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits.'' and add in their place the words ''(including the cost of personnel and computer processing time) reaches the equivalent dollar amount of personnel fees for 2 hours.''
■ m. In paragraph (g)(4), remove the words ''office of Administration and FOIA'' and add in their place the words ''Manager, Records Office''.
■ n. Revise paragraph (g)(5).
The revision reads as follows:

§ 265.9 Schedule of fees.

(b) * * *
(3) * * * The fee for reviewing records located in response to a commercial use request is $32 per hour (fractions of an hour are rounded to the nearest half hour).

* * * * *

(g) * * *
(5) Fee for other services. Waivers do not apply for fees for address correction services performed in accordance with section R900 of the *Domestic Mail Manual.*

* * * * *

§ 265.10 [Amended]

■ 23. In § 265.10, last sentence, remove the word ''.gov'' and add in its place the words ''.com/foia''.

§ 265.12 [Amended]

■ 24. Amend § 265.12 as follows:
■ a. In paragraph (b)(7), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.
■ b. In paragraph (b)(7), remove the digits ''5202''.
■ 25. Revise Appendix A to read as follows:

Appendix A to Part 265—Fees for Computer Searches

When requested information must be retrieved by computer, fees charged to the requester are based on rates for personnel and computer time. Estimates are provided to the requester in advance and are based on the following rates:

	Price	Unit
Personnel:		
High technical	$120	per hour.
Medium technical	70	per hour.
Low technical	50	per hour.
Computer Processing:		
Mainframe usage	.39	per second.
Midrange server usage.	.06	per second.
PC usage	7.00	per 15 minutes.
Printing computer output.	.14	per page.
Magnetic tape production.	24.00	per volume.

PART 266—[AMENDED]

■ 26. The authority citation for part 266 continues to read as follows:

Authority: 5 U.S.C. 552a; 39 U.S.C. 401.

§ 266.3 [Amended]

■ 27. Amend § 266.3 as follows:

■ a. In paragraph (a), remove the words ''*Freedom of Information/Privacy Acts Officer*. The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA'' and add in its place the words ''*Records Office*. The Records Office, within the Privacy Office''.

■ b. In paragraph (c) remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

■ c. In paragraph (d)(2) remove the words ''Manager, Administration and FOIA'' and add in their place the words ''Chief Privacy Officer''.

■ d. Revise paragraphs (d)(2)(i) through (vi) to read as follows:

§ 266.3 Responsibility.

* * * * *

(d) * * *

(2) * * *

(i) Vice President and Consumer Advocate (Chairman).

(ii) Chief Postal Inspector.

(iii) Inspector General.

(iv) Senior Vice President, Human Resources.

(v) Vice President, General Counsel.

(vi) Chief Privacy Officer.

§ 266.4 [Amended]

■ 28. In § 266.4, paragraph (b)(6)(i),(iii) and (iv), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

§ 266.5 [Amended]

■ 29. In § 266.5, paragraph (d), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

§ 266.6 [Amended]

■ 30. Amend § 266.6 as follows:

■ a. In paragraph (a), first sentence, remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

■ b. In paragraph (a), remove the digits ''5202''.

■ c. In paragraph (d), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

§ 266.7 [Amended]

■ 31. In § 266.7, paragraph (a)(4), last sentence, remove the words ''office of Administration and FOIA'' and add in their place the words ''General Counsel''.

§ 266.8 [Amended]

■ 32. In § 266.8, paragraph (b)(3), second sentence, remove the words ''the per page fee'' and add in their place the words ''$.15 per page fee''.

§ 266.10 [Amended]

■ 33. Amend § 266.10 as follows:

■ a. In paragraph (a), first sentence, paragraph (b), second sentence, paragraph (c), and paragraph (d)(2), remove the words ''USPS Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Postal Service Manager Records Office''.

■ b. In § 266.10, paragraph (a), fourth sentence, paragraph (b), last sentence, and paragraph (d), second sentence, remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

PART 267—[AMENDED]

■ 34. The authority citation for part 267 continues to read as follows:

Authority: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

§ 267.3 [Amended]

■ 35. In § 267.3, paragraph (a) introductory text, remove the words ''Freedom of Information/Privacy Acts Officer'' from both the heading and the first sentence, and add in their place the words ''Chief Privacy Officer''.

§ 267.5 [Amended]

■ 36. Amend § 267.5 as follows:

■ a. In paragraph (e)(3)(i), remove the words ''Manager, Administration and FOIA'' and add, in their place, the words ''Manager, Records Office''.

■ b. In paragraph (e)(3)(i), remove the digits ''5202''.

PART 268—[AMENDED]

■ 37. The authority citation for part 268 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 [Amended]

■ 38. In § 268.1, paragraph (b), second sentence, remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–24914 Filed 9–30–03; 8:45 am]

BILLING CODE 7710–12–U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

RIN 3090–AH33

Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Correction

AGENCY: General Services Administration (GSA).

ACTION: Final rule; correction.

SUMMARY: The General Services Administration is issuing a correction to Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Final Rule, to correct a typographical error.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte at (202) 501–4755, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

Correction

§ 101–6.216 [Corrected]

In the final rule FR Doc. 03–21140 appearing in the issue of August 26, 2003 (68 FR 51334):

■ On page 51373, third column, in paragraph (f)(3)(ii), fifth line, the word ''nay'' is corrected to read ''any''.

Dated: September 22, 2003.

Laurie Duarte,

Regulatory Secretariat, Acquisition Policy Division.

[FR Doc. 03–24456 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 213, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names, clause titles and dates, and cross-references.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 202, 213, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 202, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 213, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of ''Contracting activity'', under the heading ''NAVY'', by removing ''Marine Corps Materiel Command'' and adding in its place ''Marine Corps Systems Command''.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.301 [Amended]

■ 3. Section 213.301 is amended in paragraph (2)(ii)(B) by removing ''8.001'' and adding in its place ''8.002''.

213.302–5 [Amended]

■ 4. Section 213.302–5 is amended as follows:

■ a. In paragraph (d) introductory text, in the first sentence, by removing ''buy American Act—Balance of Payments Program—Supplies'' and adding in its place ''Buy American Act—Supplies''; and

■ b. In paragraph (d)(ii), by removing ''225.1101(13)'' and adding in its place ''225.1101(10)''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 5. Section 252.212–7001 is amended in paragraph (b), in entry ''252.225–7021'' by removing ''(APR 2003)'' and adding in its place ''(AUG 2003)''.

[FR Doc. 03–24628 Filed 9–30–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2002–D033]

Defense Federal Acquisition Regulation Supplement; Indian Incentive Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003. Section 8021 revises the criteria for application of the Indian Incentive Program to DoD contracts.

DATES: Effective date: October 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before December 1, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002–D033 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D033.

At the end of the comment period, interested parties may view public comments on the World Wide Web at http://emissary.acq.osd.mil/dar/dfars.nsf.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

The Indian Incentive Program provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. DoD implementation of the Indian Incentive Program is in DFARS Subpart 226.1 and the clause at 252.226–7001. Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Public Law 107–248) revises the criteria for application of the Indian Incentive Program by establishing a $500,000 threshold for contracts and subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. This interim rule amends DFARS subpart 226.1 and the clause at 252.226–7001 to implement section 8021 of Public Law 107–248.

In addition, this interim rule incorporates changes to the clause at 252.226–7001 resulting from the proposed rule published at 67 FR 70389 on November 22, 2002, under DFARS Case 2002-D013. That proposed rule removed references to specific contract types from the clause, since the Indian Incentive Program applies to all contract types. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. Comment: The rule should clarify that a contractor can receive a separate equitable adjustment in addition to the incentive payment under the clause. The equitable adjustment would apply if the cost of subcontracting with an Indian organization exceeds the cost of subcontracting with a non-Indian source. The 1996 version of the Indian Incentive clause at FAR 52.226–1 substantiates this position.

DoD Response: Do not concur. 25 U.S.C. 1544 provides that ''a contractor * * * may be allowed an additional amount of compensation equal to 5 percent of the amount paid, or to be paid, to a subcontractor or supplier, in carrying out the contract if such subcontractor or supplier is an Indian organization or Indian-owned economic enterprise * * *'' Section 8021 of Public Law 107–248 appropriates funds ''only for incentive payments authorized by * * * 25 U.S.C. 1544 * * *'' Accordingly, the clause at DFARS 252.226–7001 provides for an incentive payment of 5 percent of the amount of a subcontract awarded to an Indian organization or Indian-owned economic enterprise.

When the Indian Incentive Program was added to the FAR as an interim rule on August 22, 1991 (56 FR 41736), the clause at 52.226–1 provided that a contract adjustment under the Program would be the lesser of (1) the difference between the price of the subcontract awarded to an Indian concern and the price of the otherwise low, non-Indian offeror, or (2) 5 percent of the price of the subcontract awarded to an Indian concern. When the FAR rule was finalized on July 26, 1996 (61 FR 39210), the clause was revised to eliminate the first option and to specify the ''5 percent'' payment method as the

sole method of incentive payment under the Program. Confusion has existed because the FAR and DFARS clauses have used the terms ''incentive'' and ''adjustment'' interchangeably. However, the statutes and the implementing clauses historically have permitted only one type of incentive payment per subcontract award. To clarify this point, DoD has replaced the term ''adjustment'' with the term ''incentive'' each place it appeared in the clause at 252.226–7001.

2. Comment: The requirement of DFARS 252.226–7001(d), that prohibits an incentive payment from being made within 50 working days of subcontract award, is arbitrary and should be deleted. The contracting officer should have the flexibility to make a case-by-case determination of when it is appropriate to make the incentive payment.

DoD Response: Concur. The interim rule eliminates the 50-day waiting period.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule amends the DFARS to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003. Section 8021 does the following: (1) Appropriates funds for implementation of the Indian Incentive Program; (2) establishes a threshold of $500,000 for contracts and subcontracts under which incentives may be paid; (3) expands the Program to permit incentive payments for subcontract awards to Native Hawaiian small business concerns; and (4) adds contracts and subcontracts for commercial items to the Program, provided the commercial items are produced or manufactured in whole or in part by an Indian organization or enterprise or Native Hawaiian small business concern. The rule will apply to contractors and subcontractors that subcontract work under DoD contracts, and will pertain to subcontract awards to Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns. The net effect on small entities is unknown at this time. DoD knows of no alternatives that would meet the requirements of Section 8021 of the DoD Appropriations Act for Fiscal Year 2003.

A copy of the analysis may be obtained from the address specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D033.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248). Section 8021 revises the criteria for application of the Indian Incentive Program by establishing a $500,000 threshold for contracts and subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. Section 8021 became effective upon enactment, on October 23, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 226 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 226 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 226 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

■ 2. Sections 226.103 and 226.104 are revised to read as follows:

226.103 Procedures.

(f) The contracting officer shall—

(i) Submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)SADBU), 1777 North Kent Street, Suite 9100, Arlington, VA 22209; and

(ii) Upon receipt of funding from OUSD(AT&L)SADBU, issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described in the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts for supplies or services exceeding $500,000 in value for which subcontracting opportunities may exist.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(Oct 2003)''; and

■ b. In paragraph (b) by adding, in numerical order, entry ''252.226–7001'' to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Oct 2003) (Section 8021 of Pub. L. 107–248).

* * * * *

■ 4. Section 252.226–7001 is revised to read as follows:

252.226–7001 Utilization of Indian organizations, Indian-owned economic enterprises, and native Hawaiian small business concerns.

As prescribed in 226.104, use the following clause:

Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Oct 2003)

(a) *Definitions.* As used in this clause—

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any ''Native'' as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

Native Hawaiian small business concern means an entity that is—

(1) A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to—

(1) For matters relating to Indian organizations or Indian-owned economic enterprises: U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS–2626–MIB, Washington, DC 20240–4000. The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns: Department of Hawaiian Home Lands, PO Box 1879, Honolulu, HI 96805. The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made—

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000 for which further subcontracting opportunities may exist.

[FR Doc. 03–24629 Filed 9–30–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2002–D024]

Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task Orders

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 801(b) of the National Defense Authorization Act for Fiscal Year 2002. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services.

DATES: Effective date: October 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before December 1, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002-D024 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002-D024.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS section 237.170, Approval of contracts and task orders for services, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

Section 801 of Public Law 107–107 established a series of requirements impacting the acquisition of services in DoD. On May 31, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) issued a policy memorandum that established a review structure and process for the acquisition of services in accordance with section 801(d). The policy memorandum is available on the World Wide Web at http://www.acq.osd.mil/dpap.

This interim DFARS rule implements section 801(b) of Public Law 107–107 by establishing approval requirements for contracts and task orders for services. The rule prohibits the acquisition of services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD, unless certain approval requirements are met. With respect to services acquisitions through a contract or task order awarded by an agency other than DoD, the rule requires approval in accordance with department or agency procedures. Each of the three

military departments has developed a ''Management and Oversight of Acquisition of Services Process'' to provide a review structure for services acquisitions, as required by the May 31, 2002, memorandum. The military departments are working to implement this infrastructure, which will include approval levels for services acquired through another agency's contract.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because FAR part 37 already requires the use of performance-based contracting to the maximum extent practicable. This DFARS rule establishes internal DoD approval requirements to manage compliance with the existing FAR requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D024.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 801(b) of the National Defense Authorization Act for Fiscal Year 2002, which requires DoD to establish and implement a management structure for the procurement of services. Section 801(b) became effective upon enactment on December 28, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ *Therefore, 48 CFR part 237 is amended as follows:*

■ 1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Sections 237.170 through 237.170–3 are added to read as follows:

237.170 Approval of contracts and task orders for services.

237.1701–1 Scope.

This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through—

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.170–2 Prohibition on acquisition of services.

Unless approval is obtained in accordance with 237.170–3, do not acquire services through use of a contract or task order that'

(a) Is not performance based; or

(b) Is awarded by an agency other than DoD.

237.170–3 Approval requirements.

(a) Acquisition of services through a DoD contract or task order that is not performance based.

(1) For acquisitions at or below $50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $50,000,000, obtain the approval of the senior procurement executive.

(b) Acquisition of services through any contract or task order awarded by an agency other than DoD. Obtain approval in accordance with department or agency procedures.

[FR Doc. 03–24627 Filed 9–30–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH47

Endangered and Threatened Wildlife and Plants; Delisting of the *Berberis* (=*Mahonia*) *sonnei* (Truckee barberry)

AGENCY: Fish and Wildlife Service Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) have determined that it is appropriate to delist or remove *Berberis* (=*Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened Plants. This determination is based on a thorough review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). *Berberis sonnei* has been synonymized with *B. repens,* a common and wide-ranging taxon with a distribution from California northward to British Columbia and Alberta, and eastward to the Great Plains. This rule eliminates Federal protection for *Berberis sonnei* under the Act.

DATES: This rule is effective October 1, 2003.

ADDRESSES: The administrative record for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825–1888 (telephone: 916–414–6600).

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Susan Moore, at the above address (telephone: 916–414–6600; facsimile: 916–414–6713).

SUPPLEMENTARY INFORMATION:

Background

Berberis (=*Mahonia*) *sonnei* is a small colonial evergreen shrub known only from a 280-yard (250-meter) section of the Truckee River floodplain in the town of Truckee, Nevada County, CA. LeRoy Abrams described *Berberis sonnei* as *Mahonia sonnei* in 1934. McMinn (1939) transferred *Mahonia sonnei* to the genus *Berberis*. Separation of *Berberis* and *Mahonia* at the generic level is in dispute among taxonomists. The generic name *Berberis* will be used throughout this discussion following Yoder-Williams (1985, 1986, 1987).

The collections amateur botanist Charles Sonne made from 1884 to 1886 around the Truckee River in Nevada County, CA, provided the material from which the *Berberis sonnei* type later was taken. Sonne placed his collections in *B. aquifolium,* which at the time was the only suitable name to which he could refer his specimens (Roof 1974).

LeRoy Abrams (1934) determined that Sonne's specimens were not *Berberis aquifolium* and recognized them as a new species, *B. sonnei,* in his revision of the western barberries. Abrams distinguished the new species from *B. aquifolium* by the numerous small teeth on the leaf margins, dull color of underside leaf surfaces, and presence of papillae (small round or conic projections), concluding that these characters indicated a closer relationship with *B. repens.*

Sonne's material, and an 1881 collection by Marcus Jones at Soda Springs, Nevada County, CA, were the only specimens of *Berberis sonnei* available to botanists for many years. The actual location of Jones's collection has never been determined conclusively; it possibly was the same area later collected by Sonne (U.S. Fish and Wildlife Service 1984). Howard McMinn searched unsuccessfully for *B. sonnei* for his 1939 treatment of California shrubs. A 1944 collection from an unknown site on the Truckee River was placed in *B. repens* and went unnoticed by botanists for nearly 30 years. In 1965, an examination of Sonne's field notes revealed a reference to *B. aquifolium,* which likely could have been *B. sonnei,* from Deer Creek in Placer County, CA, but the locality is undocumented by a specimen (Roof 1974). *Berberis sonnei* was not relocated until a 1973 collection by Tahoe-Truckee high school student, Cathy Kramer, from the site presumably visited by Sonne nearly 90 years earlier (Roof 1974).

Taxonomic relationships between members of the *Berberis aquifolium* complex, which includes *B. repens* and *B. sonnei,* have long been confused. Abrams (1934) and McMinn (1939) both recognized a close relationship between *B. sonnei* and *B. repens.* McMinn (1939) first questioned the validity of *B. sonnei,* observing that *B. sonnei* perhaps was ''only a more upright form of'' *B. repens.* Yoder-Williams (1985, 1986, 1987) attributed frequent misclassification of herbarium specimens to the use of taxonomic characters incapable of consistently separating taxa of the group because they failed to account for variability throughout the range of the complex.

Yoder-Williams (1985, 1986, 1987) evaluated the diagnostic value of *Berberis* characters, including presence of papillae, glossiness of upper and lower leaf surfaces, plant height, and leaf tooth spination. As a result of his evaluation, Yoder-Williams concluded in several unpublished manuscripts that an analysis of possible characters to separate *Berberis sonnei* from both *B. repens* and *B. aquifolium* as treated by Abrams (1934) "'failed to produce any clear distinctions,'" and that the taxon *B. sonnei* should be reduced to synonymy under *B. repens.* He recommended further field work and a comprehensive taxonomic revision of the entire group.

Michael Williams (1993) based his treatment of California *Berberis* on his taxonomic studies of selected members of the *B. aquifolium.* Williams's treatment of the California taxa followed earlier authors (Scoggan 1978) in placing *B. repens* as a variety of *B. aquifolium,* and additionally synonymized *B. sonnei* with *B. aquifolium* var. *repens.* The latter is a wide-ranging taxon with a distribution from the Peninsular Ranges of southern California northward to British Columbia and eastward to the Great Plains.

In the *Flora of North America* (Whittemore 1997), both *Berberis aquifolium* var. *repens* and *B. sonnei* are considered to be synonyms for *B. repens. Berberis repens* occurs in open forest, grassland, and shrubland. Whittemore (1997) notes that Sonne's collections from Truckee are considered to be an aberrant form of *B. repens,* and that subsequent collections from this population show the morphology typical of *B. repens* (Whittemore 1997). The range for *B. repens* is similar to that described for *B. aquifolium* ssp. *repens.*

Previous Federal Action

Federal Government actions on *Berberis sonnei* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *B. sonnei* as an endangered species. We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. *Berberis sonnei* was included in the July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *B. sonnei,* to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and our July 1, 1975, publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, publication (43 FR 17909). We published the final rule to list *Berberis sonnei* as an endangered species on November 6, 1979 (44 FR 64246).

On February 2, 1997, we received a petition to delist Truckee barberry (*Mahonia sonnei* [*sic*]) from the National Wilderness Institute. However, in April 1995, the enactment of Public Law 104–6 (P.L. 104–6) prohibited the Service from expending any of the remaining appropriated funds for the final determinations and listing of plants and animals under the Act. Subsequent Listing Priority Guidance, published on December 5, 1996 (61 FR 64479), identified all delisting actions as Tier 4, and deferred action on all delisting packages until Fiscal Years 1998 and 1999. As a result of this guidance we were unable to address the petition to delist the species. In May 1998, the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25508) identified all delisting actions as Tier 2 priority actions. Beginning in 1999, funding for work on delisting actions was provided through the recovery program rather than the listing program (64 FR 57114, published October 22, 1999). The basis for the National Wilderness Institute petition was original taxonomic data error. We published a proposed rule to remove *Berberis sonnei* from the Federal List of Endangered and Threatened Plants on September 3, 2002 (67 FR 56254), based on information indicating that *B. sonnei* is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Act. The proposed rule also served as our combined 90-day and 12-month finding on this petition.

Summary of Issues and Recommendations

In the September 3, 2002, proposed rule (67 FR 56254) and associated notifications, we invited all interested parties to submit comments or information that might contribute to the final delisting determination for this species. The public comment period ended November 4, 2002. We contacted

and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We established an Internet web site for electronic submittal of comments and hearing requests by any party. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested three individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed rule by the close of the comment period. We received comments from two parties, including one designated peer reviewer. The comment is addressed in the following summary. We did not receive any requests for a public hearing.

Issue: Both commenters agreed with us that the morphological work and conclusion of both Michael Yoder-Williams and Alan Whittemore regarding the taxonomy of *Berberis sonnei* are scientifically sound as far as existing evidence, but requested that a molecular analysis of *B. sonnei* be conducted to determine if the molecular evidence correlates with the morphological evidence before delisting *B. sonnei.*

Our Response: We base our delisting decisions upon the best available commercial and scientific information. Currently, no one has performed a molecular analysis of *Berberis sonnei*. After a review of all available data, we have made the determination that *B. sonnei* is not a discrete taxonomic entity and does not meet the definition of a species. Therefore, our recommendation to delist *B. sonnei* remains unchanged. If new information becomes available through molecular analyses that shows that *B. sonnei* is a discrete taxonomic entity, we will reexamine the threats to determine if it should be listed again.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, or removing species from listed status. We may list a species as endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting a species. According to 50 CFR 424.11(d) of our regulations, we may delist a species if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

We have carefully assessed the best scientific and commercial information available regarding the taxonomic classification of *Berberis* (=*Mahonia*) *sonnei* and have determined that previous classification of the species is not taxonomically correct and that the entity listed as *B. sonnei* does not meet the definition of ''species'' in the Act. Therefore, we have determined that it is appropriate to delist or remove *Berberis* (=*Mahonia*) *sonnei* from the List of Endangered and Threatened Plants.

The five factors affecting the species, as described in section 4(a)(1) of the Act, and their current application to *Berberis* (=*Mahonia*) *sonnei* (Abrams) McMinn (Truckee barberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Berberis repens,* with which *B. sonnei* has been combined, is a common species ranging from California northward to British Columbia and Alberta and eastward to the Great Plains (Whittemore 1997). This wide-ranging taxon is not threatened. Although urbanization and other activities may destroy or modify its habitat in localized areas, there is no evidence that habitat destruction or modification threaten the continued existence of *B. repens.*

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule adding *Berberis sonnei* to the endangered species list cited removal of plants from the one known population as a threat because *Berberis* species are widely used as ornamentals. Because *Berberis repens,* with which *B. sonnei* has been combined, is common and wide-ranging, removal of plants for ornamental purposes does not threaten this species.

C. *Disease or predation.* Neither disease nor predation were cited as threats in the final rule to list *Berberis sonnei* as an endangered species, and they do not threaten the common and wide-ranging taxon *B. repens*, with which *B. sonnei* has been combined.

D. *The inadequacy of existing regulatory mechanisms.* There is no evidence that the common and wide-ranging *Berberis repens*, with which *B. sonnei* has been combined, requires regulatory mechanisms to sustain it. The California Department of Fish and Game tentatively plans to prepare a proposal to delist *B. sonnei* sometime in the future (Sandra Morey, California Department of Fish and Game, pers. comm. 2001).

E. *Other natural or manmade factors affecting its continued existence.* The final rule listing *Berberis sonnei* as an endangered species cited low seed set and seed viability as threats to the one known population. Neither of these factors threatens the common and wide-ranging *B. repens*, with which *B. sonnei* has been combined.

In summary, our regulations at 50 CFR 424.11(d) state that a species may be delisted if—(1) It becomes extinct, (2) it recovers, and/or (3) the original classification data were in error. We believe current scientific information demonstrates that *Berberis sonnei* does not represent a valid taxonomic entity and, therefore, does not meet the definition of ''species'' in section 3(15) of the Act. In addition, we have determined that *B. repens*, with which *B. sonnei* has been combined, is not an endangered or threatened species. We, therefore, conclude that *B. sonnei* no longer warrants listing under the Act.

Effects of the Rule

This action removes *Berberis sonnei* from the List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act no longer apply to this species. Therefore, interstate commerce, import, and export of *B. sonnei* are no longer prohibited under the Act. In addition, Federal agencies no longer are required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *B. sonnei*. The use of *B. sonnei* must comply with State regulations. There is no designated critical habitat for this species.

Future Conservation Measures

There are no specific preservation or management programs for *Berberis sonnei*. Section 4(g)(1) of the Act requires us to monitor for at least 5 years species that are delisted due to recovery. Because *B. sonnei* is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this plant species following its delisting.

Effective Date

This rule relieves an existing restriction. Therefore, in accordance with 5 U.S.C. 553(d), we have determined that good cause exists to

make this rule effective immediately. Delay in implementation of this delisting could cost government agencies staff time and monies on conducting section 7 consultations. Relieving the existing restrictions associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation.

Paperwork Reduction Act

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has a current valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Author

The primary author of this document is Kirsten Tarp, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Section 17.12(h) is amended by removing the entry for *Berberis sonnei* (=*Mahonia s.*), Truckee barberry, under ''FLOWERING PLANTS,'' from the List of Endangered and Threatened Plants.

Dated: September 23, 2003.

Marshall Jones,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–24858 Filed 9–30–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 68, No. 190

Wednesday, October 1, 2003

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 03–22]

RIN 1557–AC77

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC75

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2003–47]

RIN 1550–AB81

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Asset-Backed Commercial Paper Programs and Early Amortization Provisions

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

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing to amend their risk-based capital standards by removing a sunset provision in order to permit sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) to continue to exclude from their risk-weighted asset base those assets in asset-backed commercial paper (ABCP) programs that are consolidated onto sponsoring banking organizations' balance sheets as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The removal of the sunset provision is contingent upon the agencies implementing alternative, more risk-sensitive risk-based capital requirements for credit exposures arising from involvement with ABCP programs. See Section I of the **SUPPLEMENTARY INFORMATION** for discussion of a related joint interim final rule published concurrently with this notice of proposed rulemaking.

The agencies also are proposing to require banking organizations to hold risk-based capital against liquidity facilities with an original maturity of one year or less that organizations provide to ABCP programs, regardless of whether the organization sponsors the program or must consolidate the program under GAAP. This treatment recognizes that such facilities expose banking organizations to credit risk and is consistent with the industry's practice of internally allocating economic capital against this risk associated with such facilities. A separate capital charge on liquidity facilities provided to an ABCP program would not be required if a banking organization must or chooses to consolidate the program for purposes of risk-based capital.

In addition, the agencies are proposing a risk-based capital charge for certain types of securitizations of revolving retail credit facilities (for example, credit card receivables) that incorporate early amortization provisions. The effect of these capital proposals will be to more closely align the risk-based capital requirements with the associated risk of the exposures.

Finally, the agencies are proposing to amend their risk-based capital standards by deleting tables and attachments that summarize risk categories, credit conversion factors, and transitional arrangements.

DATES: Comments on the joint notice of proposed rulemaking must be received by November 17, 2003.

ADDRESSES: Comments should be directed to:

OCC: You should send comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–22, 250 E Street, SW., Washington, DC 20219. Due to delays in the delivery of paper mail in the Washington area and at the OCC, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can make an appointment to inspect and photocopy the comments by calling the Public Information Room at (202) 874–5043.

Board: Comments should refer to Docket No. R–1162 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G

Street, NW., Washington, DC 20552, Attention: No. 2003–47.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–47.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–47.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–47 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Mauricio Claver-Carone, Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

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

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

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654, David W. Riley, Project Manager, Supervision Policy, (202) 906–6669; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Asset-Backed Commercial Paper Programs

Background

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

In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, ''Consolidation of Variable Interest Entities'' (FIN 46), requiring the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[2] FIN 46 likely will result in the consolidation of many ABCP programs onto the balance sheets of banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, the sponsors of ABCP programs normally have not been required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets will have to include all of the program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their September 30, 2003 balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower both the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

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

Because of the limited risks, in a related joint interim rule published elsewhere in today's **Federal Register**, the agencies amended their risk-based capital standards to permit sponsoring banking organizations to exclude ABCP program assets that must be consolidated by the organization under FIN 46 from risk-weighted assets for purposes of calculating the risk-based capital ratios through the end of the first quarter of 2004. The agencies also amended their risk-based capital rules to exclude from tier 1 and total risk-based capital any minority interest in sponsored ABCP programs that are

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

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

consolidated under FIN 46. Exclusion of minority interests associated with consolidated ABCP programs is appropriate when such programs' assets are not included in a sponsoring organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. This interim risk-based capital treatment will expire on April 1, 2004. The period during which the interim rule is in effect provides the agencies with additional time to develop appropriate risk-based capital requirements for banking organizations' sponsorship and other involvement with ABCP programs and to receive comments from the industry on this proposal.

The interim risk-based capital treatment does not alter any accounting requirements as established by GAAP or the manner in which banking organizations report consolidated on-balance sheet assets. In addition, the risk-based capital treatment set forth in the interim final rule and its proposed continuation in this joint notice of proposed rulemaking does not affect the denominator of the tier 1 leverage capital ratio, which would continue to be based primarily on on-balance sheet assets as reported under GAAP. Thus, as a result of FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio.

In contrast to most other cases where minority interests in consolidated subsidiaries are included as a component of tier 1 capital and, hence, are incorporated into the tier 1 leverage capital ratio calculation, minority interests related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46 are not to be included in tier 1 capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization would likely be lower than it would be if only the ABCP program assets were consolidated. The agencies do not anticipate that the exclusion of minority interests related to consolidated ABCP programs assets would significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the amount of equity in ABCP programs generally is small relative to the capital levels of the sponsoring organizations.

Proposed Risk-Based Capital Treatment for ABCP Exposures

In this notice of proposed rulemaking, the agencies are proposing to amend their risk-based capital standards by removing the April 1, 2004 sunset provision so that ABCP program assets consolidated under FIN 46 and any associated minority interests continue to be excluded from risk-weighted assets and tier 1 capital, respectively, when sponsoring banking organizations calculate their tier 1 and total risk-based capital ratios. The proposed removal of the sunset provision is contingent upon the agencies implementing an alternative, more risk-sensitive approach to the risk exposures arising from ABCP programs.

Accordingly, the agencies are proposing to amend their risk-based capital requirements to assess more appropriate capital charges against the credit exposures that arise from ABCP programs, including liquidity facilities with an original maturity of one year or less (that is, short-term liquidity facilities). The agencies believe that this proposal would result in a capital requirement that is more commensurate with the credit risk to which banking organizations are exposed as a result of their sponsorship and other involvement with ABCP programs. The capital charge for short-term liquidity facilities that are provided to ABCP programs generally would apply even if FIN 46 would not require the program to be consolidated.

Liquidity facilities extended to ABCP programs are commitments to lend to, or purchase assets from, the programs in the event that funds are needed to repay maturing commercial paper. Typically, this need for liquidity is due to a timing mismatch between cash collections on the underlying assets in the program and scheduled repayments of the commercial paper issued by the program. Currently, liquidity facilities with an original maturity of over one year (that is, long-term liquidity facilities) are converted to an on-balance sheet credit equivalent amount using the 50 percent credit conversion factor. Short-term liquidity facilities are converted to an on-balance sheet credit equivalent amount utilizing the zero percent credit conversion factor. As a result, such short-term facilities currently are not subject to a risk-based capital charge.

In the agencies' view, a banking organization that provides liquidity facilities to ABCP programs is exposed to credit risk regardless of the tenure of the liquidity facilities. For example, an ABCP program may draw on a liquidity facility at the first sign of deterioration in the credit quality of an asset pool to buy out the assets and remove them from the program. In such an event, a draw exposes the banking organization providing the liquidity facility to credit risk. The agencies believe that the existing risk-based capital rules do not adequately reflect the risks associated with short-term liquidity facilities extended to ABCP programs.

Although the agencies are of the view that liquidity facilities expose banking organizations to credit risk, the agencies also believe that the short tenure of commitments with an original maturity of one year or less exposes banking organizations to a lower degree of credit risk than longer tenure commitments. This difference in degree of credit risk exposure should be reflected in any potential capital requirement. The agencies, therefore, are proposing to convert short-term liquidity facilities provided to ABCP programs to on-balance sheet credit equivalent amounts utilizing the 20 percent credit conversion factor, as opposed to the 50 percent credit conversion factor applied to commitments with an original maturity of greater than one year. This amount would then be risk-weighted according to the underlying assets or the obligor, after considering any collateral or guarantees, or external credit ratings, if applicable. For example, if a short-term liquidity facility provided to an ABCP program covered an asset-backed security (ABS) externally rated AAA, then the amount of the security would be converted at 20 percent to an on-balance sheet credit equivalent amount and assigned to the 20 percent risk category appropriate for AAA-rated ABS.[3]

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

For example, assume a banking organization provides a program-wide credit enhancement covering 10 percent of the underlying asset pools in an ABCP program and pool-specific liquidity facilities covering 100 percent

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

of each of the underlying asset pools. The banking organization would be required to hold capital against 10 percent of the underlying asset pools because it is providing the program-wide credit enhancement. The banking organization also would be required to hold capital against 90 percent of the liquidity facilities it is providing to each of the underlying asset pools. Moreover, if a banking organization had to consolidate ABCP program assets onto its balance sheet for risk-based capital purposes because, for example, the organization was not the sponsor of the program, the organization would not be required also to hold risk-based capital against any credit enhancements or liquidity facilities that cover those same program assets.

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

The agencies also are proposing that banking organizations that are subject to the market risk capital rules would not be permitted to apply those rules to any liquidity facilities held in the trading book. Rather, organizations will be required to convert the notional amount of all liquidity facilities to ABCP programs using the appropriate credit conversion factor to determine the credit equivalent amount for liquidity facilities that are structured or characterized as derivatives or other trading book assets. Thus, for example, all liquidity facilities to ABCP programs with an original maturity of one year or less will be subject to a 20 percent conversion factor as described above, regardless of whether the exposure is carried in the trading account or the banking book. The agencies request comment on this prohibition and its implications.

In order for a liquidity facility, either short-or long-term, provided to an ABCP program not to be considered a recourse obligation or a direct credit substitute, draws on the facility must be subject to a reasonable asset quality test that precludes funding assets that are 60 days or more past due or in default. Assets that are past due 60 days or more generally are considered ineligible for financing based upon standard industry practice and rating agency guidelines for trade receivables. The funding of assets past due 60 days or more using a liquidity facility exposes the institution to a greater degree of credit risk compared to the purchase of assets of a more current nature. It is the agencies' view that liquidity facilities that are eligible for the 20 percent or 50 percent conversion factors should not be used to fund assets with the higher degree of credit risk typically associated with seriously delinquent assets.

In addition, if the assets a banking organization would be required to fund pursuant to a liquidity facility are initially externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, the liquidity facility must contain provisions that, prior to any draws, reduce the banking organization's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests. In other words, the amount of coverage provided by the liquidity facility must decrease as assets that meet the asset quality test decrease so that the liquidity facility would cover only those assets satisfying the asset quality test. If the asset quality tests were violated, the liquidity facility would be considered a direct credit substitute and would be converted at 100 percent as opposed to 20 or 50 percent.

Additional Risk-Based Capital Considerations

The agencies recognize that FIN 46 may affect whether consolidation is required of other VIE structures in addition to ABCP programs sponsored by banking organizations. While the current proposal would permit banking organizations to exclude from risk-weighted assets only sponsored ABCP program assets, the agencies seek comment on whether other structures or asset types affected by FIN 46 should be eligible for risk-based capital treatment similar to that proposed for banking organization-sponsored ABCP program assets. In addition, the agencies request feedback on whether banking organizations expect any difficulties in tracking these consolidated ABCP program assets on an ongoing basis. The agencies also request comment on any alternative regulatory capital approaches that should be considered, beyond what has been proposed.

II. Early Amortization Capital Charge

The Agencies also are seeking comment on the assessment of a risk-based capital charge against the risks associated with early amortization, a common feature in securitizations of revolving retail credit exposures (for example, credit card receivables). When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the nature of the underlying assets. The early amortization provision often present in securitizations of revolving retail credit facilities increases the likelihood that investors will be repaid before being subject to any risk of significant credit losses. For example, if a securitized asset pool begins to experience credit deterioration to the point where the early amortization provision is triggered, then the asset-backed securities begin to pay down rapidly. This occurs because, after an early amortization provision is triggered, if new receivables are generated from the accounts designated to the securitization trust, they are no longer sold to investors, but instead are retained on the sponsoring banking organization's balance sheet.

Early amortization provisions raise several distinct concerns about the risks to selling banking organizations. First, the seller's interest in the securitized assets effectively is subordinated to the interests of the investors by the payment allocation formula applied during early amortization. Investors effectively get paid first, and, as a result, the seller's residual interest likely will absorb a disproportionate share of credit losses.

Second, early amortization can create liquidity problems for selling organizations. For example, a credit card issuer must fund a steady stream of new credit card receivables when a securitization trust is no longer able to purchase new receivables due to early amortization. The selling organization must either find an alternative buyer for the receivables or else the receivables will accumulate on the seller's balance sheet, creating the need for another source of funding and potentially the need for additional regulatory capital.

Third, the first two risks to the selling banking organization can create an incentive for the seller to provide implicit support to the securitization transaction—credit enhancement beyond any pre-existing contractual obligations—to prevent an early amortization. Incentives to provide implicit support are, to some extent, present in other types of securitizations because of concerns about damage to the selling organization's reputation and its ability to securitize assets going forward if one of its transactions performs poorly. However, the early amortization provision creates additional and more direct financial incentives to prevent early amortization through the provision of implicit support.

This is not the first time that the agencies have addressed the question of whether to impose a capital charge on securitizations of revolving credit exposures incorporating early amortization provisions. On March 8, 2000, the agencies published a notice of proposed rulemaking on recourse and direct credit substitutes (65 FR 12320). In that proposal, the agencies proposed a fixed conversion factor of 20 percent to be applied to the amount of assets under management in all revolving securitizations that contained early amortization features, in recognition of the risks associated with these structures. The agencies acknowledge that the March 2000 proposal was not particularly risk sensitive and would have required the same amount of capital for all securitizations of revolving credit exposures that contained early amortization features, regardless of the risk present in the securitization transaction. In a subsequent November 2001 rulemaking (66 FR 59614), which implemented many of the proposals in the March 2000 proposal, the agencies reiterated their concerns with early amortization, indicating that the risks associated with securitization, including those posed by an early amortization feature, are not fully captured in the current capital rules.

In the interim, the Basel Committee on Banking Supervision (BSC) has set forth a more risk-sensitive proposal that would assess capital against securitizations of revolving exposures with early amortization features based on key indicators of risk, such as excess spread levels. Virtually all securitizations of revolving retail credit facilities that include early amortization provisions rely on excess spread as an early amortization trigger. For example, early amortization generally commences once excess spread falls below zero for a given period of time. International supervisors recognize that there is a connection between early amortization and excess spread levels. In a separate rulemaking, the agencies currently are seeking comment on the proposals the BSC has set forth for large, internationally active banking organizations.[4] The risk-based capital charge, on which comment is sought in this proposed rulemaking for the exposures arising from early amortization structures, is based on the proposal set forth by the Basel Supervisors Committee.[5]

The agencies believe that the risks associated with early amortization exist for all banking organizations that utilize securitizations of revolving exposures to fund their operations. Further, the agencies acknowledge that while early amortization events are infrequent, an increasing number of securitizations have been forced to unwind and repay investors earlier than planned. Given these concerns, the agencies are requesting comment on whether to impose a more risk-sensitive approach for assessing capital against securitizations of revolving retail credit exposures that incorporate early amortization provisions, which would apply to all banking organizations that use these vehicles to fund their operations.

Such an early amortization capital charge would be applied to securitizations of revolving retail credit facilities that include early amortization provisions, which are expected predominantly to be credit card securitizations. Since risk-based capital already is held against the on-balance sheet seller's interest, such a capital charge would be assessed against only the off-balance sheet investors' interest and only in the event that the excess spread in the transaction has declined to a predetermined level. The proposed capital requirement would assess increasing amounts of risk-based capital as the level of excess spread approaches the early amortization trigger (typically, a three-month average excess spread of zero). Therefore, as the probability of an early amortization event increases, the capital charge against the off-balance sheet portion of the securitization also would increase.

At this time, the agencies are only requesting comment on whether to assess risk-based capital against securitizations of revolving retail credit exposures (defined to include personal and business credit card accounts), even though there are some transactions that securitize revolving corporate exposures, such as certain collateralized loan obligations. The agencies are considering the appropriateness of applying an early amortization capital charge to securitizations of non-retail revolving credit exposures and request comment on this issue.

The maximum risk-based capital requirement that would be assessed under the proposal would be equal to the greater of (i) the capital requirement for residual interests or (ii) the capital requirement that would have applied if the securitized assets were held on the securitizing banking organization's balance sheet. The latter capital charge generally is 8 percent for credit card receivables. For example, if a banking organization, after securitizing a credit card portfolio, retains a combination of an interest-only strips receivable, a spread account, and a subordinated tranche that equaled 12 percent of the transaction, then under the agencies' risk-based capital standards the organization would be assessed a dollar-for-dollar capital charge against the 12 percent of retained, subordinated securitization exposures, net of any associated deferred tax liabilities. In this example, there would be no incremental charge for early amortization risk. Alternatively, if the amount of the retained exposures were less than 8 percent, which is the risk-based capital charge for credit card receivables held on the balance sheet, then the charge against the retained securitization exposures plus any early amortization capital charge would be limited to 8 percent. Potentially, if the exposure were limited by contract, the risk-based capital requirement could be limited to that contractual amount under the low-level exposure rule.

In order to determine whether a banking organization securitizing revolving retail credit facilities containing early amortization provisions must hold risk-based capital against the off-balance sheet portion of its securitization (that is, the investors' interest), the three-month average excess spread must be compared against the difference between (i) the point at which the securitization trust would be required by the securitization documents to trap excess spread (spread trapping point) in a spread or reserve account and (ii) the excess spread level at which early amortization would be triggered. This differential would be referred to as the excess spread differential (ESD). If the securitization documents do not require excess spread to be trapped, then for purposes of this calculation the spread trapping point is deemed to be 450 basis points higher than the early amortization trigger. If such a securitization does not employ the concept of excess spread as a transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal

[4] On August 4, 2003, the agencies published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** seeking public comment on the implementation of the new Basel Capital Accord in the United States. The ANPR presents an overview of the proposed implementation in the United States of the advance, approaches to determining risk-based capital requirements for credit and operational risk.

[5] The credit conversation factors used in this proposed rulemaking mirror in the agencies' July 2003 Advanced Notice of Proposed Rulemaking for non-controlled early amortization of uncommitted retail credit lines.

balance of the investors' interest at the securitization's inception, regardless of the level of the transaction's excess spread. Once the difference between the spread trapping point and the early amortization trigger is determined, this difference must be divided into four equal segments.

For example, if the spread trapping point is 4.5 percent and the early amortization trigger is zero, then the 450 basis point difference would be divided into four equal segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the off-balance sheet investors' interest if a securitization's three-month average excess spread equaled or exceeded the spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are assigned to each segment in descending order beginning at the spread trapping point as the securitization approaches early amortization as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT

Segment of excess spread differential	Credit conversion factor (percent)
450 bp or more	0
Less than 450 bp to 337.5 bp	5
Less than 337.5 bp to 225 bp	10
Less than 225 bp to 112.5 bp	50
Less than 112.5 bp	100

In this example, if the three-month average excess spread is greater than 450 or equal to basis points, the banking organization would not incur a risk-based capital charge for early amortization. However, once the three-month average excess spread declines below 450 basis points, a positive credit conversion factor would be applied against the outstanding principal balance of the off-balance sheet investors' interest to calculate the credit equivalent amount of assets that is to be risk weighted according to the asset type, typically the 100 percent risk weight category.

On the other hand, if the spread trapping point instead were 6 percent and the early amortization trigger were 2 percent, then the ESD would be 4 percent, resulting in four equal segments of 100 basis points. The 5 percent credit conversion factor would be applied to the off-balance sheet investors' interest when the three-month average excess spread declined to between 6 percent and 5 percent.

The agencies seek comment on whether to adopt such a treatment of securitization of revolving credit facilities containing early amortization mechanisms. Would such a treatment satisfactorily address the potential risks such transactions pose to originators? Are there other approaches, treatments, or factors that the agencies should consider? Comments also are invited on the interplay and timing between this proposal and the proposed capital treatment for securitization structures contained in the agencies' July 2003 advanced notice of proposed rulemaking regarding the implementation of the proposed Basel Capital Accord.

III. Elimination of Summary Sections of Rules Text

The agencies also are proposing to amend their risk-based capital standards by deleting tables and attachments that summarize the risk categories, credit conversion factors, and transitional arrangements. These tables and attachments have become outdated and unnecessary because the substance of these summaries is included in the main text of the risk-based capital standards. Furthermore, these summary tables and attachments were originally provided to assist banking organizations unfamiliar with the new framework during the transition period when the agencies' risk-based capital requirements were initially implemented. Deleting the tables and attachments will remove unnecessary regulatory text.

IV. Regulatory Analysis

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this proposed rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The agencies believe that this proposed rule should not impact a substantial number of small banking organizations because such organizations typically do not sponsor ABCP programs, provide liquidity facilities to such programs, or engage in securitizations of revolving retail credit facilities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC believes that exclusion of consolidated ABCP program assets from risk-weighted assets for risk-based capital purposes will not result in a significant impact for national banks because the exclusion of consolidated ABCP program assets is designed to offset the effect of FIN 46 on risk-based capital. With respect to the proposed capital treatment of liquidity facilities, because national banks that provide liquidity facilities to ABCP programs currently exceed regulatory minimum capital requirements, the OCC does not believe these banks will be required to raise additional capital. Finally, while the OCC and the other Federal banking agencies do not currently collect data on the excess spread levels for individual revolving securitizations, the OCC does not believe that the proposed capital charge on revolving securitizations will have a significant impact on the capital requirements of national banks because currently, most revolving securitizations are operating with excess spread levels above the proposed capital triggers.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies

have sought to present their proposed rules in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rules easier to understand.

List of Subjects

12 CFR Part 3

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

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

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

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter 1

Authority and Issuance

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

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

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

2. Appendix A to part 3 is amended as follows:

A. In section 1, paragraphs (c)(3) and (c)(30) are republished.

B. In section 2, paragraph (a)(3) is revised.

C. In section 3, paragraphs (b)(2)(ii), (b)(3)(i), and (b)(4)(i) are revised; and new paragraph (b)(3)(ii) is added.

D. In section 4:

i. Paragraphs (a)(5) through (a)(16) are redesignated as paragraphs (a)(7) through (a)(18); newly redesignated paragraphs (a)(15) through (a)(18) are redesignated as paragraphs (a)(16) through (a)(19); and new paragraphs (a)(5), (a)(6) and (a)(15) are added.

ii. Paragraphs (j) and (k) are revised;

iii. New paragraphs (l) and (m) are added.

E. In section 5, Tables 1 through 4 are removed.

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines and Definitions

* * * * *

(c) * * *

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

* * * * *

(30) *Sponsor* means a bank that:

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

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

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

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

* * * * *

Section 2. Components of Capital

* * * * *

(a) * * *

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

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in a nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A.

* * * * *

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

* * * * *

(b) * * *

(2) * * *

(ii) Unused portion of commitments, including home equity lines of credit, and eligible liquidity facilities (as defined in accordance with section 4(l)(2) of this appendix A) provided to asset-backed commercial paper programs, in form or in substance, with an original maturity exceeding one-year [17]; and

* * * * *

(3) * * * (i) Trade-related contingencies which are short-term self-liquidating instruments used to finance the movement of goods and are collateralized by the underlying shipment (an example is a commercial letter of credit); and

(ii) Unused portion of eligible liquidity facilities (as defined in accordance with section 4(l)(2) of this appendix A) provided to an asset-backed commercial paper program, in form or in substance, with an original maturity of one year or less.

(4) * * * (i) Unused portion of commitments, including liquidity facilities not provided to asset-backed commercial paper programs, with an original maturity of one year or less;

* * * * *

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

* * * * *

(a) * * *

(5) *Early amortization trigger* means a contractual requirement that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

(6) *Excess spread* generally means gross finance charge collections and other income received by the trust or special purpose entity minus certificate interest, servicing fees, charge-offs, and other trust or special purpose entity expenses.

* * * * *

(15) *Revolving retail credit* means an exposure to an individual or a business where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as personal or business credit card accounts).

* * * * *

(j) *Asset-backed commercial paper programs subject to consolidation.* (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

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

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

(3) If a bank either elects not to exclude consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

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

(l) *Liquidity facility provided to an asset-backed commercial paper program.* (1) *Noneligible liquidity facilities treated as recourse or direct credit substitute.* Liquidity facilities extended to asset-backed commercial paper programs that do not meet the criteria for an eligible liquidity facility provided to an asset-backed commercial paper program in accordance with section 4(l)(2) of this appendix A must be treated as recourse or as a direct credit substitute, and assessed the appropriate risk-based capital charge in accordance to section 4 of this appendix A.

(2) *Eligible liquidity facility.* In order for a liquidity facility provided to an asset-backed commercial paper program to be eligible for either the 50 percent or 20 percent credit conversion factors under section 3(b)(2) or 3(b)(3)(ii) of this appendix A, the liquidity facility must satisfy the following criteria:

(i) At the time of draw, the liquidity facility must be subject to a reasonable asset quality test that:

(A) Precludes funding of assets that are 60 days or more past due or in default; and

(B) If the assets that a liquidity facility is required to fund are externally rated securities (at the time they are transferred into the program), the facility must be used to fund only securities that are externally rated investment grade at the time of funding. If the assets are not externally rated at the time they are transferred into the program, then they are not subject to this investment grade requirement.

(ii) The liquidity facility must provide that, prior to any draws, the bank's funding obligation is reduced to cover only those assets that satisfy the funding criteria under the asset quality test of the liquidity facility.

(m) *Early amortization.* (1) *Additional capital charge for revolving retail securitization with early amortization trigger.* A bank that originates a securitization of revolving retail credits that contains early amortization triggers must risk weight the off-balance sheet portion of such a securitization (investors' interest) by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor in accordance with Table F in section 4(m)(3) of this appendix A, and then assigning the resulting credit equivalent amount to the appropriate risk weight category pursuant to section 3(a) of this appendix A. In order to determine the appropriate credit conversion factor, the bank must compare the most recent three-month average excess spread level of the securitization to the excess spread ranges in Table F of section 4(m)(3) of this appendix A, and apply the corresponding credit conversion factor.

(2) *Excess spread differential.* Before the bank can apply Table F in section 4(m)(3) of this appendix A, the bank must calculate the upper and lower bounds for each excess spread range. To calculate the upper and lower bounds, the bank must first determine the excess spread differential of the securitization. The excess spread differential is equal to the difference between the point at which the bank is required by the securitization to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). If the securitization does not require excess spread to be diverted to a spread or reserve account at a certain excess spread level, the spread differential is equal to 4.5 percentage points. If the securitization does not use excess spread as an early amortization trigger, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

(3) *Excess spread differential segments.* Once the excess spread differential is determined, the standard excess spread differential value must be calculated by dividing the excess spread differential by 4. The upper and lower bounds for each of the excess spread differential segments is calculated using the spread trapping point and the standard excess spread differential value in accordance with the formulas provided in Table F of section 4(m)(3) of this appendix A. As provided in Table F of section 4(m)(3) of this appendix A, if the three-month excess spread level equals or exceeds the spread trapping point, the credit conversion factor is zero (resulting in no capital charge on the investors' interest). If the spread trapping point exceeds the three-month excess spread level, then the corresponding credit conversion factor applied to the investors' interest increases in steps from 5 percent to 100 percent as the three-month excess spread level approaches the early amortization trigger.

TABLE F.—CREDIT CONVERSION FACTORS FOR REVOLVING RETAIL SECURITIZATIONS WITH EARLY AMORTIZATION TRIGGERS

Excess Spread Ranges	Credit conversion factor (percent)
Excess spread equals or exceeds the spread trapping point	0
Upper Bound < Spread Trapping Point Lower Bound = Spread Trapping Point—(1 × SESDV)	5
Upper Bound < Spread Trapping Point—(1 × SESDV) Lower Bound = Spread Trapping Point—(2 × SESDV)	10
Upper Bound < Spread Trapping Point—(2 × SESDV) Lower Bound = Spread Trapping Point—(3 × SESDV)	50
Upper Bound < Spread Trapping Point—(3 × SESDV) Lower Bound = None	100

Note: SESDV is the standard excess spread differential value.

(5) *Limitations on risk-based capital requirements.* For a bank subject to the early amortization requirements in section 4(m) of this appendix A, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credits is limited to the greater of the risk-based capital requirement for residual interests, as defined in accordance with section 4(a)(14) of this appendix A, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

3. Appendix B to part 3 is amended by adding a new sentence at the end of

section 2, paragraph (a) to read as follows:

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

* * * * *

Section 2. Definitions

* * * * *

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

Dated: September 4, 2003.

John D. Hawke,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

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

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

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

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

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

a. Section II.A.1.c. is revised.

b. In section III.B.3—

i. Paragraph a., *Definitions,* is revised.

ii. Paragraph g., *Limitations on risk-based capital requirements,* is redesignated as paragraph h.

iii. A new paragraph g., *Early amortization triggers,* is added.

iv. A new paragraph iv., is added to the redesignated paragraph h.

c. Section III.B.6. is revised.

d. In section III.D—

i. The last sentence of the introductory paragraph is removed.

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

iii. In paragraph 3, *Items with a 20 percent conversion factor,* the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added.

iv. The first sentence in paragraph 4., *Items with a zero percent conversion factor,* is revised.

v. Footnote 54 is removed and reserved.

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

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

* * * * *

II. * * *

A. * * *

1. * * *

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

* * * * *

III. * * *

B. * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

iv. *Early amortization triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

v. *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at

the time of draw that precludes funding against assets that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

vi. *Excess Spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

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

xv. *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

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

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

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

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

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

* * * * *

g. *Early Amortization Triggers.* i. A bank that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitization's most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level

at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the bank is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded the securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning at the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

Segment of excess spread differential	Credit conversion factor (percent)
450 bp or more	0
Less than 450 bp to 337.5 bp	5
Less than 337.5 bp to 225 bp	10
Less than 225 bp to 112.5 bp	50
Less than 112.5 bp	100

h. *Limitations on risk-based capital requirements.* * * *

iv. For a bank subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

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

* * * * *

III. * * *

D. * * *

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

c. Commitments are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs-,(in form or in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the bank is obligated solely for its *pro rata* share, only the bank's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio. Banks that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less that banks provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banks that comply with the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, liquidity facilities should contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests.

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

* * * * *

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

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

* * * * *

Section 2. Definitions * * *

(a) *** Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section III.B.3.a. of

[54] [Reserved]

appendix A of this part) to asset-backed commercial paper programs (as defined in section III.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

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

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

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

2. In Appendix A to part 225, the following amendments are proposed:

a. Section II.A.1.c. is revised.

b. In section III.B.3—

i. Paragraph a., *Definitions,* is revised.

ii. Paragraph g., *Limitations on risk-based capital requirements,* is redesignated as paragraph h.

iii. A new paragraph g., *Early amortization triggers,* is added.

iv. A new paragraph iv., is added to the redesignated paragraph h.

c. Section III.B.6. is revised.

d. In section III.D—

i. The last sentence of the introductory paragraph is removed.

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

iii. In paragraph 3, *Items with a 20 percent conversion factor,* the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added.

iv. The first sentence in the paragraph 4., *Items with a zero percent conversion factor,* is revised.

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

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

* * * * *

II. * * *

A. * * *

1. * * *

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

* * * * *

III. * * *

B. * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

iv. *Early Amortization Triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

v. *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank holding company's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

vi. *Excess Spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

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

viii. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an

asset not held for trading purposes; and the fair value of a trading asset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

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

xv. *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

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

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

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

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

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

* * * * *

g. *Early Amortization Triggers.* i. A bank holding company that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitization's most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank holding company must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the organization is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In

a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded the securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning with the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

Segment of excess spread differential	Credit conversion factor (percent)
450 bp or more	0
Less than 450 bp to 337.5 bp	5
Less than 337.5 bp to 225 bp	10
Less than 225 bp to 112.5 bp	50
Less than 112.5 bp	100

h. *Limitations on risk-based capital requirements.* * * *

iv. For a bank holding company subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank holding company continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank holding company provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the banking organization's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

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

* * * * *

III. * * *

D. * * *

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

c. Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs (in form or in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the banking organization is obligated solely for its pro rata share, only the organization's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio. Banking organizations that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less, that banking organizations provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banking organizations that are subject to the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, liquidity facilities must contain provisions that, prior to any draws, reduces the banking organization's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests.

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

* * * * *

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

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

* * * * *

Section 2. Definitions * * *

(a) * * * Covered positions exclude all positions in a banking organization's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section III.B.3.a. of appendix A of this part) to asset-backed commercial paper programs (as defined in section III.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 12, 2003.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

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

PART 325—CAPITAL MAINTENANCE

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

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

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

a. Section I.A.1. is revised.

b. In section II.B.5 —

i. Paragraph (a), *Definitions,* is revised.

ii. Paragraph (h), *Limitations on risk-based capital requirements,* and paragraph (i), *Alternative Capital Calculation for Small Business Obligations,* are redesignated as paragraphs (i) and (j) respectively.

iii. A new paragraph (h), *Early amortization triggers,* is added.

iv. A new paragraph (4), is added to the redesignated paragraph (i).

c. Section II.B.6. is revised.

d. In section II.D—

i. The last sentence of the introductory paragraph is removed;

ii. In paragraph 2., *Items With a 50 Percent Conversion Factor,* the four undesignated paragraphs are designated 2.a. through 2.d. and newly designated 2.c. is revised;

iii. In paragraph 3, *Items With a 20 Percent Conversion Factor,* the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added;

iv. The first sentence in paragraph 4., *Items With a Zero Percent Conversion Factor,* is revised.

e. Tables III and IV are removed.

APPENDIX A TO PART 325—STATEMENT OF POLICY ON RISK-BASED CAPITAL

* * * * *

I. * * *

A. * * *

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

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

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

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

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

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

(c) Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

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

* * * * *

II. * * *

B. * * *

5. * * *

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

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

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

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

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

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

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

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

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

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

(ii) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding loans, or other financial claims, or that back off-balance-sheet items against which risk-based capital must be maintained;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of credit losses from the underlying assets. Purchased subordinated interests that are credit-enhancing interest-only strips are subject to the higher capital charge specified in section II.B.5.(f) of this appendix A;

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

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

(vi) Purchased loan servicing assets if the servicer:

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

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

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

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

(viii.) Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section II.B.5.a. of this appendix).

(5) *Early amortization triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

(6) *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

(7) *Excess spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

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

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

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

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

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

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

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

(i) The mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan, and

(ii) the servicer's entitlement to reimbursement in not subordinated.

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

(14) *Recourse* means an arrangement in which a bank retains, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

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

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

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

(B) Is responsible for making mortgage servicer cash advances (unless the advances are not a recourse obligation because they meet the conditions specified in section II.B.5(a)(12) of this appendix A), or

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

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

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

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

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

(vii) Clean-up calls. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance are not recourse arrangements.

(viii.) Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section II.B.5.a. of this appendix).

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

from a third party, except that purchased credit-enhancing I/Os are residual interests.

(16) *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

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

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

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

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

(21) *Traded position* means a position or asset-backed security that is retained, assumed or issued in connection with a securitization that is externally rated, where there is a reasonable expectation that, in the near future, the rating will be relied upon by

(i) Unaffiliated investors to purchase the position; or

(ii) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

(h) *Early Amortization Triggers.* i. A bank that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitizations' most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the bank is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded a securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning at the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

Segment of excess spread differential	Credit conversion factor (percent)
450 bp or more	0
Less than 450 bp to 337.5 bp	5
Less than 337.5 bp to 225 bp	10
Less than 225 bp to 112.5 bp	50
Less than 112.5 bp	100

i. *Limitations on risk-based capital requirements.* * * *

(4) For a bank subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

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

* * * * *

II. * * *

D. * * *

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

* * * * *

c. Commitments, for risk-based capital purposes, are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs (in form and in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain *material adverse change* clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. Banks that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate

credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less that banks provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banks that are subject to the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section II.B.5. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, eligible liquidity facilities must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests. * * *

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

* * * * *

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

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

Section 2. Definitions.

(a) * * * Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section II.B.5.a. of appendix A of this part), to asset-backed commercial paper programs (as defined in section II.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

Dated at Washington, DC, this 5th day of September 2003.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

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

PART 567—CAPITAL

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

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

2. Section 567.1 is amended by adding definitions of early amortization trigger, excess spread, qualifying liquidity facility, and revolving retail credit in alphabetical order to read as follows:

§ 567.1 Definitions.

* * * * *

Early amortization trigger. The term *early amortization trigger* means a contractual requirement that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

* * * * *

Excess spread. The term *excess spread* means gross finance charge collections and other income received by the trust or special purpose entity minus certificate interest, servicing fees, charge-offs, and other trust or special purpose entity expenses.

* * * * *

Qualifying liquidity facility. The term *qualifying liquidity facility* means a liquidity facility provided to an ABCP program provided that:

(1) At the time of the draw, the liquidity facility must be subject to a reasonable asset quality test that precludes funding against or purchase of assets from the ABCP program that are 60 days or more past due or in default;

(2) If the assets that the liquidity facility is required to fund are externally rated securities, (at the time they are transferred into the program) the facility can be used to fund only exposures that are externally rated investment grade at the time of funding; and

(3) The liquidity facility must provide that, prior to any draws, the savings association's funding obligation is reduced to cover only those assets that satisfy the funding criteria under the asset quality test of the liquidity facility.

* * * * *

Revolving retail credit. The term *revolving retail credit* means an exposure to an individual or a business where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as personal or business credit card accounts).

* * * * *

3. Amend § 567.5 by revising paragraph (a)(1)(iii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the consolidated assets are excluded from risk-weighted assets pursuant to § 567.6 (a)(3);

* * * * *

4. Amend § 567.6 by:

A. Revising paragraph (a)(2)(ii)(B);

B. Redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iii)(A);

C. Adding paragraph (a)(2)(iii)(B);

D. Revising paragraph (a)(2)(iv)(A);

E. Removing paragraph (a)(3)(iv);

F. Adding paragraph (b)(9).

§ 576.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(ii) * * *

(B) Unused portions of commitments, including home equity lines of credit and qualifying liquidity facilities with an original maturity exceeding one year except those listed in paragraph (a)(2)(iv) of this section; and

* * * * *

(iii) *20 percent credit conversion factor (Group C).* * * *

(B) Undrawn portions of qualifying liquidity facilities with an original maturity of one year or less that a savings association provides to ABCP programs.

(iv) *Zero percent credit conversion factor (Group D).* (A) Unused commitments, with the exception of liquidity facilities provided to ABCP

programs, with an original maturity of one year or less.

* * * * *

(b) * * *

(9) *Early amortization.* (i) A savings association that originates a securitization of revolving retail credits that contains early amortization triggers must risk weight the off-balance sheet portion of such a securitization (investors' interest) by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor as provided by paragraph (b)(9)(ii) or (iii) of this section and then assigning the resultant credit equivalent amount to the appropriate risk weight category.

(ii) *Calculation of credit conversion factor.* (A) The credit conversion factor to be applied to such a securitization generally is a function of the securitizations' most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account (spread trapping point), and the excess spread level at which an early amortization of the securitization is triggered (early amortization trigger). This difference between the spread trapping point and the early amortization trigger is the excess spread differential.

(B) The excess spread differential must then be divided by four to create the standard excess spread differential value. This value will be used to determine the appropriate credit conversion factor in accordance with Table D of this section. The upper and lower bounds for each of the excess spread differential segments is calculated using the spread trapping point and the standard excess spread differential value in accordance with the formulas provided in Table D of this section. However, if the securitization documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the excess spread differential is equal to 4.5 percentage points.

(C) *(1)* If the three-month average excess spread equals or exceeds the securitization's spread trapping point, then the credit conversion factor is equal to zero. If the three-month average excess spread is less than the spread trapping point, then the credit conversion factors (5 percent, 10 percent, 50 percent, and 100 percent) are then assigned to each of the four equal excess spread differential segments in descending order, beginning at the spread trapping point as the securitization approaches early amortization, in accordance with Table D of this section.

(2) If the securitization does not use the excess spread as an early amortization trigger, then a 10 percent credit conversion factor is applied to the current outstanding principal balance of the investors' interest.

TABLE D.—CALCULATION OF CREDIT CONVERSION FACTORS FOR EARLY AMORTIZATIONS

Excess spread differential segments	Excess spread ranges	Credit Conversion factor (percent)
1	Excess spread equals or exceeds the trapping point	0
2	Upper Bound < Spread Trapping Point	5
	Lower Bound = Spread Trapping Point—(1 × SESDV)	
3	Upper Bound < Spread Trapping Point—(1 × SESDV)	10
	Lower Bound = Spread Trapping Point—(2 × SESDV)	
4	Upper Bound < Spread Trapping Point—(2 × SESDV)	50
	Lower Bound = Spread Trapping Point—(3 × SESDV)	
5	Upper Bound < Spread Trapping Point—(3 × SESDV)	100
	Lower Bound = None	

Note: SESDV is the standard excess spread differential value.

(iii) *Limitations on risk-based capital requirements.* For a savings association subject to the early amortization requirements in paragraph (b)(9) of this section, the total risk-based capital requirement for all of the savings association's exposures to a securitization of revolving retail credits is limited to the greater of the risk-based capital requirement for residual interests or the risk-based capital requirement for the underlying securitized assets calculated as if the savings association continued to hold the assets on its balance sheet.

* * * * *

Dated: September 9, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–23757 Filed 9–30–03; 8:45 am]

BILLING CODE 4801–01–P; 6720–01–P; 6210–01–P; 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Suretyship and Guaranty; Maximum Borrowing Authority

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to revise its rules concerning maximum borrowing authority to permit federally insured, State-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). This amendment will provide FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under State law.

NCUA is also proposing adding a provision to its regulations that allows a Federal credit union (FCU) to act as surety or guarantor on behalf of its members. The proposal establishes certain requirements to ensure that FCUs, and FISCUs if permitted under state law to act as a surety or guarantor, are not exposed to undue risk.

DATES: The NCUA must receive comments on or before December 1, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General

Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. New Sections 701.20 and 741.221—Suretyship and Guaranty

The NCUA Board proposes adding a new § 701.20 to recognize that an FCU, as part of its incidental powers, may act as a guarantor or surety on behalf of a member. 12 U.S.C. 1757(17). Acting as a guarantor or surety on behalf of an FCU member meets the definition of an incidental power because it: Is convenient or useful to an FCU in extending credit to its members; is a logical extension of an FCU's authority to make loans to its members and to provide letters of credit on behalf of members; and involves risks that are similar in nature to the risks involved in an FCU's lending activity. 12 CFR 721.2.

The proposal notes that it does not apply to the guaranty of public deposits or the assumption of liability to pay member accounts. The FCU Act provides express authority for an FCU to guaranty public deposits. 12 U.S.C. 1767(b). The requirements governing the assumption of liability to pay member accounts are in the FCU Act. 12 U.S.C. 1757(b)(1)(B) and (3). Since an FCU may already engage in these activities under the authority and requirements in the FCU Act, it is not necessary to include these activities as part of this rulemaking.

The proposal defines suretyship, guaranty agreements and principal. While both a surety and a guarantor agree to be bound for the principal, there are distinctions. A principal is the ''person primarily liable, for whose performance of his obligation the guaranty or surety has become bound.'' *Blacks Law Dictionary* 1193 (6th ed. 1990). Under a suretyship agreement, a surety is bound with its principal to pay or perform an obligation to a third party. *Id.* at 1441–42. Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to perform. *Id.* at 705. In addition, while a surety is usually bound with the principal by the same instrument, which is executed simultaneously by both the surety and the principal, a guarantor usually enters into a separate agreement with the third party, which the principal does not join. *Id.* at 1441–42. A guaranty agreement is usually entered into before or after that of principal and is often founded on a separate consideration from that supporting the contract of the principal. *Id.*

The proposal includes three requirements designed to ensure the safety and soundness of surety and guaranty agreements. The Board has the same safety and soundness concerns for FISCUs authorized under state law to enter into surety and guaranty agreements as it does for FCUs. Accordingly, the Board proposes to apply the requirements to FISCUs through new § 741.220. The requirements are modeled after the requirements in the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) rules on guaranty and suretyship. 12 CFR 7.1017 and 560.60.

The first two requirements are substantially similar to the requirements in the OTS rule. The first requires that the obligation under the agreement be limited to a fixed amount and limited in duration. Without a requirement to limit the amount and duration of the agreement, an FCU may take on more risk than it anticipated in the agreement.

The second provision requires that an FCU's performance under the agreement create a loan that is permissible under applicable law because the nature of a surety or guaranty agreement is a loan. The FCU is lending its credit and, in effect, is lending to its member. An FCU may not use a surety or guaranty agreement as a mechanism to avoid the applicable regulatory requirements for loans. These regulatory requirements are in place to ensure the safety and soundness of the transactions. For example, if an FCU will be a surety or guarantor for a member's obligation for a business loan, it must comply with the member business loan requirements. 12 CFR part 723.

This provision also highlights that an FCU must treat its obligation under the agreement as a contractual commitment to advance funds to the principal under the loans-to-one-borrower limits and loans to insider restrictions. 12 CFR 560.60(b)(3), 701.21(c)(5), (d) and 723.8. Again, these requirements are in place to ensure the safety and soundness of the transaction and should not be circumvented through the use of a surety or guaranty agreement.

The third provision addresses collateral requirements and parallels requirements in the OCC and OTS rules. Depending on the nature of the collateral, an FCU must have collateral equal to 100 or 110 percent of the obligation. The 100 percent collateral category includes cash, obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. Because the value of some of these types of collateral can fluctuate, the proposal requires that the collateral have a market value at the close of each business day equal to 100 percent of the FCU's total potential liability.

The 110 percent collateral category includes real estate and marketable securities. If the collateral is real estate, an FCU must establish the value of the collateral by an evaluation or appraisal of the real estate consistent with NCUA's appraisal regulation. 12 CFR 722.3. If the collateral is marketable securities, an FCU must be authorized to invest in the securities and must ensure that the value of the securities is equal to 110 percent of the obligation at all times. To protect against risk of loss, an FCU must perfect its security interest in the collateral.

B. Section 741.2—Maximum Borrowing Authority

The NCUA Board proposes to amend § 741.2 to create a waiver process for FISCUs that want to exceed the general borrowing limitations in this section provided certain requirements have been met. The FCU Act limits an FCU's maximum borrowing authority to ''50 per centum of its paid-in and unimpaired capital and surplus.'' 12 U.S.C. 1757(9). In 1971, shortly after the passage of Title II of the FCU Act, which authorized the NCUA to provide share insurance, the Board issued regulations governing various aspects of the share insurance program. In particular, the Board, noting that some states had no limitations on borrowing, issued a regulation that made it a requirement for share insurance that all federally insured credit unions comply with the FCU Act's borrowing limitations. 36 FR 10844, June 4, 1971.

While safety and soundness concerns could potentially exist with an FISCU borrowing over the statutory limit for an FCU absent necessary safeguards to ensure due diligence by the FISCU and State and Federal supervisory review, the Board recognizes that it may be appropriate in certain circumstances and on a case-by-case basis to allow an FISCU to exceed the statutory limitation currently imposed on FCUs. The Board proposes allowing an FISCU to apply for a waiver from § 741.2 up to the amount permitted under State law or by the State regulator. Prerequisites for a waiver request include that appropriate safeguards must be in place and that either State law permits the higher limit than that specified in the FCU Act for which the FISCU seeks approval, which is verified by the State regulator, or the State regulator has duly approved a

higher limit than that allowed under State law. Instances in which it would seem appropriate to seek a waiver could include a situation where, for example, the borrowing has minimal risk associated with it but the FISCU is unable to enter into the transaction because of the regulatory prohibition. Circumstances presenting minimal risk could be, for example, a transaction where the FISCU is acting as a co-borrower with a member and the member has provided collateral sufficient to cover its obligation if the member defaults on the loan. The waiver process will permit regional directors to take into consideration the circumstances of the FISCU, its community, and members, and provide additional flexibility to address particular needs or benefits on a case-by-case basis. The proposed regulation contemplates that FISCUs wishing to engage in particular transactions, programs or projects, which would otherwise take their borrowings above the regulatory limitation, will have the opportunity to apply for a waiver, which will include a thorough explanation of the business purposes and strategies the FISCU has in place to mitigate risk, so that regional directors may make an informed determination regarding safety and soundness.

To apply for a waiver, an FISCU must submit its request to the appropriate regional director. The request must include a detailed analysis of the safety and soundness implications of the waiver, a proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation, a letter from the State regulator approving the request, and an explanation demonstrating the need for a higher limit. The regional director will approve the waiver request if he or she determines that the proposed borrowing limit will not adversely affect the safety and soundness of the FISCU.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposal authorizes FCUs to enter into surety and guaranty agreements and permits FISCUs to request a waiver from the maximum borrowing limitation. It is unlikely that small credit unions will participate in either of these activities. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposal that would allow FISCUs to file for a waiver from the borrowing limitations in § 741.2 is covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The NCUA Board estimates it will take an FISCU 8 hours on average to complete a waiver request. The NCUA Board also estimates, based on past interest in increased borrowing authority, that two FISCUs per year will request a waiver. Based on this, the NCUA Board estimates that the proposed rule will have an estimated net burden of 16 additional hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule will apply directly to federally insured state-chartered credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the States, on the connection between the National government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

D. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Add new § 701.20 to read as follows:

§ 701.20 Suretyship and guaranty.

(a) *Scope.* This section authorizes a Federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A suretyship binds a Federal credit union with its principal

to pay or perform an obligation to a third person. Under a *guaranty* agreement, a Federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The Federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;

(2) The Federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The Federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the Federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the Federal credit union has perfected its security interest (for example, if the collateral is a printed security, the Federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the Federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the Federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the Federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the Federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the Federal credit union is authorized to invest in. The Federal credit union must ensure that the value of the security is 110 percent of the obligation at all times during the term of the agreement.

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

4. Amend § 741.2 by designating the existing paragraph as (a) and adding new paragraphs (b), (c) and (d) to read as follows:

§ 741.2 Maximum borrowing authority.

(a) * * *

(b) A federally insured State-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable State law or by the State regulator. The waiver request must include:

(1) Written approval from the State regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured State-chartered credit union.

5. Add new § 741.221 to read as follows:

§ 741.221 Suretyship and guaranty requirements.

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under State law.

[FR Doc. 03–24761 Filed 9–30–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to update its rule regarding conversion of insured credit unions to mutual savings banks. This proposal, seeking to accomplish full disclosure and transparency, would require a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union would have to disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. The proposal also would require the converting credit union to disclose that conversion to a mutual savings bank could lead to members having diminished voting rights and losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders. NCUA believes this proposal would enhance a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and would help converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

DATES: Comments must be received on or before December 1, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Pub. L. 105–21. Section 202 of CUMAA amended the provisions

of the Federal Credit Union Act (Act) concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

It has been almost five years since NCUA first amended Part 708a to comply with CUMAA. In that time, NCUA has grown concerned that many credit union members do not fully appreciate the effect the conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank.

Discussion

There are increasing indications that a high percentage of credit unions that convert to mutual savings banks have or will undertake a second conversion to become a stock institution. While it is certainly within the rights of the credit union membership to exercise their right to convert and change the structure of the institution, converting credit unions generally do not adequately discuss in the notice to credit union members the likelihood and ramifications of a second conversion to a stock institution.

While State laws may vary, under the Office of Thrift Supervision's regulations, there is no minimum waiting period for a newly chartered Federal mutual savings bank to convert to a stock institution. As a result, it is possible for a credit union that converts to a Federal mutual savings bank to attempt to convert to a stock institution in less than two years. In most cases, a conversion from a mutual savings bank to a stock institution will result in a loss of ownership interest for a majority of its members because most members do not purchase stock in the institution.

While CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. The credit union must provide for NCUA's review a copy of the member notice, ballot, and all other written materials the credit union has provided or intends to provide to its members in connection with the conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it begins to distribute them to its members. *Id.* This enables the credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. The credit union can then decide whether to move forward with the often expensive, labor intensive conversion process with a full and complete understanding of NCUA's position. NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote to ensure that all reasonable measures to accomplish full disclosure and transparency have been taken to inform the credit union membership of the potential consequences of their vote.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, that all required notices are timely, and that the membership vote is conducted in a fair and legal manner.

NCUA believes that full and proper disclosure to members that they could potentially lose their ownership interest in their credit union if it ultimately becomes a stock institution is key to describing the purpose and subject matter of the member vote adequately. Failing to discuss this integral risk associated with the conversion adequately is tantamount to providing misleading information. Most of the conversion packets NCUA has reviewed since CUMAA went into effect have contained some information relating to this issue, but have not addressed it sufficiently to make this point clear to members.

A charter conversion is a sophisticated transaction with consequences that might not surface for a number of years and that are often not recognizable at the time of conversion to even the most astute members. As a result, few members can make a truly informed decision about how the conversion will affect their ownership interest in the credit union unless the credit union provides them with this information. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders.

The Act provides that a member of a Federal credit union is entitled to only one vote irrespective of the number of shares held by that member. The ''one member one vote'' structure gives an equal voice to all members, even those of modest means. 12 U.S.C. 1760. Most, if not all, state credit unions also are required to follow this approach. This is not usually the case with mutual savings banks. In most instances, mutual savings banks allot votes based on the amount of a member's deposits. Commonly, one vote is granted for each $100 a member has on deposit up to a maximum of 1,000 votes. As noted above, NCUA believes that disclosing that members could have lesser voting power in the mutual savings bank than they do in the credit union is central to describing the purpose and subject matter of the member vote in an adequate and proper fashion. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union.

NCUA's conversion rule echoes CUMAA by providing that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. 12 CFR 708a.10. This is intended to insure that management's decision to begin the conversion process is based on sound business judgment reflecting the best interests of the members. Consistent with this statutory and regulatory limitation, NCUA believes it is appropriate to require a converting credit union to disclose in the member

notice any conversion related benefits a director or senior management official may receive, including compensation not permitted in the credit union context. To be complete, this disclosure must include any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose whether it will provide any or increasing compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposed rule requires some revisions to the disclosures a converting credit union must provide to its members. It is unlikely that small credit unions will engage in these kinds of conversions. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, the NCUA has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget control number associated with part 708a is 3133–0153. The NCUA Board has determined that the proposed rule will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the States, on the connection between the National government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend § 708a.4 as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by adding paragraph (d) to read as follows:

§ 708a.4 Voting procedures.

* * * * *

(d)(1) An adequate description of the purpose and subject matter of the member vote on conversion, as required by paragraph (c) of this section, must include:

(i) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converts to a stock institution and the members do not become stockholders;

(ii) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union; and

(iii) A disclosure of any conversion related economic benefit a director or senior management official may receive including receipt of or an increase in compensation and any foreseeable stock related benefits associated with a subsequent conversion to a stock institution.

(d)(2) In connection with the disclosures required by paragraphs (d)(1)(i) through (iii) of this section, the converting credit union must include an affirmative statement, that at the time of conversion to a mutual savings bank, the credit union does or does not intend to:

(i) Convert to a stock institution;

(ii) Provide any compensation to previously uncompensated directors or increase compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials; and

(iii) Base member voting rights on account balances.

[FR Doc. 03–24762 Filed 9–30–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 series airplanes. This proposal would require a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, and corrective actions, if necessary. This proposal would also require modification of the A1 galley. These actions are necessary to prevent interference of the A1 galley with the radial stiffener on the aft pressure bulkhead, which could result in fatigue crack propagation. Fatigue crack propagation could lead to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–125–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–125–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that interference between the top corners of the A1 galley and the radial stiffener on the aft pressure bulkhead could damage the aft pressure bulkhead structure of certain Boeing Model 767–300 series airplanes. It was discovered in production that for certain A1 aft galleys, the dimensions exceeded the design dimensional envelope by three inches. Investigation revealed that the top corners of these A1 galleys could cause interference with the radial stiffener on the aft pressure bulkhead. This condition, if not corrected, could result in fatigue crack propagation, leading to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003, which describes procedures for performing a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, and corrective actions, if necessary. The corrective actions include completing a detailed inspection for damage to the insulation and aft pressure bulkhead structure and repairing damage if detected. This service bulletin also describes procedures for modifying the A1 galley. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Service Bulletin 767–53A0102, Revision 1, refers to BE Aerospace Service Bulletins 25–30–0079, dated April 22, 2002; and 25–30–0080, dated April 22, 2002; as additional sources of service information for accomplishment of the modification for Model 767–300 series airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Boeing service bulletin specifies that a modification be made if the A1 galley clearance is less than 1.0 inch, this proposal would require the mandatory modification of the A1 galley. The FAA has determined that, because the A1 galley is removable and may be installed on other Model 767–300 series airplanes, all affected A1 galleys should be modified.

Operators should also note that, although the Boeing service bulletin specifies that operators may contact the manufacturer for repair instructions if damage exceeds the conditions covered in the Structural Repair Manual, this proposed AD would require operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 5 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on the U.S. operator is estimated to be $520 for that airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–125–AD.

Applicability: Model 767–300 series airplanes, line numbers 754, 761, 767, 775, and 776; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference of the A1 galley with the radial stiffener on the aft pressure bulkhead, which could result in fatigue crack propagation, leading to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane; accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, per the Accomplishment Instructions of Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action: Detailed Inspection

(b) If, during the inspection required by paragraph (a) of this AD, the clearance between the corners of the A1 galley and the aft pressure bulkhead is found to be less than 1.0 inch, before further flight, perform a detailed inspection for damage to the insulation and aft pressure bulkhead structure, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003. If any damage to the insulation or cracking in the aft pressure bulkhead is detected, before further flight, repair the damage and/or cracking per the Accomplishment Instructions of the service bulletin, except where the service bulletin specifies to contact the manufacturer for repair instructions if damage exceeds the conditions covered in the Structural Repair Manual. If damage exceeds the limits specified in the Structural Repair Manual, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.,* may be used. Surface cleaning and elaborate access procedures may be required.''

Concurrent Modification

(c) Before or concurrent with the requirements of paragraph (a) of this AD, modify the A1 galley, per the Accomplishment Instructions of Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003.

Note 3: Boeing Service Bulletin 767–53A0102, Revision 1, refers to BE Aerospace Service Bulletins 25–30–0079, dated April 22, 2002; and 25–30–0080, dated April 22, 2002; as additional sources of service information for accomplishment of the modification for Model 767–300 series airplanes.

Actions Accomplished Per Previous Issue of Service Bulletin

(d) The applicable actions accomplished before the effective date of this AD per Boeing Service Bulletin 767–53A0102, dated November 21, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24848 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The actions are intended to prevent various failures of the electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–55–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 98046, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer; Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–55–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that, during ground operations or when powered in flight by the air driven generator, the electric motor of the auxiliary hydraulic pump and associated motor feeder cables failed on certain McDonnell Douglas Model MD–80, MD–90, DC–10, and MD–11 series airplanes. These failures consisted of a seized or difficult to turn rotor on the pump assembly, burnt and shorted motor feeder cables, and/or uncontained internal electric arcing failures with the electric motor. Investigation revealed that these failures may be caused by hydraulic fluid contamination to the electric motor portion of the pump, a failed rotor bearing, and/or degradation of the stator's encapsulation material. Failure of the electric motors of the hydraulic pump and associated motor feeder cables, if not corrected, could result in a fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

The subject electric motor on certain McDonnell Douglas Model MD–80, MD–90, DC–10, and MD–11 series airplanes is identical to that on the affected Model 717–200 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA has previously issued AD 2001–22–17, amendment 39–12496 (66 FR 56753, November 13, 2001), applicable to certain McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes. We have also previously issued AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. These ADs require repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical

rotation, and associated wiring resistance/voltage. Those ADs prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002, which describes procedures for repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The corrective actions involve replacing the auxiliary hydraulic pump with a serviceable pump, troubleshooting, and repairing the wiring, as applicable.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 95 airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,355, or $65 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2003–NM–55–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5200 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Initial Inspection and Testing

(b) Prior to the accumulation of 3,000 total flight hours, or within 12 months after the effective date of this AD, whichever occurs later, do an inspection of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated writing resistance/voltage per the service bulletin.

Condition 1, No Failures: Repetitive Inspections

(c) If no failures are detected during any inspection required by paragraph (b) of this AD, repeat the inspection thereafter at intervals not to exceed 5,000 flight hours.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(d) If any pump motor fails during any inspection required by paragraph (b) of this AD, before further flight, replace the failed auxiliary hydraulic pump with a serviceable pump, per the service bulletin. Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 5,000 flight hours.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection

(e) If any wiring fails during any inspection required by paragraph (b) of this AD, before further flight, troubleshoot and repair the failed wiring, per the service bulletin. Repeat the inspection at intervals not to exceed 5,000 flight hours.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on September 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24847 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions if necessary. This action is necessary to detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–270–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–270–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that during an inspection done in accordance with Jetstream Service Bulletin J41–A53–023, referenced in AD 98–24–01, amendment 39–10888 (63 FR 63975, November 18, 1998), which addresses the diaphragms in the nose cone structure, operators found damage in diaphragms 14153005–177 and –178. When those diaphragms were removed to allow for replacement, fatigue cracking was found in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11). Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, which describes procedures for various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions, if necessary, as follows:

- Repetitive detailed visual inspections of (1) the forward avionics bay doors for damage, and repair of damage within certain limits; (2) the cho-shield conductive coating for cracking, flaking, wearing, and any uneven surface; restoration of the coating, if necessary; and surface resistance tests of the coating; (3) the forward and rear faces of the station 4 bulkhead and the attached parts for damage, and repair of damage within certain limits; (4) all the aircraft

structure between the rear face of the station 4 bulkhead and station 8 for damage, and repair of damage within certain limits; and (5) all the aircraft structure between stations 8 and 11 for damage, and repair of damage within certain limits.

- Repetitive detailed visual inspections for cracks and corrosion of the surround structures for the avionics bay doors including the aft vertical closing frames, frame 8, upper gutters, corner gussets, and lower gutters.
- Repetitive radiographic and eddy current inspections for cracks and corrosion of the avionics bay doors apertures including the door frames, gutters and corner gussets.
- Repetitive radiographic and eddy current inspections of the high intensity radiated field (HIRF) seal at the avionics bay doors apertures for damage (including mechanical damage, corrosion, and exposure of the ferrex wire in the bulb of the seal), and replacement of the seal, if necessary; and surface resistance tests of the HIRF seal.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 001–06–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Service Bulletin and This Proposed AD

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting reports of inspection findings, this proposed AD would not require those actions. The FAA does not need this information from operators.

Although the service bulletin describes a detailed visual inspection, this proposed AD would require a detailed inspection.

Also, the service bulletin specifies that operators may contact the manufacturer for disposition of repairs, this proposal would require operators to repair per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAA (or its delegated agent) would be acceptable for compliance with this proposed AD.

The Planning Information in Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, states that operators may remove the HIRF seal and do a detailed visual inspection of the avionics bay door surround structure under the HIRF seal, or do a radiographic and eddy current inspection of the avionics bay door surround structure. The Accomplishment Instructions of the service bulletin do not specify that operators may choose which type of inspection to perform. This proposed AD clarifies that operators may choose to do either a detailed inspection or radiographic and eddy current inspections.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Explanation of Labor Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $185,250, or $3,250 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–270–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform detailed, radiographic, and eddy current inspections of the fuselage nose structure between stations 4 and 11 for discrepancies (including cracking, corrosion, and exposed wiring), per the Accomplishment Instructions of Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, except that reporting results of inspection findings is not required by this AD. Do the inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 landings.

(1) Prior to the accumulation of 10,000 total landings, but not before the accumulation of 7,000 total landings.

(2) Within 3,000 landings after the effective date of this AD, or at the next 8-year environmental (corrosion) inspection, whichever occurs first.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) For the inspections of the surround structure for the avionics bay doors, operators may either remove the high intensity radiated field (HIRF) seal and do a detailed inspection, or do radiographic and eddy current inspections with the HIRF seal in place.

(c) If any discrepancy is found during any inspection required by this AD, before further flight, repair per Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002. Where the service bulletin specifies contacting the manufacturer for disposition of repairs, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in British airworthiness directive 001–06–2001.

Issued in Renton, Washington, on September 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24846 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–287–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–400ER series airplanes. This proposal would require repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly. This action is necessary to prevent fatigue cracking in the aft lower lug run-out region of the deflection control track. Fatigue cracking of the deflection control track, if not detected and corrected in a timely manner, could result in the loss of the secondary load path for the outboard flap, resulting in the loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by Novemeber 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–287–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen; Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002-NM–287-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–287-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of cracked deflection control tracks on the outboard end of the outboard flaps on Boeing Model 767–300 series airplanes. These cracks all initiated in the aft lower lug run-out region. In one case, the crack initiated at inclusions that are typical of the slag products that are a result of the casting process. After a crack initiates, it is propagated by fatigue until the track fractures.

The deflection control track on Model 767–400 ER series airplanes is identical to that on the affected Model 767–300 series airplanes. However, on the Model 767–300 series airplanes the deflection control track does not act as a load path, so the Model 767–300 series airplanes are not subject to mandatory action for this condition at this time. Fatigue analysis for the Model 767–400ER series airplanes showed that the cracking should not occur before 12,000 total flight cycles. Fatigue cracking of the deflection control track for Model 767–400ER series airplanes, if not detected and corrected in a timely manner, could result in the loss of the secondary load path for the outboard flap resulting in the loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002, which describes procedures for repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,410, or $195 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–287–AD.

Applicability: All Model 767–400ER series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the aft lower lug run-out region of the deflection control track, which could result in the loss of the secondary load path for the outboard flap, resulting in loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails, accomplish the following:

Initial Inspection

(a) Before the accumulation of 12,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection for cracks in the aft lower lug of the deflection control track on the outboard flap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002.

Repetitive Inspections

(b) If no crack is detected during any HFEC inspection required in paragraph (a) of this AD, repeat the inspection at intervals not to exceed 1,200 flight cycles.

Corrective Action

(c) If any crack is detected during any HFEC inspection required by paragraph (a) of this AD, before further flight, replace the deflection control track with a new track assembly, in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002. Within 12,000 flight cycles following the replacement, perform the HFEC inspection specified in paragraph (a) of this AD, and repeat inspections as specified in paragraph (b) of this AD.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on September 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24842 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

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

Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of satellite downlink public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss final regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) regarding Registration of Food Facilities (Docket No. 2002N–0276) and Prior Notice of Imported Food Shipments (Docket No. 2002N–0278). FDA expects to publish shortly in the **Federal Register** final rules implementing each of these provisions. The purpose of the satellite downlink public meeting is to provide information on the rules to the public and to provide the public an opportunity to ask questions of clarification.

DATES: The satellite downlink public meeting will be held on Tuesday, October 28, 2003, from 1 p.m. to 3 p.m. eastern standard time. Questions submitted in advance must be received by the contact person by close of business (4:30 p.m.) on Friday, October 24, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations where the satellite downlink may be viewed. A written transcript of the meeting will be available for viewing at the Division of Dockets Management (DDM) (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and through the Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html.*

A copy of the videotaped meeting may also be viewed at DDM.

FOR FURTHER INFORMATION CONTACT: Louis J. Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: *CFSAN-FSS@cfsan.fda.gov*, for general questions about the downlink, submission of advance questions, and requests for a videotaped version of the meeting. Registration for specific downlink locations should be directed to the appropriate contact person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes four provisions in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A (Protection of Food Supply) that require the Secretary of Health and Human Services, through FDA, to develop implementing regulations on an expedited basis. These four provisions are section 305 (Registration of Food Facilities); section 307 (Prior Notice of Imported Food Shipments); section 306 (Maintenance and Inspection of Records for Foods); and section 303 (Administrative Detention). FDA expects that the agency will soon publish in the **Federal Register** final rules to implement sections 305 and 307 of the Bioterrorism Act. During the satellite downlink public meeting, FDA will explain the final rules on registration of food facilities and prior notice of imported food shipments and will answer questions. The satellite downlink public meeting will be offered in English with French and Spanish translation, and will be simulcast live in English, French, and Spanish for Mexico and North, Central, and South America (including Hawaii and Alaska).

II. Submitting Questions

Interested persons may submit questions concerning the final rules in advance of the downlink meeting. The deadline for the submission of questions is provided in the **DATES** section of this document. Questions submitted in advance will be used by the session moderator to help clarify issues of concern and provide information about the final rules. The viewing audience may telephone or fax questions to the FDA participants during the live downlink.

FDA is planning a second satellite downlink meeting during which FDA will explain the final rules that FDA intends to publish later this year to implement sections 306 and 303 of the Bioterrorism Act. That meeting will be

announced in a future **Federal Register** document.

Information about the public meetings, contact information, and the provisions of the Bioterrorism Act under FDA's jurisdiction may be found on the agency's Web site, *http://www.fda.gov/oc/bioterrorism/bioact.html.*

III. Final Rules

The final regulations that will be addressed at the satellite downlink public meeting announced in this document concern the following provisions of the Bioterrorism Act:

Section 305: Registration of Food Facilities—The Bioterrorism Act requires the owner, operator, or agent-in-charge of domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA no later than December 12, 2003. Farms, restaurants, retail food establishments, non-profit food establishments that prepare or serve food directly to the consumer, and fishing vessels not engaged in processing, as defined in 21 CFR 123.3(k), are exempt from this requirement. Also exempt are foreign facilities if the food from the facility undergoes further processing or packaging of more than a de minimus nature by another facility outside of the United States. FDA must issue final regulations no later than December 12, 2003, but facilities must register by this date in accordance with the Bioterrorism Act even if the regulations are not finalized. FDA plans to publish a registration final rule by October 10, 2003.

Section 307: Prior Notice of Imported Food Shipments—The Bioterrorism Act specifies that on or after December 12, 2003, FDA must receive prior notice of each article of food imported or offered for import into the United States. FDA must issue the final regulation by December 12, 2003. If the regulation is not final by that date, the Bioterrorism Act still requires FDA to receive prior notice of not less than 8 hours and not more than 5 days until the regulation takes effect. The agency plans to publish a prior notice final rule by October 10, 2003.

IV. Sites for Viewing the Downlink Public Meeting

A list of locations for viewing the downlink public meeting is provided in table 1 of this document.

TABLE 1.—OCTOBER 28, 2003, SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS

Locations	Contact Information
FDA New York District Office, 158–15 Liberty Ave., Jamaica, NY 11433	Marilyn Corretto, 718–662–5461; FAX: 718–662–5434; e-mail: *mcorrett@ora.fda.gov*
FDA Buffalo Office, 300 Pearl St., Buffalo, NY 14202	Robert Hart, 716–551–4461 X3142; FAX: 716–551–3813; e-mail: *Rhart@ora.fda.gov*
Plattsburgh Area, Angell Center, Plattsburgh Room, Plattsburgh State University of NY (PSUNY)	Todd Manning, 518–298–8240; FAX: 518–298–5538; e-mail: *tmanning@ora.fda.gov*
FDA Chicago District Office, 550 West Jackson, 16th floor, Chicago, IL 60661	Darlene Bailey, 312–353–7126; FAX: 312–596–4195; e-mail: *dbailey@ora.fda.gov*
Ronald V. Dellums Federal Bldg., 1301 Clay St., 3d floor, North Tower, Oakland, CA 94612	Marcia Madrigal, 510–637–3980; FAX: 510–637–3976; e-mail: *mmadriga@ora.fda.gov*
FDA/Southwest Import District, 4040 North Central Expressway, suite 300, Dallas, TX 75204	Robert Deininger, 214–253–5322; FAX: 214–253–5317; e-mail: *rdeining@ora.fda.gov*
Memphis Marriot East, 2625 Thousand Oaks Dr., Memphis, TN 38118	Sandra Baxter, 615–781–5385 X122; FAX: 615–781–5383; e-mail: *sbaxter@ora.fda.gov*
FDA Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207	Evelyn DeNike, 313–393–8109; FAX: 313–393–8139; e-mail: *edenike@ora.fda.gov*
Bishop Henry Whipple Federal Bldg., One Federal Dr., rm. G–110, Saint Paul, MN 55111–4008	Amy C. Johnson, 612–758–7131; FAX: 612–334–4134; e-mail: *acjohnso@ora.fda.gov*
Florida Department of Agriculture and Consumer Services (FDACS), George Eyster Auditorium, 3125 Connor Blvd., Tallahassee, FL 32399	Courtney Hunt, 850–942–8325; FAX: 850–942–8326; e-mail: *chunt@ora.fda.gov*
Tampa Port Authority, 1101 Channelside Dr., 1st Floor Board Room, Tampa, FL 33602	Jean Peeples, 813–228–2671 X18; FAX: 813–228–2046; e-mail: *Jpeeples@ora.fda.gov*
Miami Free Zone, 2305 NW. 107th Ave., 1st Floor Conference Room, Miami, FL 33172	Estela N. Brown, 786–437–4838; FAX: 786–437–4866; e-mail: *Ebrown1@ora.fda.gov*
FDA Atlanta District Office, 60 8th Street, NE., Atlanta, GA 30309	JoAnn Pittman, 404–253–1272; FAX: 404–253–1202; e-mail: *jpittman@ora.fda.gov*
FDA Kansas City District Office, 11630 W. 80th St., Annex Conference Room, Lenexa, KS 66214	Tywanna Paul, 913–752–2141; FAX: 913–752–2111; e-mail: *tpaul@ora.fda.gov*
FDA New England District Office, One Montvale Ave., Stoneham, MA 02180	Susan Small, 781–596–7779: FAX: 781–596–7896; e-mail: *Ssmall@ora.fda.gov*

TABLE 1.—OCTOBER 28, 2003, SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS—Continued

Locations	Contact Information
FDA Kansas City District Office, 12 Sunnen Dr., suite 122, St. Louis, MO 63143	Don Aird, 314–645–1167; FAX: 314–645–2969; e-mail: *daird@ora.fda.gov*
FDA Cincinnati District Office, 6751 Steger Dr., Cincinnati, OH 45237–3097	Bonny Carzoli, 513–679–2700 x 115.; FAX: 513–679–2771; e-mail: *bcarzoli@ora.fda.gov*
Portland Innovative Food Center, 1207 NW. Naito Pkwy., Portland, OR 97209	Alan Bennett, 503–671–9332; FAX: 503–671–9445; e-mail: *abennett@ora.fda.gov*
Lake Washington Technical College, 11605 132d Ave., NE., Kirkland, WA 98034.	Stephanie Magill, 425–483–4953; FAX: 425–483–4996; e-mail: *stephanie.magill@fda.gov*
Center for Food Safety and Applied Nutrition, U.S. FDA, Auditorium, 5100 Paint Branch Pkwy., College Park, MD 20740	Marion Allen, 301–436–2277, FAX: 301–436–2605, e-mail: *CFSAN-FSS@cfsan.fda.gov*
Texas A&M International University, WHTC Bldg., rm. 116, 5201 University, KL 262, Laredo TX 78041–1900 South Texas Community College Technology Center, 3700 West Military Hwy., McAllen, TX 78503–8807 Arizona Western College, College Union Bldg., Palo Verde Room, 2020 South Avenue 8E, Yuma, AZ 85364 PIMA Community College, 401 N. Bonita Ave., Tucson, AZ 85709 Health Services Complex, Rosecrans Bldg., 3851 Rosecrans St., San Diego, CA 92110 University of El Paso, Undergraduate Learning Center, rm. 110, 500 West University Ave., El Paso, TX 79905	Adrian Garcia, 520–281–1100, FAX: 520–281–1190, e-mail: *agarcia@ora.fda.gov*
FDA/Denver District Office, Denver Federal Center, Bldg. #20, Sixth & Kipling, Lakewood, CO 80225	Virlie Walker/Devin Koontz, 303–236–3018/3020, FAX: 303–236–3551, e-mail: *vwalker@ora.fda.gov dkoontz@ora.fda.gov*
VA Medical Center, 4th Floor Auditorium, 2202 Holcombe, Houston TX 77030	Sheryl McConnell, 713–802–7534, FAX: 713–802–7503, e-mail: *smcconne@ora.fda.gov*

The sites presented in table 1 of this document are the sites scheduled to broadcast the satellite downlink as of the publication of this document. Please check the FDA Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html* for additional sites that may be added.

V. Registration

All attendees are asked to preregister for the satellite downlink public meeting by contacting the person listed in table 1 of this document for the site you want to attend. Space is limited and registration will be closed at each site when maximum seating capacity for that site is reached. Send registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) to the contact identified in table 1 of this document at least 2 workdays before the meeting. You may register by e-mail, fax, or telephone.

If you need special accommodations due to a disability, please notify the contact person listed in table 1 of this document at least 7 days in advance of the meeting.

In addition, any interested parties with access to a satellite dish may view the downlink meetings at the following coordinates: Live simulcast in English (channel 6.8), French (channel 5.8), and Spanish (channel 6.2).

UNITED STATES (INCLUDING ALASKA AND HAWAII) AND CANADA (C-BAND: GALAXY 3C @ 95 DEGREES WEST)

Transponder	Polarization	Channel	Downlink Freq.	Audio
3	Horizontal	3	3760 MHz	6.8 English only 6.2 Spanish 5.8 French

MEXICO, SOUTH & CENTRAL AMERICA (C-BAND: PAS 9 @ 58 DEGREES WEST)

Transponder	Polarization	Channel	Downlink Freq.
Slot A Digital	Horizontal	24	4164.5 MHz

Video rebroadcasts will be played at several locations throughout the world. Dates and viewing times for the video rebroadcasts for Europe, Asia, Australia, South Africa, and New Zealand may be found on FDA's bioterrorism Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html*. Information on additional video rebroadcasts in English, Spanish,

and French will also be available at *http://www.fda.gov/oc/bioterrorism/bioact.html*.

VI. Transcripts

Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at DDM (see **ADDRESSES**) and posted on the following Web site: *http://www.fda.gov/oc/bioterrorism/bioact.html*. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, 3 weeks after the satellite downlink public meeting at a cost of 10 cents per page. A copy of the videotaped meeting may also be viewed at DDM. Or you may contact Lou Carson for a copy of the videotaped meeting and specify format and language.

Pre-event Test: A pre-event test for downlink sites will be provided on October 28 from 12 noon EST to 1 p.m. EST. During that hour, technical assistance will be available through a trouble line at 1–888–626–8730.

Dated: September 26, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–24921 Filed 9–26–03; 4:13 pm]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7567–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: The Environmental Protection Agency (the EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by OxyVinyls, LP (OxyVinyls) to exclude (or delist) a certain solid waste generated by its Houston, TX Deer Park VCM Plant from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that OxyVinyls' petitioned waste is nonhazardous with respect to the original listing criteria and that the Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process and not from a manufacturing process will adequately reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that OxyVinyls' process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: The EPA will accept comments until November 17, 2003. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by October 16, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–02–TX–OXYVINYLS.'' You may submit your comments electronically to James Harris at *harris.jamesa@epa.gov.*

You should address requests for a hearing to Steve Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: James A. Harris, Jr. (214) 665–8302.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
- A. What action is the EPA proposing?
- B. Why is the EPA proposing to approve this delisting?
- C. How will OxyVinyls manage the waste if it is delisted?
- D. When would the proposed delisting exclusion be finalized?
- E. How would this action affect states?

II. Background
- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must the EPA consider in deciding whether to grant a delisting petition?

III. The EPA's Evaluation of the Waste Information and Data
- A. What wastes did OxyVinyls petition the EPA to delist?
- B. Who is OxyVinyls and what process does it use to generate the petitioned waste?
- C. How did OxyVinyls sample and analyze the data in this petition?
- D. What were the results of OxyVinyls' analysis?
- E. How did the EPA evaluate the risk of delisting this waste?
- F. What did the EPA conclude about OxyVinyls' analysis?
- G. What other factors did the EPA consider in its evaluation?
- H. What is the EPA's evaluation of this delisting petition?

IV. Next Steps
- A. With what conditions must the petitioner comply?
- B. What happens if OxyVinyls violates the terms and conditions?

V. Public Comments
- A. How may I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

VI. Regulatory Impact

VII. Regulatory Flexibility Act

VIII. Paperwork Reduction Act

IX. Unfunded Mandates Reform Act

X. Executive Order 13045

XI. Executive Order 13084

XII. National Technology Transfer and Advancements Act

XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is the EPA Proposing?

The EPA is proposing:

(1) To grant OxyVinyls' delisting petition to have its Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The EPA would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is the EPA Proposing To Approve This Delisting?

OxyVinyls' petition requests a delisting from the K017, K019, and K020, waste listings under 40 CFR

260.20 and 260.22. OxyVinyls does not believe that the petitioned waste meets the criteria for which the EPA listed it, primarily because the Off-gas Scrubber Waste Water could be considered ''derived from'' a listed waste that has been incinerated to destroy the hazardous constituents of the listed waste. OxyVinyls also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from OxyVinyls' facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. How Will OxyVinyls Manage the Waste if It Is Delisted?

The Incinerator Offgas Treatment Scrubber Water combines with other aqueous wastes in the chemical sewer and flows by pipe to Shell Chemical L.P.'s South Effluent Treater (SET). The SET is a TPDES-permitted wastewater treatment unit which also holds a surface impoundment retrofitting variance issued by the EPA under RCRA section 3005(j)(3) in November 1988, 42 U.S.C. § 6925(j)(3). It is RCRA permitted to manage listed hazardous waste.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C.6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If OxyVinyls transports the petitioned waste to or manages the waste in any state with delisting authorization, OxyVinyls must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) they are wastes which are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' and ''derived-from'' rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. The EPA's Evaluation of the Waste Information and Data

A. What Waste Did OxyVinyls Petition the EPA To Delist?

On October 11, 2002, OxyVinyls petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, Incinerator Offgas Treatment Scrubber Water generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste under § 261.3.

Specifically, in its petition, OxyVinyls requested that the EPA grant a standard exclusion for 919,990 cubic yardsper year of the Incinerator Offgas Treatment Scrubber Water.

B. Who Is OxyVinyls and What Process Does It Use To Generate the Petitioned Waste?

The OxyVinyls facility is located at 1000 Tidal Road Deer Park, Texas in the Shell Chemical Manufacturing Complex. OxyVinyls produces ethylene dichloride (EDC) and vinyl chloride monomer (VCM). EDC is produced only for internal use to make VCM. The primary SIC code for the facility is 2869. There are also support facilities including vent incineration, VCM storage and shipping, EDC intermediate storage, cooling towers and refrigeration and compressors. OxyVinyls utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019 and K020), epichlorohydrin heavy ends from Resolution Performance Products LLC (K017) and waste oil. There are three wastewater streams generated from treatment of the off-gases from each of the two RCRA permitted incinerators. These three streams are components of the Incinerator Offgas Treatment Scrubber Water; (1) Rockbox Wastewater, which is neutralized scrubber water from the HCl (hydrochloric acid) absorption column, (2) Caustic Scrubber/Dehumidifier column blowdown, and (3) Wet Electrostatic Precipitator (WESP) blowdown. The HCl absorption column is designed to remove HCl from the combustion offgases, while the Caustic Scrubber is designed to remove both residual HCl and chlorine from the offgases, and is located downstream of the HCl absorption column. The further downstream WESP units are designed to remove particulate matter, semi-volatile metals (SVM) and low volatile metals (LVM) from the combustion offgases, including arsenic, beryllium, chromium, cadmium and lead. Dioxins will also be removed by the WESP units. Catalytic oxidizers follow the WESP units and are designed to destroy trace amounts of dioxins, but they do not generate a wastewater stream. The concentrations of constituents from these three units will be accounted for during sampling and analysis of the Offgas Treatment Scrubber Water.

OxyVinyls classified two waste streams (Rockbox Residue and Incinerator Offgas Treatment Scrubber Water), generated from the treatment of the offgas from the incinerators, as hazardous based on the ''derived from'' rule in 40 CFR 261.3(c)(2)[1]. The facility operates 24 hours per day, 7 days per week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

The Rockbox Residue was successfully delisted from hazardous waste classification by the EPA (64 FR 42033, August 3, 1999).

OxyVinyls is now petitioning the EPA for a standard exclusion of the Incinerator Offgas Treatment Scrubber Water from the K017, K019, and K020, waste listings.

C. How Did OxyVinyls Sample and Analyze the Data in the Petition?

To support its petition, OxyVinyls submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) analytical constituents of concern for K017, K019 and K020

(5) results from total oil and grease analyses

(6) multiple pH testing for the petitioned waste.

D. What Were the results of OxyVinyls' Analyses?

The EPA believes that the descriptions of the OxyVinyls analytical characterization provide a reasonable basis to grant OxyVinyls' petition for an exclusion of the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show the incinerator offgas treatment scrubber water is non-hazardous. Analytical data for the incinerator offgas treatment scrubber water samples were used in the DRAS. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA's criteria for collecting representative samples of the variations in constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below health-based levels used in the delisting decision-making. The EPA believes that OxyVinyls has successfully

[1] The EPA has not independently determined that the waste is hazardous based on the ''derived-from'' rule. Waste characterization is the responsibility of the generator of the waste. See 40 CFR 262.11. OxyVinyls made the characterization of the Incinerator Offgas Treatment Scrubber Water and requested dedisting to resolve all ambiguity about the applicability of the ''derived-from'' rule to the waste.

demonstrated that the incinerator offgas treatment scrubber water is non-hazardous.

TABLE I.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE INCINERATOR OFFGAS TREATMENT SCRUBBER WATER AT THE OXYVINYLS L.P. DEER PARK VCM PLANT[1]

Constituent	TCLP constituent analyses (mg/l)	Maximum allowable delisting concentration levels (mg/l)
Antimony	0.00586	0.0204
Arsenic	0.02	[2] 0.385
Barium	0.291	2.92
Beryllium	0.00279	0.166
Cadmium	0.00112	0.0225
Chromium	0.0823	5.0
Cobalt	0.00543	13.14
Copper	0.0636	418.00
Lead	0.011	5.00
Nickel	0.0437	1.13
Mercury	0.00038	0.0111
Vanadium	0.0222	0.838
Zinc	0.0798	2.61
Acetone	0.03	1.46
Bromoform	0.016	0.481
Bromomethane	0.0017	8.20
Bromodichloromethane	0.012	0.0719
Chloroform	0.0051	0.683
Dibromochloromethane	0.013	0.057
Iodomethane	0.001	0.19
Methylene Chloride	0.0014	0.029
2,3,7,8-TCDD Equivalent	0.000000302	0.0000926

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

E. How Did the EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D surface impoundment is the most reasonable, worst-case disposal scenario for OxyVinyls' petitioned waste. The EPA applied the most recent version of the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of OxyVinyls' petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to groundwater, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and the EPA health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the surface impoundment). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit

where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, OxyVinyls disposes of its wastewater in an NPDES permitted facility with surface impoundments (part of the Shell South Effluent Treatment system), with existing groundwater contamination sources other than the surface impoundments impacting monitoring wells in the area. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, the EPA has determined that it would be unnecessary to request groundwater monitoring data.

The EPA believes that the descriptions of OxyVinyls' hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by products in OxyVinyls' waste. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

F. What Did the EPA Conclude About OxyVinyls' Analysis?

The EPA concluded, after reviewing OxyVinyls' processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to §§ 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22 and 261.23, respectively.

G. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of OxyVinyls' petition, the EPA also considered the potential impact of the petitioned waste via non-groundwater routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from OxyVinyls' petitioned waste is unlikely. Therefore, no appreciable air releases are likely from OxyVinyls waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from OxyVinyls' waste in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from OxyVinyls' incinerator offgas treatment scrubber water. A description of the EPA's assessment of the potential impact of OxyVinyls' waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–02–TX–OxyVinyls.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste surface impoundments can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, the incinerator offgas scrubber water is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Since the waste is a liquid, the concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as groundwater.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if OxyVinyls' waste were released from a municipal solid waste surface impoundment through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that OxyVinyls incinerator offgas treatment scrubber water is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is the EPA's Evaluation of This Delisting Petition?

The descriptions of OxyVinyls' hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). The EPA believes OxyVinyls' process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. OxyVinyls' process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant OxyVinyls an exclusion for the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show OxyVinyls' process can render the incinerator offgas treatment scrubber water non-hazardous.

The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that OxyVinyls has successfully demonstrated that the incinerator offgas treatment scrubber water is non-hazardous.

The EPA therefore, proposes to grant an exclusion to OxyVinyls, in Deer Park, Texas, for the incinerator offgas treatment scrubber water described in

its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the incinerator offgas treatment scrubber water.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, OxyVinyls, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that OxyVinyls must test the incinerator offgas treatment scrubber water, below which these wastes would be considered non-hazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR Part 261, Appendix IX, Table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of OxyVinyls' treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentration analysis of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that OxyVinyls manages and disposes of any incinerator offgas treatment scrubber water that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the incinerator offgas treatment scrubber water as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal at a non-Subtitle C surface impoundment cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

OxyVinyls must complete a rigorous verification testing program on the incinerator offgas treatment scrubber water to assure that the treated incinerator offgas treatment scrubber water does not exceed the maximum levels specified in Paragraph (1). If the EPA determines that the data collected under this Paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the verification testing program consists of testing the incinerator offgas treatment scrubber water for specified indicator parameters as per Paragraph (1).

If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the treatment process is effective, OxyVinyls may request quarterly testing. The EPA will notify OxyVinyls, in writing, if and when it may replace the testing conditions in paragraph(3)(A)with the testing conditions in (3)(B).

The second part of the verification testing program is the quarterly testing of representative samples of incinerator offgas treatment scrubber water for all constituents specified in Paragraph (1). The EPA believes that the concentrations of the constituents of concern in the incinerator offgas treatment scrubber water may vary over time. Consequently this program will ensure that OxyVinyls' treatment process can effectively handle any variation in constituent concentrations in the waste.

The proposed subsequent testing would verify that OxyVinyls operates an incinerator from which an aqueous stream is generated from treating and neutralizing gasses generated in the firebox during the incineration process as it did during the initial verification testing. It would also verify that the incinerator offgas treatment scrubber water does not exhibit unacceptable levels of toxic constituents.

The EPA is proposing to require OxyVinyls to analyze representative samples of the incinerator offgas treatment scrubber water quarterly during the first year of waste generation. OxyVinyls would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B).

The EPA, per Paragraph 3(C), is proposing to end the subsequent testing conditions after the first year if OxyVinyls has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, OxyVinyls must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph 1. If operating conditions change as described in Paragraph (4); OxyVinyls must reinstate all testing in Paragraph (1). It must prove through a new demonstration that its waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must notify the EPA according to the requirements in Paragraph 6. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) would allow OxyVinyls the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, OxyVinyls must prove the effectiveness of the modified process and request approval from the EPA. OxyVinyls must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that OxyVinyls facility is properly treating the waste, OxyVinyls must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that OxyVinyls furnish these data upon request for inspection by any employee or representative of the EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 919,990 cubic yards per year of incinerator offgas treatment scrubber water generated at the OxyVinyls facility after successful verification testing.

The EPA would require OxyVinyls to file a new delisting petition under any of the following circumstances:

(a) If OxyVinyls significantly alters the manufacturing process treatment system except as described in Paragraph (4).

(b) If OxyVinyls uses any new manufacturing or production

process(es), or significantly change from the current process(es) described in its petition; or

(c) If OxyVinyls make any changes that could affect the composition or type of waste generated.

OxyVinyls must manage waste volumes greater than 919,990 cubic yards per year of incinerator offgas treatment scrubber water as hazardous until the EPA grants a new exclusion.

When this exclusion becomes final, OxyVinyls' management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. OxyVinyls must either treat, store, or dispose of the waste in an on-site facility. If not, OxyVinyls must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph 6 is to require OxyVinyls to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. OxyVinyls must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires OxyVinyls to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. The EPA may reopen a delisting decision when new information is received that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that OxyVinyls provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. OxyVinyls must provide this notification within 60 days of commencing this activity.

B. What Happens if OxyVinyls Violates the Terms and Conditions?

If OxyVinyls violates the terms and conditions established in the exclusion, the EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects OxyVinyls to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–02–TX–OxyVinyls.'' You may submit your comments electronically to James Harris at *harris.jamesa@epa.gov.*

You should submit requests for a hearing to Steven Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have

a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It 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, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 19, 2003.

William Luthans,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
* *	* * * * *
OxyVinyls, L.P., Deer Park, TX	Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after [insert publication date of the final rule] and disposed in a Subtitle D surface impoundment. For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must use the leaching specified in 40 CFR Part 261.24 to measure constituents in the incinerator offgas scrubber water. Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Beryllium-0.166; Cadmium-0.0225; Chromium-5.0; Cobalt-13.14; Copper-418.00; Lead-5.0; Nickel-1.13; Mercury-0.0111; Vanadium-0.838; Zinc-2.61 (ii) Organic Constituents Acetone-1.46; Bromoform-0.481; Bromomethane-8.2; Bromodichloromethane-0.0719; Chloroform-0.683; Dibromochloromethane-0.057; Iodomethane-0.19; Methylene Chloride-0.029; 2,3,7,8-TCDD equivalents as TEQ-0.0000926 (2) *Waste Management:* (A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls can collect one additional sample and perform expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels. (D) If the facility has not treated the waste, OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraph 3(A) and (B) as appropriate and the transmittal of the results to the EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels. (3) *Verification Testing Requirements:* OxyVinyls must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If the EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by the EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing:* After the EPA grants the final exclusion, OxyVinyls must do the following: (i) Within 60 days of this exclusion's becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water. (ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1).

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility/Address	Waste description
	(iii) Within sixty (60) days after this exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid waste regulations. (B) *Subsequent Verification Testing:* Following written notification by the EPA, OxyVinyls may substitute the testing conditions in (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling Verification sampling can be performed on a single annual sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1). (C) *Termination of Testing:* (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that the EPA stop quarterly testing. After the EPA notifies OxyVinyls in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) *Changes in Operating Conditions:* If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from the EPA. (5) *Data Submittals:* OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Oklahoma/Texas Section, the EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when the EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener* (A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If OxyVinyls fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility/Address	Waste description
	(D) If the Regional Administrator or his delegate determines that the reported information does require action by the EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) Notification Requirements: OxyVinyls must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

* * * * * * *

[FR Doc. 03–24910 Filed 9–30–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16 and 39

[FAR Case 2003–008]

RIN 9000–AJ74

Federal Acquisition Regulation; Share-in-Savings Contracting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to solicit comments to assist in the implementation of section 210 of the E-Government Act of 2002, Public Law 107–347. Section 210 authorizes Governmentwide use of Share-in-Savings (SIS) contracts for information technology (IT). SIS contracts offer an innovative approach for encouraging industry to share creative technology solutions with the Government. Through a properly structured SIS contract, agencies may lower costs and improve service delivery without large ''up front'' investments by having the contractor provide the technology investment and allowing the contractor to share with the Government in the savings achieved. The Councils seek the public's comment on the challenges associated with SIS contracts, such as the establishment of quantifiable baselines and a reasonable return on investment (ROI) over the life-cycle of the investment, so that this tool can be applied effectively to improve mission performance.

DATES: Interested parties should submit comments in writing on or before October 31, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to *ANPR.2003–008@gsa.gov.*

Please submit comments only and cite ANPR FAR case 2003–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAR case 2003–008.

SUPPLEMENTARY INFORMATION:

A. Background

Section 210 of the E–Government Act amends the Armed Services Procurement Act and the Federal Property and Administrative Services Act to authorize the use of SIS contracts for IT. Share-in-Savings is an innovative, performance-based concept that is intended to help an agency leverage its limited resources to improve or accelerate mission-related or administrative processes and lower costs for the taxpayer. Under an SIS contract, the contractor finances the work and then shares with the agency in the savings generated from contract performance. Pursuant to the authority in section 210, which sunsets at the end of fiscal year 2005, agencies are permitted to enter into SIS contracts for up to 5 years, and, with appropriate approval, up to 10 years. Agencies are obligated to pay the contractor for services performed only if savings are realized and, in such cases, only a portion of the total savings realized. The agency may retain its share of the savings, with certain exceptions.

Section 210 authorizes the Federal Government to award any number of SIS IT contracts where funds are available and sufficient to make payments with respect to the first fiscal

year of the contract and cover termination or cancellation costs. Section 210 also authorizes award of up to 10 contracts (*i.e.,* 5 for DOD, NASA, and the Coast guard, and 5 for other agencies) during fiscal years 2003, 2004, and 2005 when funds are not made specifically available for the full costs of cancellation or termination of the contract—provided that the amount of unfunded contingent liability associated with cancellation and termination does not exceed the lesser of (a) 25 percent of the estimated costs of a cancellation or termination or (b) $5 million. In signing the E-Government Act into law, the President stated that the executive branch shall ''limit authorized waivers for funding of potential termination costs to appropriate circumstances, so as to minimize the financial risk to the government'' and ensure SIS contracts are operated according to sound fiscal policy.

This past winter, the General Accounting Office (GAO) released a report examining non-federal entities' experience with SIS contracts. See *CONTRACT MANAGEMENT: Commercial Use of Share-in-Savings Contracting,* GAO–03–327 (January 2003). The GAO found that SIS contracting can be highly effective in motivating contractors to generate savings and revenues for their clients. At the same time, the GAO cautioned that contracting parties must be ''specific and in agreement in their goals and objectives as well as how to achieve them.'' The GAO identified several specific elements that are necessary for Share-in-Savings contracts to be successful, namely: (1) A clearly specified expected outcome, (2) defined incentives, (3) a baseline and good performance measures to gauge exactly what savings or revenues are being achieved, and (4) the commitment of senior level management. The GAO emphasized that effective planning is critical: ''[Parties] need to carefully consider the potential risks and rewards of an SIS arrangement and whether the conditions that facilitate success are present—something that may not be easily achievable in Government, which is frequently unable to calculate a baseline.''

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

B. Solicitation of Public Comment

The Councils, along with the Office of Management and Budget (OMB), wish to ensure the necessary guidance is in place—in the FAR and other documents as appropriate—for agencies to effectively motivate contractors and successfully capture the benefits of an SIS contract. Given the Government's limited experience with this tool and the GAO's cautions, the Councils are soliciting public comment for consideration in drafting implementing FAR regulations. Comments received may also be shared with Federal agencies for related guidance (regulatory or nonregulatory) that they may wish to issue to address SIS contracting. Respondents are welcome to share any insights that may assist in managing the use of SIS contracts, but are especially encouraged to comment on the following issues:

- *Proposal preparation.* What type of information or guidance will vendors need in the solicitation to adequately prepare a proposal for an SIS contract?
- *Share ratios.* What criteria should be taken into account in developing an appropriate share ratio and schedule for payment? Should ROIs be market-based? In light of the generally short life cycle of IT, can the Government's interests be adequately protected if it does not share in savings each year?
- *Baselines.* What general factors or criteria should be considered in determining a quantifiable baseline?
- *Cancellation and termination costs.* How, if at all, should the determination of cancellation and termination costs differ from that used in connection with multi-year contracts (see FAR 17.106–1(c))?
- *Ownership rights.* Should ownership rights of hardware or property acquired under the SIS contract be addressed in the FAR (*e.g.,* in the coverage on cancellation costs or in a standard contract clause)?
- *Applicability of requirements.* What contract valuation method should be used to determine the applicability of various FAR requirements that are triggered by the dollar amount of the acquisitions?
- *Contract structure.* Should there be a preference for structuring SIS contracts as firm-fixed price or fixed-price with economic price adjustment? Under what, if any, circumstances would other contract types be appropriate?
- *Use of FAR 37.6.* Which, if any, of the policies pertaining to performance-based contracting in FAR Subpart 37.6 should not be applicable to an SIS contract, and why?
- *Potential projects.* What types of activities in the IT arena might be especially conducive to SIS contracting?

C. Regulatory Amendments Under Consideration.

The Councils are currently planning to amend FAR part 39 to establish a new subpart on SIS contracting for IT. FAR subpart 16.4, addressing incentive contracts, would also be amended to add a cross-reference both to the new subpart 39.3 as well as FAR 23.204, which provides guidance on energy-savings performance contracts, a type of Share-in-Savings contract authorized by the National Energy Conservation Policy Act, 42 U.S.C. 8287.

Although the Councils have not yet agreed upon FAR amendments, their preliminary thinking on regulatory implementation as of the publication of this notice is set forth below. The public is welcome to comment on these preliminary changes as part of their comments in response to this notice.

List of Subjects in 48 CFR Parts 16 and 39

Government procurement.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 16 and 39 as set forth below:

1. The authority citation for 48 CFR parts 16 and 39 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. charger 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

16.401 [Amended]

2. Amend section 16.401 by adding paragraph (e) to read as follows:

16.401 General.

* * * * *

(e) For related incentive concepts, refer to Subpart 39.3, Share-in-Savings Contracting, and 23.204, Energy-savings performance contracts.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 39.3 [Added]

3. Add subpart 39.3 consisting of sections 39.300 through 39.309, to read as follows:

Subpart 39.3—Share-in-Savings Contracting

39.300 Scope of subpart.

This subpart implements section 210 of the E-Government Act of 2002 (Public Law 107–347) by prescribing policies and procedures for Share-in-Savings contracts for information technology.

39.301 Definitions.

As used in this subpart—

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

(i) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(ii) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Savings means—

(1) Monetary savings to an agency; or

(2) Savings in time or other quantifiable benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

Share-in-Savings contract means a contract under which—

(1) A contractor provides solutions for improving the agency's mission-related or administrative processes or for accelerating the achievement of agency missions; and

(2) The Government pays the contractor an amount equal to a portion of the quantifiable savings derived by the agency from—

(i) Any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) Acceleration of achievement of agency missions.

39.302 Authority.

The E-Government Act of 2002 (Public Law 107–347) authorizes the head of an agency to enter into a Share-in-Savings contract for information technology. This authority expires on September 30, 2005.

39.303 Applicability.

This subpart applies only to information technology projects that are appropriate for Share-in-Savings contracting techniques.

(a) In general, use of Share-in-Savings contracts should be considered only for projects involving significant innovation or process transformation.

(b) Agencies intending to use this subpart are encouraged to complete the ''Share-in-Savings Project Screening Template'' at: *http://www.gsa/gov/shareinsavings*. The information provided in this template will help the General Services Administration to assist agencies in determining the potential effectiveness of using the authority of this subpart.

(c)(1) The capital programming requirements of OMB Circular A–11 shall apply to—

(i) Share-in-Savings projects for which funds are not being made specifically available for the full costs of cancellation or termination; and

(ii) Other Share-in-Savings projects that qualify as major IT investments, as provided in the Circular.

(2) Share-in-Savings projects not covered by paragraph (c)(1) shall be the subject of a business case appropriate for the size and complexity of the project as determined by the agency and the Office of Management and Budget.

39.304 Limitations on Share-in-Savings contract period of performance.

(a) Except as provided in paragraph (b) of this section, a Share-in-Savings contract shall be awarded for a period of not more than 5 years.

(5) A Share-in-Savings contract may be awarded for a period greater than 5 years, but not more than 10 years, if other applicable requirements do not otherwise limit the length of the contract and the head of the agency determines in writing prior to award of the contract that—

(1) The level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the Government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of 5 years of less; and

(2) Use of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the Government.

39.305 Use of performance-based contracts.

Share-in-Savings contracts shall be performance-based contracts. Objective outcomes and performance standards shall be used to measure achievements and milestones that must be met before payment is made (*see* subpart 37.6).

39.306 Share-in-Savings baseline.

(a) Share-in-Savings contracts shall include a clause containing a quantifiable baseline that is to be the basis upon which a saving share ratio is established to govern the amount of payment a contractor is to receive under a contract.

(b) Before award of a Share-in-Savings contract, the agency senior procurement executive shall determine in writing that the terms of the baseline clause are quantifiable and will likely yield value to the Government.

39.307 Managing retained savings.

(a) Agencies may retain savings in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in paragraph (b) of this section, savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(b) Amounts retained by the agency under this subpart shall—

(1) Without further appropriation, remain available until expended; and

(2) Be applied first to fund any cancellation or termination liabilities associated with Share-in-Savings procurements that are not fully funded.

39.308 Cancellation or termination.

39.308–1 Paying for cancellation or termination.

(a) The amount payable in the event of cancellation or termination of a Share-in-Savings contract shall be negotiated with the contractor at the time of contract award.

(b) If funds are not made available for the continuation of a Share-in-Savings contract in a subsequent fiscal year, the contract shall be cancelled or terminated. The costs of cancellation or termination may be paid out of—

(1) Appropriations available for the performance of the contract;

(2) Appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(3) Funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in 39.308–2.

39.308–2 Funding of cancellation or termination liability.

(a) Except as provided in paragraph (b) of this subsection, the funds obligated for Share-in-Savings contracts must be sufficient to cover any potential cancellation and/or termination costs.

(b)(1) The head of an agency may enter into Share-in-Savings contracts even if funds are not made specifically available for the full costs of cancellation or termination of the contract provided that—

(i) The action is approved as provided in paragraph (b)(1)(iii) of this subsection;

(ii) Funds are available and sufficient to make payments with respect to the first fiscal year of the contract; and

(iii) The following conditions are met regarding the funding of cancellation and termination liability:

(A) The amount of unfunded liability does not exceed the lesser of 25 percent of the estimated costs of a cancellation or termination, or $5 million.

(B) An unfunded cancellation or termination liability in excess of $1 million has been approved by the Director of the Office of Management and Budget.

(C) Notification has been provided to OMB in accordance with paragraph (c) of this subsection.

(2) The aggregate number of Share-in-Savings contracts that may be entered into under this paragraph may not exceed 5 in each of fiscal years 2003, 2004, and 2005 for each of the following groups of agencies:

(i) The Department of Defense, NASA, and the Coast Guard.

(ii) All other agencies.

(c) In addition to the requirements specified in paragraph (b) of this subsection, an agency planning to award a Share-in-Savings contract having an unfunded cancellation or termination liability in any amount must notify the Office of Management and Budget at least 30 days prior to solicitation issuance.

39.309 Solicitation requirements.

(a) Solicitations for Share-in-Savings contracts shall use competitive procedures to the maximum extent practicable. Each solicitation shall include provisions and evaluation criteria ensuring that—

(1) The contractor's share of savings reflects the risks involved and market conditions; and

(2) The Government will realize best value from the contract.

(b) Contracting officers should consider the use of a technology refreshment clause to ensure the information technology provided under the contract incorporates desired technological advancements throughout the entire period of contract performance. In developing such a clause, contracting officers should consider similar terms and conditions available on the commercial market.

(c) Contracting officers may include other appropriate clauses not specifically prescribed in the FAR to ensure that the goals of the Share-in-Savings contract are attained, provided that such clauses are consistent with applicable statutes and regulations.

[FR Doc. 03–24855 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–M

Notices

Federal Register

Vol. 68, No. 190

Wednesday, October 1, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Savannah, Georgia, October 16–18, 2003. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held October 16–18, 2003. A tour of local projects will be held October 16 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Historic Savannah, 411 West Bay Street, Savannah, Georgia. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 2000 Ascot Parkway, Unit 3816, Vallejo, California 94591. Individuals may fax their names and proposed agenda items to (707) 642–9201.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (707) 642–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: September 25, 2003.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 03–24854 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, September 11, 2003, in Susanville, California for a field trip and field business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting October 9, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Chairman Voting for Second year, Improve the Use of Proxies, Workshop Report, Fire Safe Council RAC Project Report, and Review Monitoring Updates Reports. Time will also be set aside for public comments at the beginning and end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Elizabeth Norton,

Acting Forest Supervisory.

[FR Doc. 03–24835 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, October 24, 2003. The meeting and field trip is scheduled to begin at 9 a.m. and will conclude at approximately 4:30 p.m. The meeting will be held at the Oregon Community Credit Union; 2880 Chad Drive; Eugene, Oregon; (541) 681–6069. The tentative agenda includes: (1) Finalizing Recommendations on 2004 Projects; (2) Field Trip to 2002 and 2003 Projects; (3) Setting up Dates and Process for 2005 Projects; and (4) Public Forum.

The Public Forum is tentatively scheduled to begin at 9:15 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the October 24th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: September 24, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–24839 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting

AGENCY: Notice of Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, October 20, 2003 in Sundance, Wyoming for a

business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on October 20, begins at 6:30 PM, and the US Forest Service, Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include: New project proposals for fiscal year 2004, updates on previously funded projects, nominations and leadership elections for the coming year. A public forum will begin at 8:30 PM (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: September 25, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–24849 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2003), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of October 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, A–351–832	4/15/02–9/30/03
Canada: Carbon and Certain Alloy Steel Wire Rod, A–122–840	4/10/02–9/30/03
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	4/10/02–9/30/03
Italy: Pressure Sensitive Tape, A–475–059	10/1/02–9/30/03
Malaysia: Extruded Rubber Thread, A–557–805	10/1/02–9/30/03
Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830	4/10/02–9/30/03
Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805	4/10/02–9/30/03
The People's Republic of China: Barium Chloride A–570–007	10/1/02–9/30/03
The People's Republic of China: Certain Cut-to-Length Carbon Steel, A–570–849	10/1/02–9/30/03
The People's Republic of China: Helical Spring Lock Washers, A–570–822	10/1/02–9/30/03
The People's Republic of China: Cotton Shop Towels, A–570–003	10/1/02–9/30/03
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	4/10/02–9/30/03
Ukraine: Carbon and Certain Alloy Steel Wire Rod, A–823–812	4/10/02–9/30/03

	Period
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, C–351–833	8/30/02–12/31/02
Canada: Carbon and Certain Alloy Steel Wire Rod, C–122–841	2/8/02–12/31/02
Iran: Roasted In-Shell Pistachios, C–507–601	1/1/02–12/31/02
Suspension Agreements	
Russia: Certain Cut-to-Length Carbon Steel, A–821–808	10/1/02–9/30/03
Uranium, A–821–802	10/1/02–9/30/03
The People's Republic of China: Certain Cut-to-Length Carbon Steel, A–570–849	10/1/02–9/30/03

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington,

DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2003. If the Department does not receive, by the last day of October 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 26, 2003.

Melissa G. Skinner,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 03–24904 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International trade Administration

[A-570–880]

Antidumping Duty Order: Barium Carbonate from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton or Tisha Loeper-Viti at (202) 482–0371 or (202) 482–7425, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2003, the Department of Commerce (the Department) published its final determination in the antidumping duty investigation of barium carbonate from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China*, 68 FR 46577 (August 6, 2003).

Scope of Order

The merchandise covered by this order is barium carbonate, regardless of form or grade. The product is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On September 19, 2003, in accordance with section 735(d) of the Tariff Act of 1930, as amended, (the Act), the International Trade Commission notified the Department of its final determination that the industry in the United States producing barium carbonate is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from the PRC.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (BCBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all relevant entries of barium carbonate from the PRC. The antidumping duties will be assessed on all (1) unliquidated entries of barium carbonate subject to this order, entered, or withdrawn from warehouse, for consumption on or after March 17, 2003, the date of publication of the Department's preliminary determination in the **Federal Register**[1], and before September 13, 2003; and (2) merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. The Department terminated the suspension of liquidation for entries of subject merchandise, pursuant to section 733(d) of the Act, on September 13, 2003. Entries of barium carbonate from the PRC made between September 13, 2003 and the day preceding the publication of the ITC's notice of final determination in the **Federal Register**, are not liable for the assessment of antidumping duties.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the BCBP will require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''PRC-Wide Rate'' applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)
Qingdao Red Star Chemical Import & Export Co., Ltd.	34.44%
PRC-Wide Rate	81.30%

This notice constitutes the antidumping duty order with respect to barium carbonate from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: September 25, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24901 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate from the People's Republic of China*, 68 FR 12664 (March 17, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Decision of the Court of International Trade: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of the Court of International Trade.

SUMMARY: On September 15, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's results of redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on canned pineapple fruit from Thailand. See *Maui Pineapple Company, Ltd.* v. *United States,* Slip Op. 03–120 (September 15, 2003), Court No. 01–01017 (*Maui Pineapple*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department of Commerce (the Department) is notifying the public that *Maui Pineapple* and the CIT's earlier opinion in this case were ''not in harmony'' with the Department's original results.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton 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) 482–0371 and (202) 482–0650, respectively.

Background

On October 17, 2001, the Department published a notice of the final results of the fifth review of canned pineapple fruit from Thailand. *See Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand,* 66 FR 52744 (October 17, 2001) (Final Results). Subsequent to the Department's Final Results, Maui Pineapple Company, Ltd. filed a lawsuit challenging these results. Thereafter, the CIT issued an Order and Opinion dated April 16, 2003 in remanding two issues to the Department. See *Maui Pineapple Company, Ltd.* v. *United States,* 264 F.Supp.2d 1244 (Ct. Int'l Trade 2003) (September 15, 2003), Court No. 01–01017. Pursuant to the CIT's April 16, 2003 Order and Opinion, the Department filed its remand results on June 16, 2003. On September 15, 2003, the CIT affirmed the Department's final results of redetermination in *Maui Pineapple.*

Timken Notice

In its decision in *Timken,* the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT which is ''not in harmony'' with the Department's results. The CIT's decision in *Maui Pineapple* and its April 16, 2003 Order and Opinion in this case were not in harmony with the Department's final antidumping duty results of review. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken.* In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, if it is upheld, the Department will publish amended final antidumping duty results.

Dated: September 25, 2003,

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24905 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–879]

Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyvinyl alcohol from the People's Republic of China.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Gibbons, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3874 or (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise covered by this investigation is polyvinyl alcohol (PVA). This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the*

United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Order:

On September 25, 2003, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PVA is materially injured by reason of less-than-fair-value imports of subject merchandise from the People's Republic of China (PRC). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PVA from the PRC. These antidumping duties will be assessed on all unliquidated entries of PVA from the PRC entered, or withdrawn from the warehouse, for consumption on or after March 20, 2003, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China*, 68 FR 13674 (March 20, 2003).

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. The PRC-wide rate applies to all exporters of subject merchandise except for Sinopec Sichuan Vinylon Works.

Manufacturer/exporter	Margin (percent)
Sinopec Sichuan Vinylon Works	6.91
PRC-wide	7.86

This notice constitutes the antidumping duty order with respect to PVA from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 9 CFR 351.211.

Dated: September 25, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24899 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–850]

Antidumping Duty Order: Polyvinyl Alcohol from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyvinyl alcohol from the Republic of Korea.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Jill Pollack, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 or (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise covered by this investigation is polyvinyl alcohol (PVA). This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Oorder:

On September 25, 2003, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry

in the United States producing PVA is materially injured by reason of less-than-fair-value imports of subject merchandise from the Republic of Korea (Korea). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PVA from Korea. These antidumping duties will be assessed on all unliquidated entries of PVA from Korea entered, or withdrawn from the warehouse, for consumption on or after March 20, 2003, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea*, 68 FR 13681 (March 20, 2003).

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. The All Others rate applies to all exporters of subject merchandise except for DC Chemical Company, Ltd.

Manufacturer/exporter	Margin (percent)
DC Chemical Company, Ltd.	38.74
All Others	32.08

This notice constitutes the antidumping duty order with respect to PVA from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 9 CFR 351.211.

Dated: September 25, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24900 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–834]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 22, 2003, in response to timely request from DaiYang Metal Corporation Ltd. (''DMC''), a Korean producer and exporter of subject merchandise, the Department of Commerce (''the Department'') published a notice of initiation of an antidumping duty administrative review on stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea for the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003) (''*Initiation Notice*''). On August 27, 2003, DMC withdrew its request for an administrative review. Therefore, as DMC was the only party to request a review, the Department is rescinding this review, in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published a notice of opportunity to request administrative review. *See Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation*, 68 FR 39511 (July 2, 2003). On July 31, 2003, DMC requested that the Department conduct an administrative review of its sales of the subject merchandise during the period July 1, 2002 through June 30, 2003. On August 22, 2003, the Department published its *Initiation Notice* on SSSS from the Republic of Korea. On August 27, 2003, DMC withdrew its request for the administrative review and requested that the Department rescind the review. *See Letter to Withdraw DMC's Review Request* dated August 27, 2003.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. DMC, the only interested party to request an administrative review for this time period, withdrew its request for review within the 90 day time limit; accordingly, we are rescinding the administrative review for the period July 1, 2002 through June 30, 2003, and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 751(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 25, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–24902 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–046. Applicant: Colorado State University, 200 W. Lake Street, Fort Collins, CO 80523. Instrument: Piezoelectric Scanning Stage, Model NIS–30. Manufacturer: Nanonics Imaging Ltd, Israel. Intended Use: The instrument is intended to be

used for research involving deoxyribonucleic acid (DNA) and protein, often fluorescently labeled with rhodamine, and to investigate interactions among DNA, core histone proteins (H1, H2A, H3, H4), and NAP–1 (Nucleosome Assembly Protein 1) and their involvement in the assembly and disassembly of chromatin. Application accepted by Commissioner of Customs: August 28, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–24898 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Request for an Extraordinary Challenge Committee

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of request for an Extraordinary Challenge Committee to review the binational NAFTA Panel decisions of March 27, 2002; October 15, 2002; April 28, 2003 and June 24, 2003 in the matter of Pure Magnesium from Canada—Full Sunset Review, Secretariat File No. USA/CDA–2000–1904–06.

SUMMARY: On September 24, 2003, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review decisions as stated above with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Committee review was requested of the full sunset review of the antidumping duty order made by the International Trade Administration, respecting Pure Magnesium From Canada. These determinations were published in the **Federal Register**. The NAFTA Secretariat has assigned Case Number ECC–2003–1904–01USA to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Request for an Extraordinary Challenge Committee was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 24, 2003, requesting panel review of the full sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance within 10 days after the filing of the first Request for Extraordinary Challenge Committee (the deadline for filing a Notice of Appearance is October 6, 2003); and

(b) All briefs shall be filed within 21 days after the Request for Extraordinary Challenge Committee (the deadline for filing briefs is October 15, 2003); Dated: September 25, 2003.

Dated: September 25, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariate.

[FR Doc. 03–24878 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–CT–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 030910229–3240–02]

Minority Business Financing

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice to extend the comment period on a notice requesting comments on the direction of minority business financing published on Monday, September 22, 2003 (68 FR 55032). MBDA extends the comment period by 15 days to provide the public more time to submit comments. The new deadline for comments is October 22, 2003.

DATES: All comments must be received or postmarked by October 22, 2003.

ADDRESSES: Comments may be mailed to the following address: Ms. Anita Cooke Wells, Chief, Office of Business Development, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or e-mailed to: *awells@mbda.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Anita Cooke Wells, Chief, Office of Business Development, at (202) 482–1940.

Dated: September 26, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–24879 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

Form Number(s): PTO–158, PTO–158A, PTO–275, PTO–107A, PTO–1209, PTO 2125, PTO 2126, PTO 2149.

Agency Approval Number: 0651–0012.

Type of Request: Revision of a currently approved collection.

Burden: 97,282 hours annually.

Number of Respondents: 72,280 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the registered practitioner or agent approximately 10 minutes (0.17 hours) to complete the forms for annual practitioner registration renewal, the request for

voluntary inactive status, and the request for restoration to active status from voluntary inactive status. It is estimated to take 2 hours (2.0) to complete the continuing education program by a registered attorney or agent with delinquency. It is estimated to take and 2 hours and 10 minutes (2.17 hours) to complete the continuing education program by a registered attorney or agent with delinquency and reinstatement, and 2 hours and 15 minutes (2.25 hours) for the paper-based version of the annual practitioner registration/continuing legal education program—15 minutes (0.25 hours) to request the materials and an average of 2 hours (2.0) to complete the continuing legal education exam on paper. It is estimated to take 15 minutes (0.25 hours) for a sponsor to complete the application for pre-approval of a continuing education program. It is expected to take 6 hours (6.0) to complete the registration examination to become a registered patent practitioner. It is expected to take 40 hours (40.0) to complete the petition for reinstatement after disciplinary removal. These times include time to gather the necessary information, and prepare and submit the forms and requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 2(b)(2)(D), administered by the USPTO through 37 CFR 10.5–10.11 and 10.170. The information is used by the Director of the Office of Enrollment and Discipline (OED) to determine if the applicant for registration is of good moral character and repute; has the necessary legal, scientific, and technical qualifications; and is otherwise competent to advise and assist applicants in the presentation and prosecution of applications for patent grants. The USPTO is submitting this collection in support of a proposed rulemaking, ''Changes to Representation of Others Before the United States Patent and Trademark Office ''(RIN 0651–AB55). In this notice of proposed rulemaking, the USPTO is proposing to update the rules and procedures regarding the enrollment and recognition of individuals to practice as attorneys and agents before the USPTO in patent, trademark, and other non-patent matters. These proposed changes are also expected to improve how the USPTO handles applications for registration and petitions.

Affected Public: Individuals or households; business or other for-profit; the Federal Government; and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before October 31, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 24, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–24850 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Nuclear Engineering Education Research (NEER) Program Solicitation Number DE–PS07–03ID14540

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of solicitation for awards of financial assistance.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for research and development grant awards in nuclear engineering topics. It is anticipated that on September 25, 2003, a full text for Solicitation Number DE–PS07–03ID14540 for the 2004 NEER Program will be made available at the Industry Interactive Procurement System (IIPS) Web site at: *http://e-center.doe.gov:* The deadline for receipt of applications will be on November 12, 2003. Applications are to be submitted via the IIPS Web site. Directions on how to apply and submit applications are detailed under the solicitation on the Web site.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist at *kleinsm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities with nuclear engineering degree programs or options or an operating research reactor, because the purpose of the Nuclear Engineering Education Research (NEER) program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering students; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Pub. L. 95–91.

Issued in Idaho Falls on September 22, 2003.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 03–24873 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 16, 2003, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Dianna Feireisel, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6812.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Approve September Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- ES & H Issues
- Budget Update
- Environmental Management Project Updates
- Citizen Advisory Board (CAB) Recommendation Status
- Other

6:30 p.m. Federal Coordinator Comments
6:40 p.m. Ex-officio Comments
6:50 p.m. Public Comments and Questions

7 p.m. Break
7:10 p.m. Presentation
- Depleted Uranium Hexaflouride (DUF_6)
- Cleanup Scope

7:55 p.m. Public Comments and Questions
8:05 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

8:25 p.m. Review of Action Items
8:40 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

9:10 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on September 25, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–24868 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 6, 2003; 9 a.m.–5 p.m., Friday, November 7, 2003; 8:30 a.m.–4 p.m.

ADDRESSES: Doubletree Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR; Phone: (503) 283–2111, Fax: (503) 283–4718.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, November 6, 2003
- Tank Waste Supplemental Technologies Workshop and Draft Advice
- DOE-Richland Operation Office Risk-Based End State Vision Discussion and Draft Advice
- Discussion of DOE Office of River Protection Baseline and DOE-Richland Operation Baseline (Fluor Hanford Work Scope)
- Briefing and Discussion of the Spent Fuel Project

Friday, November 7, 2003
- Update on the Draft Tank Waste Closure Environmental Impact Statement
- Technology Progress: Carbon Tetrachloride, N-Springs, 618–10/11 Waste Sites
- Adoption of Draft Advice:—Tank Waste Supplemental Technologies—Risk-Based End State Vision
- Committee Updates
- Identification of Topics for the February Board Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on September 26, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–24870 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 8, 2003; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The meeting presentation will feature an overview of the Federal Advisory Committee Act, Conflict of Interest Guidance and Oak Ridge Site Specific Advisory Board By-Laws.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN, between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on September 25, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–24871 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed one-year extension to the Form EIA–1605, ''Voluntary Reporting of Greenhouse Gases,'' (long form) and the Form EIA–1605EZ, ''Voluntary Reporting of Greenhouse Gases,'' (short form).

DATES: Comments must be filed by December 1, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Stephen E. Calopedis. To ensure receipt of the comments by the due date, submission by FAX (202–586–3045) or e-mail (*Stephen.calopedis@eia.doe.gov*) is recommended. The mailing address is Energy Information Administration, EI–81, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Stephen Calopedis may be contacted by telephone at 202–586–1156.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Stephen Calopedis at the address listed above or can be obtained at *http://www.eia.doe.gov/oiaf/1605/forms.html.*

SUPPLEMENTARY INFORMATION:

I. Background

II. Current Actions

III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Voluntary Reporting of Greenhouse Gases collections are conducted pursuant to section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines issued by the DOE's Office of Policy & International Affairs. These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA will be requesting a one-year extension with no changes for the Voluntary Reporting of Greenhouse Gases Program, Forms EIA–1605 and EIA–1605EZ.

This request for a one-year extension of the expiration date of the existing Forms EIA–1605 and EIA–1605EZ is being made to ensure that a data collection instrument is in place while the Guidelines to the Voluntary Reporting of Greenhouse Gases Program are in the process of being revised . A one-year extension, rather than a three-year extension, is being proposed because EIA anticipates significant changes to the data collection forms and data elements to result from the revisions to the program guidelines.

Revised Guidelines for the Voluntary Reporting of Greenhouse Gases Program

On February 14, 2002, President Bush announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, and voluntary programs to promote actions to reduce greenhouse gases. In addition, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to

propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of the Energy Policy Act of 1992. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches. The President also directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

The purposes of the proposed revised Guidelines are to: (1) establish revised procedures and reporting requirements for filing voluntary reports, and (2) encourage corporations, Government agencies, non-profit organizations, individuals and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent.

On May 6, 2002 (67 FR 30370), the Department of Energy solicited public comments on various issues relevant to its efforts to implement the President's directives. After consideration of these public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency wrote the President on July 8, 2002, stating that improvements to the existing Voluntary Greenhouse Gas Reporting Program should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions unit of output) as well as emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Develop a process for evaluating the extent to which past reductions may qualify for credits.
8. Develop a process for evaluating the extent to which past reductions may qualify for credits.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

The DOE also held four public workshops (67 FR 64106) in the fall of 2002 to enable interested persons to discuss and provide comments on possible improvements to the program guidelines. Public comments submitted to DOE's Office of Policy and International Affairs on possible revisions to the Voluntary Reporting of Greenhouse Gases Program Guidelines are available at *http://www.pi.energy.gov/enhancingGHGregistry/index.html*.

Process for Finalizing and Implementing Revised Program Guidelines

DOE's Office of Policy and International Affairs plans to issue proposed revised general guidelines for public comment during the fall of 2003. In parallel with this effort, DOE's Office of Policy and International Affairs intends to issue for public comment proposed technical guidelines in the fall of 2003. The technical guidelines will specify the methods and factors to be used in measuring and estimating greenhouse gas emissions and emission reductions under the revised general guidelines. DOE plans to issue in final form all necessary guidelines during 2004. Upon finalization and issuance of the revised guidelines, EIA plans to develop and issue new reporting forms and instructions for reporting under the revised program guidelines. It is important to note here that it is not the intent of this notice to solicit comment on the guideline revision process above, but rather to merely extend the expiration date on the existing data collection, forms EIA–1605 and EIA–1605–EZ, so that EIA has an existing data collection instrument in place while the guideline revision process is on-going.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 40 hours per response on Form EIA–1605 (long form) and 4 hours per response on Form EIA–1605EZ (short form). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, September 25, 2003.

Nancy J. Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–24872 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 16, 2003, 8:30 a.m.–4:30 p.m. Friday, October 17, 2003, 8:30 a.m.–12 noon.

ADDRESSES: Department of Energy, Room 8E–089, 1000 Independence Ave., SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by e-mail at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of the Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

Tentative Agenda

Thursday, October 16, 2003

A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 unless otherwise noted)

1. EIA's Strategic Planning and Performance Goals
2. Data Initiatives in Natural Gas
   A. Overview
   B. Criteria to Select and Implement Estimation Procedures: A Comparison of Texas Production Methodologies
   C. Industrial Natural Gas Prices
   D. Natural Gas Production Estimation in the Gulf of Mexico
   E. Residential and Commercial Prices for Natural Gas Data
3. Public Questions and Comments

Friday, October 17, 2003, Room 8E–089

C. Major Topics

1. Confidential Information Protection and Statistical Efficiency Act (CIPSEA)
2. Data Edits for the EIA–906
3. Using Relative Standard
4. Electricity Transmission Data Needs
5. ASA Committee Suggestions for the Spring, 2004 Meeting
6. Public Questions and Comments

D. Closing Remarks by the Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by e-mail at *william.weinig@eia.doe.gov.*

Issued at Washington, DC, on September 25, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–24869 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–120–001, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

September 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric and Power Company

[Docket No. EC03–120 –001]

Take notice that on September 16, 2003, Virginia Electric and Power Company (Applicant), filed a supplement to its application requesting Commission authorization for the Applicant's proposed purchase of an approximately 240 MW cogeneration facility and its appurtenant transmission facilities located in Gordonsville, Virginia.

Applicant states that copies of the filing were served upon it's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: September 26, 2003.

2. Chandler Wind Partners, LLC

[Docket Nos. EC03–137–000, Desert Southwest Power, LLC ER99–963–001, Foote Creek II, LLC ER99–2769–005, Foote Creek III, LLC ER99–3450–004, Foote Creek IV, LLC ER00–2706–002, Nevada Sun-Peak Limited Partnership ER01–390–002, Ridge Crest Wind Partners, LLC ER01–2760–002, ER02–1866–001]

Take notice that on September 12, 2003, Chandler Wind Partners, LLC (Chandler Wind), Desert Southwest Power, LLC (DSP), Foote Creek II, LLC (Foote Creek II), Foote Creek III, LLC (Foote Creek III), Foote Creek IV, LLC (Foote Creek IV), Nevada Sun-Peak Limited Partnership (Nevada Sun-Peak), Ridge Crest Wind Partners, LLC (Ridge Crest) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect upstream membership interests in Applicants to Caithness Investors, LLC, a newly-formed limited liability company owned by ArcLight Energy Partners Fund I, L.P., and the owners of Caithness Energy, L.L.C. Applicants have requested privileged treatment of the contents of a portion of Exhibit B and of Exhibit I to the Section 203 application.

Comment Date: October 3, 2003.

3. Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, and Public Service Commission of Yazoo City Entergy Services, Inc., as agent for Entergy Arkansas, Inc. Entergy Louisiana, Inc. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Gulf States, Inc.

[Docket No. EL03–231–000]

Take notice that on September 17, 2003, the Mississippi Delta Energy Agency (MDEA), the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, (Clarksdale), and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (Yazoo City) filed a Complaint against Entergy Services, Inc.

as agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. (collectively, Entergy). The Complaint by MDEA, Clarksdale, and Yazoo City challenges the 2003 rate redetermination filing submitted by Entergy on May 20, 2003 in Docket No. ER03–861–000 pursuant to the procedures set forth in the partial settlement agreement filed by Entergy in Docket No. ER95–112–000 and approved by the Commission. MDEA, Clarksdale, and Yazoo City further request that the Commission consolidate proceedings on their Complaint with Docket No. ER03–861–000.

Comment Date: October 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, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24818 Filed 9–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act, Meetings

September 24, 2003.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 1, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, *Note—Items Listed on the Agenda May Be Deleted Without Further Notice.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400, for a Recording Listing Items, Stricken from or Added to the Meeting, Call (202) 502–8627.

This is a List of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

840th—Meeting October 1, 2003, Regular Meeting 10 A.M.

Administrative Agenda

A–1.
Docket#, AD02–1,000, Agency Administrative Matters

A–2.
Docket#, AD02–7,000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket#, EL03–133,000, American Ref-Fuel Company, Covanta Energy Group, Montenay Power Corporation, and Wheelabrator Technologies Inc.

E–2.
Docket#, EL03–132,000, Entergy Services, Inc.

E–3.
Docket#, EL03–212,001, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company. Dayton Power and Light Company Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Illinois Power Company and Northern Indiana Public Service Company.
Other#s EL03–212,000, Ameren Services Company on behalf of: Illinois Public Service Company American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company. Dayton Power and Light Company Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Illinois Power Company and Northern Indiana Public Service Company.

E–4.
Omitted

E–5.
Omitted

E–6.
Omitted

E–7.
Omitted

E–8.
Omitted

E–9.
Docket# ER03–872,000, Southern Company Services, Inc.
Other#s ER03–872,001, Southern Company Services, Inc. Corporation.

E–10.
Docket# ER01–2658,000, American Electric Power Service Corporation.
Other#s EL00–79,000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.
EL01–113,000, Mid-Tex G&T Electric Cooperative, Inc. Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.
EC01–130,000, American Electric Power Service Corporation.
ER01–2658,001, American Electric Power Service Corporation.
ER01–2668,000, American Electric Power Company, Inc.
ER01–2977,000, American Electric Power Service Corporation.
ER01–2977,001, American Electric Power Service Corporation.
ER01–2980, 000, American Electric Power Company.

ER01–2980, 001, American Electric Power Company.
EL02–24, 000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.
ER02–371, 000, American Electric Power Service Corporation.
ER02–371, 001, American Electric Power Service Corporation.
ER02–371, 002, American Electric Power Service Corporation.
ER02–602, 000, American Electric Power Service Corporation.
ER02–602, 001, American Electric Power Service Corporation.
ER02–1216, 000, American Electric Power Service Corporation.
ER02–1410, 000, West Texas Utilities Company

E–11.
Omitted

E–12.
Omitted

E–13.
Omitted

E–14.
Omitted

E–15.
Omitted

E–16.
Docket# ER02–851, 005, Southern Company Services, Inc.
Other#s ER02–851, 006, Southern Company Services, Inc.
ER02–851, 007, Southern Company Services, Inc.
ER02–851, 009, Southern Company Services, Inc.

E–17.
Omitted

E–18.
Docket# ER02–1963, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1963, 001, Midwest Independent Transmission System Operator, Inc.

E–19.
Docket# OA96–138, 000, Consolidated Edison Company of New York, Inc.

E–20.
Docket# EC03–110, 000, Texas-New Mexico Power Company and Southern New Mexico Electric Company.
Other#s EC03–110, 001, Texas-New Mexico Power Company and Southern New Mexico Electric Company.

E–21.
Docket# FA88–62, 003, Wisconsin Electric Power Company.
Other#s EL94–16, 002, Wisconsin Electric Power Company.

E–22.
Omitted

E–23.
Docket# EL00–111, 005, Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporation.
Other#s EL00–111, 006, Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporation.
EL01–84, 001, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation.
EL01–84, 002, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation.
ER01–607, 004, California Independent System Operator Corporation.

E–24.
Omitted

E–25.
Omitted

E–26.
Docket# ER03–753, 001, Entergy Services, Inc.

E–27.
Omitted

E–28.
Docket# ER03–355, 002, Southern Company Services, Inc.
Other#s ER03–355, 003, Southern Company Services, Inc.

E–29.
Omitted

E–30.
Docket# ER02–2233, 009, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent System Operator, Inc.

E–31.
Omitted

E–32.
Omitted

E–33.
Docket# ER03–811, 001, Entergy Services, Inc.

E–34.
Omitted

E–35.
Omitted

E–36.
Docket# ER02–2330, 015, New England Power Pool.
Other#s ER02–2330, 016, New England Power Pool.
ER02–2330, 017, New England Power Pool.

E–37.
Omitted

E–38.
Docket# EL03–51, 000, North Hartland, LLC.

E–39.
Docket# OA03–9, 000, Florida Power & Light Company.
Other#s OA03–10, 000, Florida Power & Light Company.

E–40.
Docket# EL03–218, 000, Wisconsin Energy Corporation, Wisconsin Electric Power Company, W.E. Power LLC and Port Washington Generating Station LLC.

E–41.
Omitted

E–42.
Docket# EL02–75, 000, Duke Energy Trading & Marketing, LLC v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., Entergy New Orleans, Inc., and Entergy Services, Inc.

E–43.
Docket# EL03–215, 000, North Hartland, LLC v. Central Vermont Public Service Corporation.

E–44.
Docket# AC03–46, 000, First Energy Companies: Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company.

E–45.
Omitted

E–46.
Docket# TX96–2, 008, City of College Station, Texas.
Other#s TX96–2, 004, City of College Station, Texas.
TX96–2, 005, City of College Station, Texas.
TX96–2, 007, City of College Station, Texas.
TX96–2, 001, City of College Station, Texas.
TX96–2, 006, City of College Station, Texas.

E–47.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.
Other#s PA03–1, 000, American Electric Power Co.
PA03–2, 000, Aquila Marketing Service.
PA03–3, 000, Coral Energy Resources, L.P.
PL03–3, 000, Price Discovery in Natural Gas and Electric Markets.
PA03–4, 000, CMS Marketing Services & Trading.
PA03–5, 000, Dynegy Inc.
PA03–6, 000, Duke Energy Trading & Marketing, LLC.
AD03–7, 000, Natural Gas Price Formation.
PA03–7, 000, El Paso Merchant Energy, L.P.
PA03–8, 000, Mirant Americas Energy Marketing, LP.
PA03–9, 000, Reliant Resources, Inc.
IN03–10, 000, Investigation of Anomalous Bidding. Behavior and Practices in the Western Markets.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company.
EL03–59, 000, Reliant Energy Services, Inc.
EL03–60, 000, BP Energy Company.
EL03–77, 000, Enron Power Marketing, Inc. and Enron Energy Services, Inc.
RP03–311, 000, Bridgeline Gas Marketing L.L.C. Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, LLC and Enron North America Corp.

E–48.
Docket# ER03–1048, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–1048, 001, Midwest Independent Transmission System Operator, Inc.

Markets, Tariffs and Rates—Gas

G–1.

Omitted
G–2.
Docket# RP02–74, 000, Enbridge Pipelines (KPC).
Other#s RP03–90, 000, Enbridge Pipelines (KPC).
G–3.
Docket# CP03–297, 000, Northwest Natural Gas Company.
G–4.
Docket# RP03–356, 000, Southern Star Central Gas Pipeline, Inc.
G–5.
Omitted
G–6.
Docket# RP03–47, 001, Gulf South Pipeline Company, LP.
G–7.
Docket# RP03–282, 001, Columbia Gas Transmission Corporation.
G–8.
Omitted
G–9.
Omitted
G–10.
Omitted
G–11.
Omitted
G–12.
Docket# RP03–312, 002, Calpine Energy Services, L.P. v. Southern Natural Gas Company.
G–13.
Omitted
G–14.
Docket# RP00–468, 012, Texas Eastern Transmission, LP.
Other#s RP00–468, 013, Texas Eastern Transmission, LP.
RP00–468, 011, Texas Eastern Transmission, LP.
RP01–25, 010, Texas Eastern Transmission, LP.
RP01–25, 011, Texas Eastern Transmission, LP.
RP01–25, 012, Texas Eastern Transmission, LP.
RP01–175, 005, Texas Eastern Transmission, LP.
RP03–175, 006, Texas Eastern Transmission, LP.
RP03–175, 007, Texas Eastern Transmission, LP.
G–15.
Docket# RP00–495, 006, Texas Gas Transmission Corporation.
Other#s RP00–495, 005, Texas Gas Transmission Corporation.
RP01–97, 004, Texas Gas Transmission Corporation.
RP01–97, 005, Texas Gas Transmission Corporation.
RP03–211, 001, Texas Gas Transmission Corporation.
RP03–211, 002, Texas Gas Transmission Corporation.
G–16.
Docket# TM99–6–29, 005, Transcontinental Gas Pipe Line Corporation.
Other#s TM99–6–29, 006, Transcontinental Gas Pipe Line Corporation.
RP00–209, 003, Transcontinental Gas Pipe Line Corporation.
RP00–209, 004, Transcontinental Gas Pipe Line Corporation.
RP01–253, 006, Transcontinental Gas Pipe Line Corporation.
RP01–171, 003, Transcontinental Gas Pipe Line Corporation.
RP02–171, 004, Transcontinental Gas Pipe Line Corporation.
G–17.
Omitted
G–18.
Docket# RP03–245, 000, Kinder Morgan Interstate Gas Transmission LLC.

Energy Projects—Hydro

H–1.
Omitted
H–2.
Omitted
H–3.
Docket# P–11899, 002, Symbiotics, LLC.
Other#s P–12058, 001, Baker County, Oregon.
H–4.
Omitted
H–5.
Docket# P–2651, 033, Indiana Michigan Power Company.
H–6.
Docket# P–2816, 021, Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC.
H–7.
Docket# P–12200, 001, McKay Hydro, LLC.
H–8.
Docket# P–344, 014, Southern California Edison Company.
H–9.
Docket# P–2942, 005, S. D. Warren Company.
H–10.
Docket# P–2931, 002, S. D. Warren Company.
H–11.
Docket# P–2932, 003, S. D. Warren Company.
H–12.
Docket# P–2941, 002, S. D. Warren Company.
H–13.
Docket# P–2897, 003, S. D. Warren Company.
Other#s P–2932, 003, S. D. Warren Company.
P–2941, 002, S. D. Warren Company.
P–2931, 002, S. D. Warren Company.
P–2942, 005, S. D. Warren Company.
H–14.
Omitted
H–15.
Docket# P–2543, 059, Clark Fork and Blackfoot, LLC.
H–16.
Docket# P–1494, 232, Grand River Dam Authority.

Energy Projects—Certificates

C–1.
Docket# CP03–76, 000, Norteno Pipeline Company and OkTex Pipeline Company.
Other#s CP03–99, 000, Norteno Pipeline Company and OkTex Pipeline Company.
CP03–100, 000, Norteno Pipeline Company and OkTex Pipeline Company.
C–2.
Docket# CP01–421, 000, Portland General Electric Company.
Other#s CP01–421, 001, Portland General Electric Company.
C–3.
Docket# CP03–323, 000, Pinnacle Pipeline Company.
Other#s CP03–324, 000, Pinnacle Pipeline Company.
CP03–325, 000, Pinnacle Pipeline Company.
C–4.
Docket# CP03–33, 000, Wyckoff Gas Storage Company, LLC.
Other#s CP03–34, 000, Wyckoff Gas Storage Company, LLC.
CP03–35, 000, Wyckoff Gas Storage Company, LLC.
CP03–79, 000, National Fuel Gas Supply Corporation.
C–5.
Docket# CP01–418, 000, B–R Pipeline Company.
C–6.
Docket# CP00–6, 010, Gulfstream Natural Gas System, L.L.C.
C–7.
Docket# CP03–80, 000, Eastern Shore Natural Gas Company.
C–8.
Docket# CP03–329, 000, Columbia Gas Transmission Corporation.
C–9.
Docket# CP01–415, 010, East Tennessee Natural Gas Company.
Other#s CP01–415, 011, East Tennessee Natural Gas Company.
CP01–415, 012, East Tennessee Natural Gas Company.
CP01–415, 013, East Tennessee Natural Gas Company.
CP01–415, 015, East Tennessee Natural Gas Company.

Magalie R. Salas,
Secretary.

[FR Doc. 03–24953 Filed 9–26–03; 4:23 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 25, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 2, 2003, 9:30 a.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on October 2, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24954 Filed 9–26–03; 4:28 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–FRC–7588–9]

Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

AGENCY: Environmental Protection Agency.

ACTION: Notice of annual adjustment factors for excess emissions penalty.

SUMMARY: Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2003 is 1.4502. This value is derived from the Consumer Price Index for 1990 and 2003, as defined in 40 CFR part 72, and corresponds to a penalty of $2900 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2004 is 1.4815. This value is derived from the Consumer Price Index for 1990 and 2004, as defined in 40 CFR part 72, and corresponds to a penalty of $2963 per excess ton of sulfur dioxide or nitrogen oxides emitted.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 564–9077.

Dated: September 22, 2003.

Larry F. Kertcher,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 03–24911 Filed 9–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7565–7]

Clean Water Act Section 303(d): Availability of 3 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 3 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before October 31, 2003.

ADDRESSES: Comments on the 3 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–6490, or e-mail: *caldwell.ellen@epa.gov.* For further information, contact Ellen Caldwell at (214) 665–7513. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 3 TMDLs

By this notice EPA is seeking comment on the following 3 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
AR11110203–904–3.	Stone Dam Creek.	Ammonia.
AR11110203–904–3.	Stone Dam Creek.	Nitrates.
AR11110203–931–10.	Whig Creek	Copper.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 3 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan. The EPA also will revise the Arkansas 303(d) list as appropriate.

Dated: September 23, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–24777 Filed 9–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to

the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011223–028.

Title: Transpacific Stabilization Agreement.

Parties: APL Co. Pte. Ltd. and American President Lines, Ltd. (acting as one party); A.P. Moller-Maersk A/S trading under the name of Maersk Sealand; CMA CGM, S.A.; COSCO Container Lines Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V. and P&O Nedlloyd Limited (acting as one party); and Yangming Marine Transport Corp.

Synopsis: The amendment deletes the Indian Subcontinent from the geographic scope of the agreement and revises various communications and meeting processes under the agreement.

Agreement No.: 201147.

Title: Broward/Chiquita Lease and Operating Agreement.

Parties: Broward County (Florida); Chiquita Brands Company, North America.

Synopsis: The agreement provides for the lease of property to be used as a marine terminal. The term of the lease is through September 23, 2013.

Agreement No.: 201148.

Title: Broward/Crowley Marine Terminal Lease Agreement.

Parties: Broward County (Florida); Crowley Liner Services, Inc.

Synopsis: The agreement is a restatement of a previous agreement and provides for the lease of property to be used as a marine terminal. The term of the lease is through January 21, 2010.

Dated: September 26, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–24897 Filed 9–30–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Robert M. Weiss, Shorewood, Minnesota; to acquire voting shares of Excelsior Financial Services, Inc., Shorewood, Minnesota, and thereby indirectly acquire voting shares of Beacon Bank, Shorewood, Minnesota.

Board of Governors of the Federal Reserve System, September 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24807 Filed 9–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 October 24, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. South Shore Bancorp, MHC and South Shore Bancorp, Inc., both of South Weymouth, Massachusetts to become bank holding companies by acquiring 100 percent of the voting shares of South Shore Savings Bank, South Weymouth, Massachusetts and Horizon Bank and Trust Company, Braintree, Massachusetts.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to merge with Pittsburgh Financial Corp., and thereby indirectly acquire Pittsburgh Savings Bank, both of Wexford, Pennsylvania.

C. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Capital Corporation, Fort Scott, Kansas; to acquire 100 percent of the voting shares of Centerville State Bank, Centerville, Kansas.

Board of Governors of the Federal Reserve System, September 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24808 Filed 9–30–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–124]

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 at (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 Seleda Perryman, 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: ''Reactions to Race'' Module for the General Social Survey (GSS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this data collection is to understand some of the contextual, perceptual, and experiential factors associated with reactions to ''race'' that may contribute to racial disparities in health outcomes. CDC will fund ''Reactions to Race'' data collection on the 2004 General Social Survey (GSS). The Measures of Racism Working Group at CDC developed a 10-question module in the GSS.

The GSS is a biennial national population-based in-person survey conducted by the National Opinion Research Center (NORC) at the University of Chicago. GSS first data collection was in 1972. The basic purpose of the GSS is too continue ''to gather data on contemporary American society in order to monitor and explain trends and constants in attitudes, behaviors, and attributes; to examine the structure and functioning of society in general as well as the role played by relevant subgroups; to compare the United States to other societies in order to place American society in comparative perspective and develop cross-national models of human society; and to make high-quality data easily accessible to scholars, students, policy makers, and others, with minimal cost and waiting'' (*see http://www.norc.uchicago.edu/projects/gensoc1.asp).*

CDC is contracting with NORC through an existing agreement to administer the ''Reactions to Race'' module to the full GSS sample, consisting of 3,000 non-institutionalized U.S. adults, starting in June 2004. The questionnaire will be administered in-person by trained interviewers who have been ''race''-matched with the predominant ''race'' of residents in each sampled area.

The distributions of responses to the questions on the ''Reactions to Race'' module will be examined across all respondents as well as compared by ''race''. In addition, we will look at the relationship between the responses from the ''Reactions to Race'' module and responses to other health, attitude, and behavior questions (including a detailed assessment of experiences at work) on the 2004 GSS. These other data will provide a rich resource to help us contextualize responses to the module.

Ultimately, the results from this data collection will be useful as we examine the causes of and design interventions to eliminate racial and ethnic health disparities. There are no costs to respondents.

Respondent	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
U.S. Adults	3,000	1	5/60	250
Total				250

Dated: September 25, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–24836 Filed 9–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates:
8:30 a.m.–5 p.m., October 14, 2003
8:30 a.m.–12:30 p.m., October 15, 2003.

Place: Embassy Suites—Atlanta at Centennial Olympic Park, 267 Marietta Street, Atlanta, Georgia 30313. Telephone 404/223 2300.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Update on Primary Prevention issues, Review of Evidence for Effects at Blood Lead Levels <10 μg/dL, Building Blocks Project, the National Academy of Sciences Study, Lead Exposure at Superfund Sites, and the Update on International Lead issues.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

For Further Information Contact: Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Hwy, NE, M/S F–30, Atlanta, Georgia 30341, telephone 770/488–7490, fax 770/488–3635.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of meeting.

The Director, Management Analysis and Services office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for

both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 25, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–24840 Filed 9–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0404]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written or electronic comments on the collection of information by December 1, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Tissue Intended for Transplantation—21 CFR Part 1270 (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Service Act (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) (21 CFR 1270.31(a) through (d)) require written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process, (2) all significant steps in reviewing the relevant medical record of the donor, (3) designating and identifying quarantined tissue, and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also require recording and justification of any deviation from the written procedures. Section 1270.33(a) (21 CFR 1270.33(a)) requires records to be maintained concurrently with the performance of each significant step in the procedures of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and such records required under § 1270.21 (21 CFR 1270.21). Section 1270.33(h) requires all records be retained at least 10 years beyond the date of transplantation, distribution, disposition, or expiration of the tissue, whichever is latest. Section 1270.35 (21 CFR 1270.35) requires specific records be maintained to document the following outcomes: (1) The results and interpretation of all required infectious disease tests and results, (2) the identity and relevant medical records of the donor, (3) the receipt and distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from FDA's Center for Biologics and Evaluation Research database system, the agency estimates that there are approximately 300 tissue establishments of which 166 are conventional tissue banks and 134 are eye tissue banks. Based on information provided by industry, there are an estimated total of 750,000 conventional tissue products and 94,186 eye tissue products recovered per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 20,000 donors of conventional tissue and 47,796 donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirement in part 1270 (21 CFR part 1270). Based on information provided by industry associations, 50 to 75 percent (average 63 percent) of the conventional tissue banks are members of AATB (166 X 63 percent = 105), and 99 percent of eye tissue banks are members of EBAA (134 X 99 percent = 133). Therefore, recordkeeping by these 238

establishments (105 + 133 = 238) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 62 establishments, which is 21 percent of all establishments (300 - 238 = 62, or 62/300 = 21 percent).

Based on CBER's database system and information provided by industry, FDA estimates an average of two new tissue banks annually, which may be nonmembers of a trade association. Each new tissue bank requires an estimated 64 hours to prepare standard operating procedures (SOPs) under § 1270.31(a) through (d). The requirement for the development of these written procedures is considered an initial one-time burden. FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures for § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h), include documenting the results and interpretation of all required infectious disease tests and results and the identify and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1270.31(a) through (d)	2	1	2	64	128
1270.31(a) through (d)[2]	62	1	62	24	1,488
1270.31(a) and (b)[3]	62	2	124	1.0	124
1270.33(a), (f), and (h) and 1270.35(a) and (b)	62	3,089	191,518	1.0	191,518
1270.35(c)	62	5,719	354,578	1.0	354,578
1270.35(d)	62	715	44,330	1.0	44,330
Total					592,166

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of SOPs.
[3] Documentation of deviations from SOPs.

Dated: September 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–24799 Filed 9–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0421]

Determination That Trilafon Tablets and Three Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the four drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. These are drug products with approved new drug applications (NDAs) to which one or more approved abbreviated new drug applications (ANDAs) refer. This determination means that the approval status of the ANDAs is unaffected by the withdrawal from sale of the reference product.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under an NDA. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA

determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

If a listed drug is withdrawn from sale and there are approved ANDAs that refer to that drug, under § 314.161(a)(2) (21 CFR 314.161(a)(2)), the agency must determine whether the listed drug was withdrawn from sale for reasons of safety or effectiveness. Section 314.161(d) provides that if FDA determines that the listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

The holders of the applications listed in the table in this document have informed FDA that the drug products have been withdrawn from sale. The drug products in the table are subjects of approved NDAs to which one or more approved ANDAs refer.

NDA No.	Drug	Applicant
10–775	Trilafon (perphenazine) tablets, 2, 4, 8, and 16 milligrams (mg)	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
12–071	Decadron (dexamethasone sodium phosphate) injection, 4 mg/milliliter (mL) and 24 mg/mL	Merck & Co., P.O. Box 4, West Point, GA 19486-0004
14–694	Hexadrol (dexamethasone sodium phosphate) injection, 4 mg/mL and 10 mg/mL	Organon, Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052
19–304	Tricor (fenofibrate) capsules, 67, 134, and 200 mg	Abbott Laboratories, 200 Abbott Park Rd., Abbott Park, IL 60064-3537

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Approved ANDAs that refer to the NDAs listed in this document are unaffected by the withdrawal of these products subject to those NDAs, and accordingly, the agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Dated: September 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–24862 Filed 9–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).

The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 9, 2003, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery: 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, by phone at 301–827–6758, or by e-mail at *PerezT@cder.fda.gov* or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will: (1) Consider off-patent oncology drugs for which pediatric studies are needed and discuss the availability of information concerning the safe and effective use of the drugs in the pediatric population, whether additional information is needed, and whether new pediatric studies concerning the drugs may produce health benefits in the pediatric population, as mandated by the Best Pharmaceuticals for Children Act (BPCA), and (2) discuss age-appropriate formulation changes to facilitate dosing of products used in the pediatric oncology setting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 2, 2003. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. and 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets. FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the October 9, 2003, Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–24920 Filed 9–26–03; 4:13 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: October 20, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussions are: (1) current issues; (2) the National Research Council and Institute of Medicine Report to the NIH; and (3) a panel on Enhancing Public Trust in the Clinical Research Enterprise.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/about/publicliaison/index.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency, Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24825 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Phase Application Awards in Cancer Prognosis & Prediction (PAR03–089) & Cancer Prognosis and Prediction: SBIR/STTR Initiative (PAR03–099).

Date: October 23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisor Committee Policy.

[FR Doc. 03–24828 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group NRRC 28 Meeting.

Name of Committee: National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

Date: November 13, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mary Jane Slesinksi, Phd, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 83.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 03–24829 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

Date: October 16–17, 2003.
Time: 8:15 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24821 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.
Date: October 29–30, 2003.
Closed: October 29, 2003, 8 a.m. to 9 a.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: October 29, 2003, 9 a.m. to 11:40 a.m.
Agenda: Committee Discussion.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: October 29, 2003, 11:40 a.m. to 12:40 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: October 29, 2003, 12:40 p.m. to 4:30 p.m.
Agenda: Committee Discussion.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: October 29, 2003, 4:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: October 30, 2003, 8 a.m. to 9 a.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: October 30, 2003, 9 a.m. to 12 p.m.
Agenda: Committee Discussion.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: October 30, 2003, 12 p.m. to 1 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: October 30, 1 p.m. to 3:45 p.m.
Agenda: Committee Discussion.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: October 30, 2003, 3:45 p.m. to 4:30 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24822 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Long-Term Colony of Caloric ally Restricted Rodents.
Date: October 23, 2003.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r:@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24823 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Alzheimer Patient Registry.

Date: October 7, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Ave, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24824 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel IP–RISP Applications Review.

Date: October 22, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Child and Adolescent Interventions Part 2.

Date: October 27, 2003.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Cognitive Science and Neuroimaging.

Date: October 30, 2003.

Time: 10:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1178, *benxu1@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Disorders Treatment Research.

Date: October 30, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

Name of Committee: National Institute of Mental Health Special Emphasis Panel NIMH Predoctoral and Postdoctoral Institutional Research Traning.

Date: October 31, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Healath, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1340, *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel STAR*D Ancillary Study.

Date: November 12, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24826 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel T32 Reviews for Service & Epidemiology Applications.

Date: October 9, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24827 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: October 16–17, 2003.

Time: October 16, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Time: October 17, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24830 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual investigators conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: October 26–28, 2003.

Closed: October 26, 2003, 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: October 27, 2003, 8:30 a.m. to 5 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Structural Biology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 28, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K Akiyama, Phd, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, (919) 541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: September 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24831 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS8 03 SAT Member Conflict.

Date: October 8, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychiatric Genetics.
Date: October 14, 2003.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Bacteriology and Mycology Subcommittee 2.
Date: October 15–16, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 4190, Bethesda, MD 20892, 301–435–0903.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Clinical Neuroscience and Disease Study Section.
Date: October 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel T-Cell Immunology.
Date: October 21, 2003.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Special R01 Grant Review.
Date: October 21, 2003.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

Name of Committee: Center for Scientific Review Special Emphasis Panel Trudi McFarland's Member Conflicts.
Date: October 21, 2003.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: October 23–24, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Jay Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Behavioral Medicine, Interventions and Outcomes Study Section.
Date: October 23–24, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Genetics and Psychiatric Diseases.
Date: October 24, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, PhD, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Tumor Cell Biology Study Section.
Date: October 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Angela Y. Ng, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel B-Cell Immunology.
Date: October 29, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24819 Filed 9–30–03; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2003, 8 a.m. to October 17, 2003, 5 p.m., River Inn Hotel, 924 25th Street, NW., Washington, DC, 20037 which was published in the **Federal Register** on September 9, 2003, 68 FR 53183–53186.

The meeting will be held at the Holiday Inn Downtown, 1155 14th Street, NW., Washington, DC 20005. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: September 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24820 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Undersecretary for Management; Human Resource Management System Senior Review Advisory Committee

AGENCY: Undersecretary for Management, DHS.

ACTION: Notice of meeting.

SUMMARY: The Human Resource Management System Senior Review Advisory Committee (Committee or SRC) will meet in its second session on Monday, October 20 through Wednesday, October 22, 2003. The SRC is charged with reviewing the work of the Department of Homeland Security/Office of Personnel Management (DHS/OPM) Design Team and providing options to the Secretary of DHS and the Director of OPM for their consideration in establishing the new Human Resource Management System provided for in section 841 of the Homeland Security Act. The entire meeting will be open to the public.

DATES: The SRC will meet October 20–October 22, 2003, from 8:30 a.m. to 5 p.m.; at the discretion of the chair the meetings may run past 5 p.m. Notice of this meeting is published well in advance of the meeting to give sufficient notice to interested parties and stakeholders. Requests by members of the public to make oral presentations at the meeting and written statements for the SRC should reach the Designated Federal Official at DHS on or before October 13, 2003. All oral presentations and written statements will become part of the Committee record and deliberations.

ADDRESSES: The SRC meeting will be held at the Almas Temple, 1315 K Street NW., Washington, DC. Send written statements and requests to make an oral presentation to the SRC Designated Federal Officer (DFO) at: Department of Homeland Security, Washington, DC 20528. Submission by e-mail or by delivery services such as Fedex, UPS, etc., is preferred to ensure delivery on time. The address is: Department of Homeland Security, Attn: Under Secretary for Management/CHCO/Melissa Allen, Via: Remote Delivery Site (RDS), 245 Murray Drive, Bldg 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Frances Dolan, Director Human Resource Policy, DHS, and Ms. Melissa Allen, Senior Human Resource Advisor, DHS, have been designated as DFOs for the SRC. They can be reached on 202–692–4272; *KayFrances.Dolan@dhs.gov* or *Melissa.Allen@dhs.gov;* and at the address listed above.

SUPPLEMENTARY INFORMATION:

Objective. The purpose of this meeting is to (1) deliberate the options developed by the HR Design Team; (2) to hold discussions on possible modifications to those options, and (3) to determine which options should be forwarded by the Senior Review Committee for consideration by the Secretary and Director. In addition to these formal agenda items, the Committee will hear from members of the public. Due to the complexity of the topics to be reviewed and the length of the meeting, the following tentative schedule is nominally established: On Monday, October 20, and Tuesday, October 21, the SRC will hear presentations on and deliberate the options. On Tuesday, October 21, the SRC will hear from members of the public who have requested time to make oral presentations. On Wednesday, October 22, the SRC will continue its deliberations on all of the options presented and determine which options should be forwarded by the Senior Review Committee for consideration by the Secretary and Director.

Public Presentations. Requests to make oral presentations should reach the Designated Federal Official at DHS on or before October 13, 2003. Oral presentations will be limited to approximately 5 minutes to allow sufficient time for any questions from the Committee. Oral presentations may be supplemented by written statements; written statements submitted for the record should be limited to no more than fifteen (15) pages. If there is insufficient time to honor all requests for oral presentations, the Designated Federal Official (DFO) will seek to ensure a full range of views and opinions are heard. Members of the public who wish to file a written statement with the SRC should send it to the DFO (see addresses above); written statements should be received on or before October 15, 2003. All written submissions will become part of the Committee record and deliberations.

Information on Services for Individuals with Disabilities. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please notify the Designated Federal Official as soon as possible by phone or email.

Dated: September 26, 2003.

Janet Hale,

Under Secretary for Management.

[FR Doc. 03–24906 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2282–03]

Introduction of Revised Form N–600 and New Form N–600K

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

ACTION: Notice.

SUMMARY: The U.S. Citizenship and Immigration Services (CIS) announces implementation of the revised Form N–600, Application for Certificate of Citizenship, and a new Form N–600K, Application for Citizenship and Issuance of Certificate under Section 322. These two forms have replaced the previous edition of Form N–600 as well as Form N–643, Application for Certificate of Citizenship on Behalf of an Adopted Child, and Form N–600/N–643 Supplement A, which have been withdrawn.

DATES: This notice is effective October 31, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

Public Law 106–395, the Child Citizenship Act of 2000, enacted on October 30, 2000, provides that foreign-born children residing in the United States who meet certain specified requirements acquire United States citizenship automatically. This process replaced prior laws that required such children to obtain citizenship through an application for naturalization. Public Law 107–273, enacted on November 2, 2002, prescribes procedures by which children born of or adopted by a United States citizen parent and residing abroad may be naturalized under section 322 of the Immigration and Nationality Act (Act), on the application of their U.S. citizen legal guardian or grandparent. Since these laws made important changes in eligibility requirements and procedures, it became necessary to amend the application forms by which qualified children may apply for naturalization or obtain documentary proof of U.S. citizenship.

To reflect these statutory changes the CIS revised Form N–600, and developed a new Form N–600K. The revision and the new form were approved for use by

the Office of Management and Budget under the Paperwork Reduction Act.

The revised Form N–600 and new Form N–600K have replaced the previous Application for Certificate of Citizenship on Behalf of an Adopted Child, Form N–643, as well as Form N–600/N–643 Supplement A, Application for Transmission of Citizenship Through a Grandparent.

Accordingly, this notice advises the public that only the current Form N–600 bearing the edition date of November 15, 2002 or later, is the correct form on which to apply for a Certificate of Citizenship. In addition, the new Form N–600K, bearing an edition date of April 30, 2003 or later, is the only correct form on which to apply for naturalization benefits for a child under section 322 of the Act.

As of October 31, 2003, only the November 15, 2002 or subsequent editions of Form N–600 will be valid for the purpose of filing an application for a certificate of citizenship, and only the April 30, 2003, or subsequent editions of Form N–600K will be valid for the purpose of filing an application for a certificate of citizenship under section 322 of the Act.

Correction of Stated Filing Fee

The current printed editions of Form N–600 and Form N–600K bear revision dates of November 15, 2002 and April 30, 2003, respectively. The instructions on these forms display a fee amount of $195.00 for a Form N–600 or Form N–600K filed on behalf of anyone except an adopted child, and $155.00 if filed on behalf of an adopted child. Those amounts were based on a fee adjustment rulemaking pending at the time the revisions were made. Clearance of the anticipated fee adjustment rulemaking has been delayed and, as a result, until further notice, CIS has adjusted the filing fees to be as follows. For a Form N–600 or Form N–600K filed on behalf of anyone except an adopted child, the correct fee is $185.00. For a Form N–600 or Form N–600K filed on behalf of an adopted child, the correct fee is $145.00.

Grace Period for Filing Previous Editions of Applications for a Certificate of Citizenship

Form N–600 applications bearing the earlier edition date that are mailed, postmarked or otherwise filed on or before October 31, 2003 will be accepted for the purpose of establishing a filing date for a certificate of citizenship. However, any applicants who are subject to the amended eligibility requirements of the current laws may be required to complete and submit either additional information or a valid current Form N–600 or N–600K without additional fee, as appropriate, in order to complete the processing of their application. After October 31, 2003 no Form N–600 application bearing an edition date earlier than November 15, 2002, will be accepted for processing by CIS.

Form N–643 applications that are mailed, postmarked or otherwise filed on or before October 31, 2003 will be accepted for the purpose of establishing a filing date for a certificate, if the applicant continues to be eligible under the current law. Any applicants who are subject to the amended eligibility requirements of the current laws may be required to complete and submit either additional information or a valid Form N–600 or N–600K without additional fee, as appropriate, in order to complete the processing of their application. After October 31, 2003 no Form N–643 will be accepted for filing at CIS Field Offices.

Beginning October 31, 2003, any outdated editions of the Form N–600 application and any Form N–643 received by the CIS will be returned to the applicant with instructions to submit a current application form.

How Can Applicants Obtain the Current Edition of Form N–600 or Form N–600K?

Applicants can obtain copies of the current Form N–600 or N–600K by calling the CIS Forms Line at 1–800–870–3676. The current edition of Form N–600 or N–600K also can be viewed and printed electronically from the CIS Web site at *http://www.bcis.gov.*

Dated: September 15, 2003.

Eduardo Aguirre,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 03–24803 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Fee for Customs Services at User Fee Airports

AGENCY: Bureau of Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged user fee airports by the Bureau of Customs and Border Protection (CBP) for providing customs services at these designated facilities. These fees are based on actual costs incurred by CBP for equipment, training, and one CBP inspector on a full-time basis, and, thus, merely represent reimbursement to CBP for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with CBP to become a user fee airport, and the annual fee thereafter charged user fee airports.

EFFECTIVE DATE: The new fees will be effective October 1, 2003, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Office of Finance (202) 927–0609.

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the provision of customs services and establishment of a fee for the use of such services at certain specified airports and at any other airport, seaport, or other facility designated pursuant to specified criteria. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15)). The fee that is charged is an amount equal to the expenses incurred in providing the customs services at the designated facility, which includes the salary and expenses of individuals employed by CBP, and any necessary support costs to provide the customs services. The fees being raised are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with CBP to become a user fee airport (set at $129,125 for FY 2003), and the annual fee, thereafter, charged user fee airports (set at $115,400 for FY 2003).

The user fees for user fee airports are typically set forth in Memorandum of Agreements between the user fee facility and CBP. While the amounts of these fees are agreed to be at flat rates, they are adjustable, as costs and circumstances change.

The last notice concerning fees charged user fee airports was published on September 12, 2002, in the **Federal Register** (67 FR 57866).

Adjustment of User Fee Airport Fees

As of July 24, 2003, CBP has determined that in order for the user fee to fully reimburse CBP for services provided, the initial fee must be increased from $129,125 to $140,874 and that the recurring annual fee subsequently charged must be increased from $115,400 to $123,438. The new fees will be effective October 1, 2003,

and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: September 26, 2003.

John E. Eichelberger,

Assistant Commissioner, Office of Finance.

[FR Doc. 03–24949 Filed 9–30–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–76]

Notice of Submission of Proposed Information Collection to OMB: Commitment to Guarantee Mortgage-Backed Securities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information is provided by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

DATES: *Comments Due Date:* October 31, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

OMB Approval Number: 2503–0001.

Form Numbers: HUD–11704.

Description of the Need for the Information and Its Proposed Use: Information is provided by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

Respondents: Business or other for-profit.

Frequency of Submission: Quarterly.

Reporting Burden: Number of Respondents 300; Average responses per respondent 4; Total annual responses 1,200; Average burden per response 0.25 hrs.

Total Estimated Burden Hours: 300.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 24, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–24810 Filed 9–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act (PRA); Federal Aid Grant Application Booklet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. You may obtain copies of the collection requirement, related forms, or explanatory material by contacting the person listed below under **FOR FURTHER INFORMATION CONTACT.**

DATES: Interested parties must submit comments on or before December 1, 2003.

ADDRESSES: Interested parties should send comments on the information collection by mail to Information Collection Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; by fax to (703) 358–2269; or by e-mail to *Anissa Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kim Galvan, voice (703) 358–2420, fax (703) 358–1837, or e-mail *kgalvan@fws.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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)). 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.

We will submit a request to OMB to renew its approval of the collection of information associated with the Federal Aid Grant Application Booklet. The Federal Aid Grant Application Booklet offers the public information on how to apply for certain Federal grants. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection

and Restoration Act (16 U.S.C. 3954). This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Boating Infrastructure, and Partnerships for Wildlife and Endangered Species. We collect information relevant to eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We also collect financial and performance information to track costs and accomplishments of these grant programs. We need the information collected to support the grant work of our Division of Federal Assistance. In this renewal request, we plan to make minimal changes to the booklet to make it easier for the public to understand and use.

The current OMB control number for this information collection is 1018–0109, and the OMB approval for this collection expires on January 31, 2004. We are requesting a three-year term of approval for this information collection activity.

Title: Federal Aid Grant Application Booklet.

OMB Control Number: 1018–0109.

Frequency of Collection: Annually.

Description of Respondents: The 50 U.S. States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Indian Tribal Governments, and not-for-profit institutions.

Annual Burden Estimates:

Name	Completion time per form	Total annual number of responses	Total annual burden hours
Initial Proposal	80 hours	4,000	320,000
Amendment	2 hours	1,750	3,500
Totals	.....	5,750	323,500

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 17, 2003.

Anissa Craghead,

Service Information Collection Officer.

[FR Doc. 03–24798 Filed 9–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by October 31, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *''victoria_davis@fws.gov''.* Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

TE077175–0

Applicant: Troy L. Best, Auburn University, Auburn, Alabama.

The applicant requests authorization to take (survey, capture, examine, and release) the gray bat (*Myotis grisescens*) while determining the size of the population and the age and sexual composition of the colony throughout the annual activity period. The activities would take place in Blowing Spring Cave, Lauderdale County, Alabama.

TE077258–0

Applicant: University of Florida, Dr. Frank Mazzotti, Fort Lauderdale Florida

The applicant requests authorization to take (capture, radio tag, examine, tag, measure, and monitor and disturb nest) the American crocodile (*Crocodylus acutus*) while conducting population surveys and monitoring. The proposed activities would take place throughout the state of Florida.

TE077267–0

Applicant: State of Georgia, Georgia Department of Transportation, William Bouthillier, Atlanta, Georgia

The applicant requests authorization to take (capture, identify, and release) all federally listed freshwater fishes and mollusks, identified in 50 CFR 17.11 in the State of Georgia along with the Eastern indigo snake (*Drymarchon corais couperi*). The proposed activities would take place throughout the state of Georgia while conducting surveys for transportation projects.

TE077277–0

Applicant: Carlos E. Diez and Robert P. Van Dam, Puerto Rico Department of Natural and Environmental Resources, San Juan, Puerto Rico

The applicant requests authorization to take (capture, collect, relocate, and euthanize) Hawksbill sea turtles (*Eretmochelys imbricata*), for the purposes of conducting genetic studies on 200 eggs and 420 hatchlings to determine the sex ratios of the hatchlings that are being produced on Mona Island. The proposed study consists of three phases: (1) Determination of the pivotal temperature (the incubation temperature at which both sexes are produced in equal proportion); (2) a methodological validation; and (3) the estimation of the sex ratio in hatchlings incubated on Mona Island's beaches. The proposed activities will take place on Mona Island, Puerto Rico.

Dated: September 19, 2003.

Sam D. Hamilton,

Regional Director.

[FR Doc. 03–24837 Filed 9–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Recovery Plan for the Endangered Fat Threeridge (*Amblema neislerii*), Shinyrayed Pocketbook (*Lampsilis subangulata*), Gulf Moccasinshell (*Medionidus penicillatus*), Ochlockonee Moccasinshell (*Medionidus simpsonianus*), Oval Pigtoe (*Pleurobema pyriforme*) and the Threatened Chipola Slabshell (*Elliptio chipolaensis*), and Purple Bankclimber (*Elliptoideus sloatianus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the final recovery plan for seven freshwater mussels—the endangered fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*) and the threatened Chipola slabshell (*Elliptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*). These species are endemic to several river basins (Apalachicola-Chattahoochee-Flint, Ochlockonee, Suwannee, and Econfina Creek) in Alabama, Florida, and Georgia. The recovery plan includes specific recovery objectives and criteria to be met in order to downlist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended.

ADDRESSES: Copies of this recovery plan are available by request from Jerry Ziewitz, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Avenue, Panama City, Florida 32405 (Telephone 850/769–0552, Ext. 223). Recovery plans approved by the Service are also available on the Internet at: *http://endangered.fws.gov/recovery/Index.html#plans,* or may also be obtained from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland, 20814 (Telephone (301) 492–6403 or (800) 582–3421). The fee for the plan varies depending on the number of pages in the plan.

FOR FURTHER INFORMATION CONTACT: Jerry Ziewitz, at the address and telephone number given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing necessary recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We developed a technical/agency draft of this recovery plan and released it for public review on September 16, 1999 (64 FR 50301). We made substantial revisions to the 1999 draft based on comments received and recently obtained biological information. Because of this, we provided an additional opportunity for stakeholders to comment by issuing an updated draft plan. We published a notice of availability of the agency draft recovery plan for these seven mussels in the **Federal Register** on July 17, 2003 (68 FR 42419). A public comment period was opened with the notice, closing on August 18, 2003. Comments and information submitted by peer reviewers and other interested parties have been considered in preparation of the final recovery plan and, where appropriate, incorporated. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We listed these seven mussels, five as endangered and two as threatened species under the Act, on March 16, 1998 (63 FR 12664). The seven freshwater mussels are restricted to a few river basins (Apalachicola-Chattahoochee-Flint, Ochlockonee, Suwannee, and Econfina Creek) in Alabama, Florida, and Georgia. They were once distributed across hundreds of stream miles in these basins and now survive in a few relatively small, isolated populations scattered throughout their former range.

Habitat alteration, including impoundments, channelization, gravel mining, contaminants, sedimentation,

and stream-flow depletion, is likely the principal cause of these species' decline in range and abundance. Genetic factors associated with increasingly small and isolated populations and the introduction of alien species may present additional obstacles to their recovery.

The objective of this recovery plan is to provide a framework for the recovery of these seven species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the seven species will be reviewed and they will be considered for reclassification to threatened status or for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 5, 2003.

Noreen Walsh,

Acting Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 03–24838 Filed 9–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of 3 years.

EFFECTIVE DATE: April 1, 2004.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on March 31, 2004. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Concessioner ID No.	Concessioner name	Park
STLI001–89	Circle Line-Statue of Liberty Ferry Inc.	Statue of Liberty National Monument/ Ellis Island.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: August 29, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–24877 Filed 9–30–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Juan Bautista de Anza National Historic Trail Advisory Commission; Notice of Meeting

SUMMARY: Notice is given in accordance with the Federal Advisory Committee Act that the second meeting of the Juan Bautista de Anza National Historic Trail Advisory Commission will be held at the following location, dates, and times.

DATES/TIMES: Saturday, November 1, 8:30 a.m. to 4:30 p.m. and Sunday, November 2, 8:30 a.m. to 12 p.m. 2003.

ADDRESSES: The meeting will be held in the meeting room at Palm Canyon Resort, 221 Palm Canyon Drive Borrego Springs, CA 92004. A field trip to trail sites within Anza-Borrego Desert State Park will occur on the afternoon of November 1. The public is welcome, but transportation will only be provided to commission members.

FOR FURTHER INFORMATION AND COPIES OF MEETING MINUTES CONTACT: Meredith Kaplan, Juan Bautista de Anza National Historic Trail, 1111 Jackson Street, Suite 700, Oakland, California 94607, at 510–817–1438, or *meredith_kaplan@nps.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established in accordance with the National Trails System Act (915 U.S.C. 1241 *et seq.*), as amended by Public Law 191–365 to consult with the Secretary of Interior on planning and other matters relating to the trail.

Agenda

1. Welcome.
2. Review trail status.
3. Develop promotional package.
4. Approve Long Range Interpretive Plan and identify funding sources.
5. Review list of trail segments with list of constituencies and groups.
6. Discuss attracting and keeping volunteers.

The meeting is open to the public and opportunity will be provided for public comments at specific times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission.

Dated: September 2, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–24876 Filed 9–30–03; 8:45 am]

BILLING CODE 4312–JA–M

INTERNATIONAL TRADE COMMISSION

Sanction for Dissemination of ''ITC Questionnaire Tip Sheet''

AGENCY: U.S. International Trade Commission.

ACTION: Sanction for dissemination of ''ITC Questionnaire Tip Sheet''.

SUMMARY: Notice is hereby given of the sanction imposed by the Commission for the dissemination of a document entitled ''ITC Questionnaire Tip Sheet'' by Sanford B. Ring, Esq. of the law firm of Dykema Gossett to a client and a non-client in Steel Consuming Industries: Competitive Conditions With Regard to Steel Safeguard Measures, Inv. No. 332–452. The Commission found that there was good cause to sanction Ring, pursuant to 19 CFR 201.15(a), because the tip sheet went beyond the boundaries of appropriate guidance for clients and non-clients regarding their responses to Commission questionnaires. The Commission believes it is important to maintain the integrity of its investigations and to ensure that questionnaire responses in a fact-finding Commission investigation will be accurate and not inappropriately influenced by counsel seeking to support his or her view of the facts in an investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: In connection with the Steel Consuming Industries investigation, Mr. Ring drafted and transmitted an ''ITC Questionnaire Tip Sheet'' to his client, the Motor and Equipment Manufacturers Association (''MEMA''). Ring also transmitted the tip sheet to a non-client, the National Electrical Manufacturers Association (''NEMA''). Both MEMA and NEMA acknowledge that they electronically transmitted the tip sheet to a group of firms and associations. The tip sheet is a document that aggressively and inappropriately coaches questionnaire respondents on how to complete the questionnaires in the Steel Consuming Industries investigation. We note at the outset that some information the Commission considered in this matter cannot be discussed as it has been given confidential treatment, as requested by Mr. Ring.

The Commission has found the tip sheet contains inappropriate coaching of questionnaire respondents in fact-finding investigations, such as a section 332 investigation, because it is worded in a manner that encourages misleading responses to the questionnaires. The first sentence of the tip sheet states that ''the overriding goal is to tell a compelling story.'' The second paragraph states that ''[w]e want to demonstrate that the adverse impact of the tariffs on steel users has been great, and that it will be *even worse going forward.* It is important to bear this point in mind as you answer the questions—your projections for the future should be even more bleak than what has happened to date.'' (Emphasis in the original). The tip sheet encourages the respondent to use estimates ''if information is not readily available from your records in exactly the form requested'' and to resolve estimates ''in favor of a more compelling story.'' In addition, regarding projections in the future, the tip sheet encourages the respondent to be ''creative and ''extrapolative.''' There is no statement in the tip sheet that reminds the respondents that their responses must be true and accurate other than to suggest that they read the ITC instruction booklets prior to completing the questionnaires.

The Commission finds the tip sheet to be an entirely inappropriate form of coaching questionnaire respondents in a fact-finding section 332 investigation.

Sanford B. Ring is reprimanded for drafting the tip sheet and disseminating it to a client and non-client in the *Steel Consuming Industries* investigation.

The authority for this action is conferred by §201.15(a) of the Commission's rules of practice and procedure (19 CFR 201.15(a)).

Issued: September 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–24805 Filed 9–30–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: National Tracing Center Trace Request and NTC Obliterated Serial Number Trace Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 150, page 46224 on August 5, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 31, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 currently approved collection.

(2) *Title of the Form/Collection:* National Tracing Center Trace Request and NTC Obliterated Serial Number Trace Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3312.1 and ATF F 3312.2. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: State, Local, or Tribal Government. Abstract: The forms are used by the Federal, State, Local, and International law enforcement Community to request that ATF trace firearms used, or suspected to have been used in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 112,123 respondents, who will complete either form within approximately 6 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 22,425 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management

Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: September 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–24816 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on September 11, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agnostic Media, Seattle, WA; Automatic Duck, Inc., Snohomish, WA; Korean Broadcasting System, Seoul, REPUBLIC OF KOREA; Preview Multimedia, Hannover, GERMANY; Studio Audio & Video Ltd. (SADiE), Ely, UNITED KINGDOM; and The Walt Disney Company, Burbank, CA have been added as parties to this venture. Also, AISTM, Ampfing, GERMANY; and NOB, Hilversum, THE NETHERLANDS have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 16, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 16, 2003 (68 FR 42131).

Dorothy B. Fountain,

Director Deputy of Operations, Antitrust Division.

[FR Doc. 03–24916 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: National Clandestine Laboratory Seizure Report.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Clark R. Fleming, Field Division Counsel, El Paso Intelligence Center, 11339 SSG Sims Blvd., El Paso, TX 79908.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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:* New Collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EPIC Form 143, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Agencies. Other: None. Records in this system are used to provide clandestine laboratory seizure information for the El Paso Intelligence Center, Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities. It is a criminal offense under Title 21, United States Code, to illegally manufacture controlled substances and their counterfeits. 21 U.S.C. 873(a) authorizes the Attorney General to, among other things, ''arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances''. This form provides a consistent method by which state and local authorities can report incidents relating to the seizure of clandestine laboratories for illegal drug manufacturing or of materials evidencing clandestine laboratory operations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete the information within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 10,000 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: September 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–24815 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–1, GE2003–2]

Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores; Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of rescheduling and postponement of public meetings.

SUMMARY: OSHA is rescheduling a public stakeholder meeting on the draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores (draft grocery guidelines) for October 2, 2003. OSHA is also postponing the public stakeholder meeting on the draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft poultry processing guidelines), which had been scheduled for October 2, 2003, and will reschedule it in the near future.

DATES: OSHA will hold a half-day public stakeholder meeting on its draft grocery guidelines from 8:30 a.m. to 12:30 p.m., Thursday, October 2, 2003.

ADDRESSES: *Stakeholder meeting:* The public stakeholder meeting on the draft grocery guidelines will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; telephone (202) 628–2100.

Obtaining Copies of the Draft Guidelines: You can download the draft grocery and poultry guidelines from OSHA's Web page on the Internet at *http://www.osha.gov.* Printed copies of the draft grocery and poultry guidelines are available from OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You also may fax your request for copies of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

Draft Grocery Guidelines

OSHA will hold a public stakeholder meeting on its draft grocery guidelines from 8:30 a.m. to 12:30 p.m., Thursday, October 2, 2003, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001. The stakeholder meeting, originally set for October 18, 2003, had to be rescheduled because of the emergency closing of Federal government offices due to Hurricane Isabel.

Draft Poultry Processing Guidelines

OSHA is postponing the October 2, 2003, public stakeholder meeting on its draft poultry processing guidelines. OSHA will announce the time and location of the rescheduled meeting in the **Federal Register** in the near future.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 26 day of September, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–24931 Filed 9–30–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–124]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee (CAS).

DATES: Wednesday, October 22, 2003, 9 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 8Q43, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Introduction/Remarks
—Report from the Space Station Utilization Advisory Subcommittee
—Decision Rules Status
—Legislative Issues/Research Re-planning Activities
—Independent Review Result
—SPD Development Plan
—Subcommittee Structure/Terms of Reference
—Subcommittee Discussion
—Wrap-Up/Recommendations

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Kim Butler via email at *kbutler@hq.nasa.gov* or by telephone at (202) 358–2560. Attendees will be escorted at all times. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–24859 Filed 9–30–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, NA Form 3035, Applicant Background Survey, to obtain source of recruitment, ethnicity, race,

and disability data on job applicants. The information is used to determine if the recruitment is effectively reaching all aspects of the relevant labor pool. The information is also used to determine if there are proportionate acceptance rates at various stages of the recruitment process. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 1, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Applicant Background Survey.

OMB number: 3095–0045.

Agency form number: NA Form 3035.

Type of review: Regular.

Affected public: Applicants for NARA jobs.

Estimated number of respondents: 2,593.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when applicant wishes to apply for a job at NARA).

Estimated total annual burden hours: 216 hours.

Abstract: A diverse workforce enhances our agency by ensuring that we can draw on the widest possible variety of viewpoints and experiences to improve the planning and actions we undertake to achieve our mission and goals. By promoting and valuing workforce diversity, we create a work setting where these varied experiences contribute to a more efficient and dynamic organization and employees can develop to their full potential. To achieve these ends and in accordance with our Strategic Plan, we constantly work to improve our performance in hiring and promoting people in underrepresented groups.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Use of this form allows us to objectively determine the barriers to recruitment and selection that affect underrepresented groups. There is no source of this information other than directly from applicants.

Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired. The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from the form is entered into the personnel file of the individual selected and all the forms are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other Federal agencies. This form is a further simplification and update of a similar OPM applicant background survey used by NARA for many years.

Dated: September 17, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–24800 Filed 9–30–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of the Contractor/Agency Reviewer Identification Badge Authorization, NA Form 6000B, that will be used by employees of NARA on-site contractors and agency reviewers in order to obtain a NARA identification badge and proximity card. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 1, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments

concerning the following information collection:

Title: Contractor/Agency Reviewer Identification Badge Authorization.

OMB number: 3095–NEW.

Agency form number: NA Form 6000B.

Type of review: Regular.

Affected public: Business or other for-profit, Federal government.

Estimated number of respondents: 600.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 30 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities, and to facilitate the issuance of badges and cards. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: September 17, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–24801 Filed 9–30–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 17, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by E-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Housing and Urban Development, Office of Multifamily Housing Assistance Restructuring (N1–207–03–1, 34 items, 29 temporary items). Records relating to restructuring mortgages supported by public assistance, including such records as chronological files, working papers, asset files, grant files, contract files, contract appeal files, voucher files, a data base used for tracking properties and transactions, and web site copies of forms, publications, and other documents. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of such records as program subject files, policy files, publications, reports and studies, and training records are proposed for permanent retention.

2. Department of Justice, Civil Division (N1–60–03–4, 4 items, 4 temporary items). Lists of approved annuity brokers and declarations submitted by annuity brokers seeking

approval to administer structured settlements entered into by the U.S. Government. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Justice, Drug Enforcement Administration (N1–170–03–8, 10 items, 10 temporary items). System inputs, outputs, master files, and documentation associated with the Chemical Transaction Analysis System, which is used to monitor the distribution of specified chemicals and identify suspicious transactions and relationships between chemical distributors. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of the Treasury, Office of Sallie Mae Oversight (N1–56–03–8, 6 items, 3 temporary items). Work papers and electronic copies of records created using electronic mail and word processing relating to agency oversight of the Student Loan Marketing Association. Proposed for permanent retention are recordkeeping copies of examination reports, correspondence, and briefing materials.

5. Department of the Treasury, Financial Management Service (N1–425–03–6, 8 items, 8 temporary items). Records of the Financial Accounting and Services Division, including such records as courtesy disbursement files, inputs, outputs, system documentation, and master files of the Courtesy Disbursement Database, and out of balance correspondence files. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of the Treasury, U.S. Mint (N1–104–03–8, 6 items, 6 temporary items). Records relating to the employee advocate program, including case files, working papers, and electronic copies of records created using electronic mail and word processing.

7. Department of Veterans Affairs, Veterans Health Administration (N1–15–03–1, 9 items, 9 temporary items). Electronic and paper records relating to health benefits and reimbursements provided to certain veterans and dependents of veterans. Included are such records as applications, requests, certifications, supporting documentation, payment information, correspondence, appeals documents, health care treatment documents, and claims for medical services. Master files, electronic indexes, system backups, internal reports, and system documentation are included as are electronic copies of records created using electronic mail and word processing.

8. Federal Energy Regulatory Commission, Agency-wide (N1–138–03–1, 5 items, 5 temporary items). Substantive and non-substantive working papers, including electronic copies of documents created using electronic mail and word processing.

9. National Aeronautics and Space Administration, Agency-wide (N1–255–03–2, 3 items, 2 temporary items). Copies and printouts of records taken to or reproduced on board the International Space Station. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as daily work plans, procedural checklists and updates, payload and systems operational data, malfunction and reference data, and other data concerning the operations of the Station.

10. National Archives and Records Administration, Office of Human Resources and Information Services (N1–64–03–8, 4 items, 4 temporary items). Requests for services and a tracking database relating to the Computer/Electronic Accommodations Program, which provides equipment and services for employees in accordance with Section 508 of the Rehabilitation Act of 1973. Also included are electronic copies of records created using electronic mail and word processing.

11. Nuclear Regulatory Commission, Office of Nuclear Security and Incident Response (N1–431–03–1, 105 items, 90 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Security and Incident Response, including electronic copies of records created using office automation tools and records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which the agency is not the sponsor, program correspondence accumulated below the office director level, safeguard status reports, and systems security records. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include recordkeeping copies of such files as significant committee and conference records, emergency planning records, program correspondence accumulated at the office director level, international safeguards program files, and security policy files.

Dated: September 24, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–24802 Filed 9–30–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Notice of Amendment of Charter

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment of the Charter of the Advisory committee on the medical uses of isotopes.

SUMMARY: The ACMUI provides advice to the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; radiopharmacy; State medical regulation; patient's rights and care; health care administration; medical research; medical dosimetry, and Food and Drug Administration regulation.

The Nuclear Regulatory Commission has decided to amend the ACMUI charter to allow it to provide consultation services when requested by the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the

Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301–504–1963.

Dated: September 25, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–24852 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors will hold a joint meeting on October 9, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 9, 2003—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to discuss seismic, digital I&C, and human factors research activities. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officials, Mr. Michael R. Snodderly (telephone: 301–415–6927) or Dr. Medhat M. El-Zeftawy (telephone: 301–415–6889) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting one of the Designated Federal Officials between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 23, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–24851 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on October 10, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, October 10, 2003—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to discuss the status of the probabilistic risk assessment research program. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (telephone: 301–415–6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 23, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–24853 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27726]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act''); The Connecticut Light and Power Company (70–10163)

September 25, 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 October 20, 2003, 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 October 20, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Notice of Proposal To Amend Charter Or, Alternatively, Waive Charter Provision; Order Authorizing the Solicitation of Proxies

The Connecticut Light and Power Company (''CL&P''), 107 Selden Street, Berlin, Connecticut 06037, a wholly owned public-utility subsidiary of Northeast Utilities (''NU''), a registered holding company, has filed a declaration (''Declaration'') with the Securities and Exchange Commission (''Commission'') under sections 6(a)(2) and 12(e) of the Public Utility Holding Company Act of 1935, as amended (''Act'') and rules 54, 62, and 65 under the Act.

Currently, the ability of CL&P to incur or assume unsecured indebtedness is limited by a provision in its Certificate of Incorporation (''Charter''). The Charter provides that, except with the

consent of the holders of a majority of CL&P preferred stock then outstanding, and providing that holders of one-third of the aggregate voting rights represented by shares of CL&P preferred stock then outstanding do not dissent in writing or vote against such action, CL&P may not issue or assume any unsecured debt if, immediately after such issuance or assumption, (a) the total outstanding principal amount of all unsecured debt of CL&P will thereby exceed twenty percent of the aggregate of all outstanding secured debt and the capital stock, premium and surplus of CL&P, as stated on its books (''Capitalization''), or (b) the total outstanding principal amount of all unsecured debt of CL&P having maturities of less than ten years will then exceed ten percent of its Capitalization. This limitation is referred to as the ''Unsecured Debt Restriction.''

CL&P states that, as a result of utility restructuring in Connecticut, its capitalization has become smaller and its unsecured debt has become a greater proportion of its total capitalization. The company believes that eliminating the Unsecured Debt Restriction would provide more financial flexibility to lower its financing costs as it issues debt to fund its planned construction and improvement program.

CL&P requests authority to solicit proxies regarding the Proposals 1 and 2, described below, for use at a special meeting of the holders of CL&P preferred stock on November 25, 2003 (''Meeting''). The company states that it will solicit proxies by mail from holders of its preferred stock in accordance with all applicable rules under the Securities Exchange Act of 1934.

The first proposal, ''Proposal 1,'' seeks the consent of holders of CL&P common stock and preferred stock to eliminate the Unsecured Debt Restriction. Holders of CL&P common stock and holders of CL&P preferred stock are entitled to one vote per share. Under the Charter, adoption of Proposal 1 requires the affirmative vote of two-thirds of the total number of outstanding shares of common and preferred CL&P stock, each voting as a single class.

CL&P requests authority to eliminate the Unsecured Debt Restriction from the Charter in the event it receives the necessary shareholder approvals. The elimination of the Unsecured Debt Restriction may also require approval by the Connecticut Department of Public Utility Control (''DPUC''), and the company represents that, if it obtains the necessary consents from shareholders, it will obtain DPUC approval before eliminating the Unsecured Debt Restriction from the Charter.

Additionally, if Proposal 1 is adopted, CL&P requests authority, effective upon the amendment of the Charter, to make a cash payment (''Cash Payment'') of one percent of par value per share to each holder of CL&P preferred stock that properly voted at the Meeting (in person by ballot or by proxy) in favor of Proposal 1.

In the event that the required Proposal 1 shareholder approvals are not obtained, or if DPUC approval is required and not obtained, CL&P also seeks the consent of holders of CL&P preferred stock to continue the current waiver of the ten percent limit contained in the Unsecured Debt Restrictions for an additional ten-year period.[1] This alternative proposal is referred to as ''Proposal 2.'' Under the Charter, adoption of Proposal 2 requires: (1) The affirmative vote of a majority of shares of CL&P preferred stock; and (2) that less than one-third of the aggregate voting rights represented by shares of CL&P preferred stock outstanding do not dissent in writing or vote against the proposal. Assuming that Proposal 1 cannot be implemented, and if it obtains shareholder approval to implement Proposal 2, CL&P requests authority to do so.

The company estimates that the fees, commissions and expenses to be incurred in connection with the proposed transactions will be $100,000, consisting chiefly of outside solicitation fees and expenses, brokers' fees and printing costs.

CL&P has filed its proxy solicitation materials and requests that its proposal to solicit proxies be permitted to become effective immediately, as provided in rule 62(d) under the Act. It appears to the Commission that the Declaration, with respect to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the Declaration regarding the proposed solicitation of proxies from CL&P shareholders become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24864 Filed 9–30–03; 8:45 am]

BILLING CODE 8010–01–P

[1] By order dated October 20, 1993 (HCAR No. 24910), the Commission authorized CL&P to solicit proxies regarding Proposals 1 and 2. At a shareholders' meeting held on December 15, 1993, CL&P obtained the consent of the holders of the two classes of CL&P preferred stock for Proposal 2, which allowed the company to issue or assume unsecured indebtedness with a maturity of less than ten years in excess of the ten percent limitation for a ten-year period through March 31, 2004, provided that all unsecured indebtedness would not exceed twenty percent of its total capitalization. By order dated February 24, 1994 (HCAR No. 25992), the Commission authorized CL&P to implement Proposal 2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48545; File No. S7–17–03]

Business Continuity Planning for Trading Markets

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement; request for comment.

SUMMARY: The Securities and Exchange Commission (Commission) is issuing a Policy Statement setting forth its view that self-regulatory organizations operating trading markets (SRO Markets) and electronic communications networks (ECNs) should apply certain basic principles in their business continuity planning within the specified implementation timeframe. The Commission also requests comments on the Policy Statement. After the comment period has closed, the Commission may re-evaluate the Policy Statement in light of the comments received.

DATES: Effective Date: October 1, 2003. Comments must be received on or before October 31, 2003.

ADDRESSES: All comments concerning the Policy Statement should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments can be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–17–03; this file number should be included on the subject line if E-mail is used. To help us process and review your comments more effectively, comments should be sent by one method—U.S. mail or electronic mail only. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names

or e-mail addresses from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Robert Colby, Deputy Director (202) 942–0094; David Shillman, Associate Director, (202) 942–0072; or Peter Chepucavage, Attorney Fellow, (202) 942–0163, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

A critical ''lesson learned'' from the events of September 11, 2001 is the need for more rigorous business continuity planning in the financial sector to address problems of wider geographic scope and longer duration than those previously addressed. These events made clear the possibility of a large-scale regional disaster, resulting in a broad consensus in the financial community that business continuity planning needs to adapt to plan for events of wider scope and, in general, become more robust and resilient. Since the September 11 attacks, the U.S. securities markets and market participants have taken significant steps toward this goal by demonstrably improving the robustness of their business continuity plans.

The Commission and other financial regulators also have been devoting substantial resources to efforts designed to strengthen the resilience of the financial sector. For example, the Commission, together with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, recently published an Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System (Interagency Paper),[1] that identified ''sound practices'' relating to business continuity planning for certain key market participants. The goal of this project was to minimize the immediate systemic effects of a wide-scale disruption by assuring that the key payment and settlement systems could resume operation promptly following a wide-scale disaster, and major participants in those systems could recover sufficiently to complete pending transactions. In this way, market participants unaffected by the disaster could continue to operate with minimal disruption and, when those impacted by the event were in a position to resume operations, the critical infrastructure would be available for them to do so. The sound practices identified by the Interagency Paper include: (1) Intraday resumption or recovery goals; (2) maintenance of sufficient geographically dispersed resources to meet those goals; and (3) routine testing of business continuity arrangements. The Interagency Paper, however, focuses only on the key payment and settlement systems, and does not address the resilience of the trading markets.

Separately, Commission staff has been reviewing, on an ongoing basis, the efforts of the organized securities markets—the exchanges, Nasdaq, and ECNs—to strengthen their resilience in the post-September 11 environment. To date, these markets have taken a variety of steps to improve their physical security, information system protections, and business continuity capabilities. For example, the New York Stock Exchange (NYSE) has taken substantial measures to physically secure its Wall Street trading floor, and has established an off-site alternative trading floor that could be activated on a next-day basis if the NYSE's Wall Street trading floor was rendered inaccessible. Commission staff continues to work with the organized markets to further increase the robustness of their individual plans. In addition, Commission staff has been exploring with the markets the possibility of mutual back-up arrangements. For example, at the staff's urging, the NYSE and Nasdaq have agreed to serve as back-up trading platforms for each other's securities if a catastrophic event forced an extended closure of one market.

Earlier this year, the Government Accounting Office (GAO) issued a Report[2] recommending, among other things, that the Commission work with the securities industry to develop goals and strategies to resume trading in securities as rapidly as appropriate in the event of future disruptions, and determine sound business continuity practices that organizations would need to meet these goals. The Commission agreed with the GAO that more needs to be done to prepare the securities markets for the resumption of trading in the event of a crisis, and indicated an intent to consider identifying a time frame against which markets should plan to resume trading following a wide-scale regional disaster.[3] By establishing a specific resumption goal, the Commission would provide the securities markets with a consistent benchmark to use in developing more resilient business continuity plans.

II. Policy Statement

In view of the importance of the trading markets to the U.S. financial system, the Commission believes it appropriate[4] for the SRO Markets and ECNs to prepare for the resumption of trading in the event of a ''wide-scale disruption.''[5] Among other things, the trading markets provide the means for financial institutions to adjust their cash and securities positions, and those of their customers, in order to effectively manage liquidity, market, and other risks. These markets also are critical to the capital raising process and for funding daily business operations. With over half of all U.S. households invested in the capital markets, the mechanisms for managing and valuing that wealth—the trading markets—must be highly-resilient.

That said, while there is little doubt that the trading markets collectively are critical to the U.S. financial system, the Commission is of the view that, individually, the markets present a lesser degree of systemic vulnerability than the key clearance and settlement utilities. For one, trading activity is relatively fungible across markets. In today's diverse U.S. national market system, very few securities are traded only in one market. As a result, the Commission believes that, were any single securities market to become incapacitated, trading could be shifted to one or more of the remaining markets. Accordingly, the business continuity planning principles for individual trading markets, set forth below, are somewhat less stringent than the sound

[1] Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, SEC Release No. 34–47638 (April 7, 2003).

[2] Report to Congressional Requesters of the United States General Accounting Office entitled Potential Terrorist Attacks: Additional Actions Would Better Prepare Critical Financial Market Participants (February 12, 2003).

[3] *See* Testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, U.S. Securities and Exchange Commission, at Hearing Before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services, entitled Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11 (February 12, 2003).

[4] Among other things, the Commission believes that the Policy Statement is consistent with and in furtherance of sections 2 and 11A (a) (1) (B) and (C) of the Securities Exchange Act of 1934.

[5] The term ''wide-scale disruption'' has the same meaning here as in the Interagency Paper. Specifically, a ''wide-scale disruption'' is an event that causes a severe disruption or destruction of transportation, telecommunications, power, or other critical infrastructure components across a metropolitan or other geographic area and the adjacent communities that are economically integrated with it; or that results in a wide-scale evacuation or inaccessibility of the population within normal commuting range of the disruption's origin.

practices for the key payment and settlement systems outlined in the Interagency Paper.

Specifically, the Commission expects each SRO Market and ECN to apply the following principles in its business continuity planning:

• Each SRO Market and ECN should have a business continuity plan that anticipates the resumption of trading, in the securities traded by that market, no later than the next business day following a wide-scale disruption.[6] The resilience of the SRO Market or ECN prescribed by such plans should reflect the extent of alternative trading venues for the securities traded by that market, including the number of sole listings on the market, the market share of the market, and the number of sole members or subscribers of the market. Business continuity plans may focus on strengthening the SRO Market's or ECN's own resilience, on backup arrangements with other markets, or both.

• Assuring resumption of trading activities by a market by the next business day generally requires geographic diversity between primary and backup sites.[7] To be fully resilient, backup sites should not rely on the same infrastructure components (*e.g.*, transportation, telecommunications, water supply, and electric power) used by the primary site, and the operation of such sites should not be impaired by a wide-scale evacuation at or the inaccessibility of staff that service the primary site.

• The SRO Markets also should assure the full resilience of important shared information systems, such as the consolidated market data stream generated for the equity and options markets. The market data collection and dissemination systems, for example, are critical to the functioning of the trading markets because of their reliance on accurate and current pricing information.

• The effectiveness of back-up arrangements in recovering from a wide-scale disruption should be confirmed through testing.

• Each SRO Market and ECN should implement plans reflecting these principles as soon as practicable and strive to do so no later than the end of 2004.

The Commission staff intends to engage in an ongoing and individualized dialogue with each SRO Market and ECN to discuss application of these principles in a manner most appropriate for the particular trading market.

The Commission believes every reasonable effort should be made to assure the prompt and smooth resumption of trading following a wide-scale disruption, and that application of the principles described above is a critical step in achieving that goal. Nevertheless, the Commission notes that, depending on the facts and circumstances of a given event, it may be prudent to defer the reopening of a particular market or markets even if, from a technical standpoint, the resumption of trading is possible. In the case of a disruption of the securities markets, the Commission has a fundamental regulatory interest in assuring the prompt—yet smooth—resumption of trading. Deciding when to reopen the markets will involve an assessment of the operational capabilities of the markets and major market participants, as well as the clearance and settlement system. In a given situation, difficult judgments may be required to strike the appropriate balance between the desire to resume trading as soon as possible, and the practical necessity of waiting long enough to minimize the risk that, when trading resumes, it will be of inferior quality or interrupted by further problems.

Finally, the Commission believes that the establishment of a next-business day resumption goal for the SRO Markets and ECNs should serve as a useful resumption benchmark for securities firms as well. The decision by a broker-dealer to risk capital or provide brokerage services on an ongoing basis is, in essence, a matter of business judgment. Given the competitive nature of the securities business, however, the Commission expects there to be incentives for broker-dealers to be prepared to participate in the markets following a wide-scale disruption as soon as the markets' trading facilities become available.

III. Conclusion

The Commission believes it important for the SRO Markets and ECNs to take concrete steps to strengthen their resilience to address the continuing, serious risks to the U.S. financial system posed by the post-September 11 environment. To date, the trading markets have made significant progress in increasing the robustness of their business continuity plans. By applying the principles outlined in this Policy Statement, the Commission believes the SRO Markets and ECNs will better assure their own resilience and that of the U.S. financial system. In so doing, they will be promoting one of the paramount objectives of the U.S. securities laws—the maintenance of fair, stable, and orderly markets.

Dated: September 25, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24863 Filed 9–30–03; 8:45 am]

BILLING CODE 8010–01–P

[6] Consistent with the approach taken in the Interagency Paper, the next-day resumption objective should provide a concrete goal to plan for and test against. This should not be regarded as a hard and fast deadline that must be met in every emergency situation. Various external factors, such as time of day, scope of disruption, and status of critical infrastructure—particularly telecommunications—can affect actual recovery times.

[7] As in the Interagency Paper, however, the Commission does not believe it is necessary or appropriate to prescribe specific mileage requirements for geographically-dispersed backup sites.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48529; File No. SR–CBOE–2002–55]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Permanently Approve Its Rapid Opening System

September 24, 2003.

I. Introduction

On September 16, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt its Rapid Opening System (''ROS'') on a permanent basis. On February 6, 2003, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 14, 2003.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On February 9, 1999, the Commission approved, on a pilot basis, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated January 17, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48293 (August 6, 2003), 68 FR 48650 (''ROS Notice'').

implementation of ROS.[5] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value.[6] The ROS pilot program is due to expire on September 30, 2003.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE.

In the Pilot Program Approval Order, the Commission required CBOE to satisfy three conditions prior to seeking permanent approval of the ROS pilot. The first condition required CBOE to develop standards to ensure that market makers satisfy their obligation to price options fairly and to surveil for such compliance. In the Pilot Program Approval Order, the Commission recognized that certain aspects of ROS may require heightened scrutiny by the CBOE to ensure that market-makers are not permitted to use the flexibility they have to set an opening price to the disadvantage of investors and other market participants. In particular, ROS provides market-makers discretion to set certain thresholds and the AutoQuote[10] value that drives the ROS algorithm. CBOE has represented that market makers generally have set the contract and delta thresholds at a level that ensures that an options class that has orders to trade will not auto-open, to avoid openings based on erroneous prints in the underlying security or delayed updates to bid/ask information on underlying securities. CBOE further represented that it was still able to open classes within seconds of the opening of the underlying class, because ROS can open classes very quickly even if they are not set to auto-open.[11]

CBOE has also submitted surveillance procedures designed to ensure, among other things, that market-makers exercise their discretion to set certain AutoQuote values consistent with their obligation to price options fairly.[12] The Commission believes the surveillance procedures submitted by the CBOE are reasonably designed to ensure that market makers do not abuse their discretion when setting AutoQuote values in setting the ROS opening price. Furthermore, these surveillance procedures should allow CBOE to better monitor market maker adjustments to AutoQuote and enable CBOE to bring sanctions for violative conduct when appropriate. However, because CBOE market makers set the contract and delta thresholds at levels that ensure that an options class that has orders to trade will not auto-open, giving CBOE market makers an opportunity to adjust AutoQuote at most openings, the Commission expects CBOE to aggressively surveil to ensure that market makers properly adjust AutoQuote values. The Commission also expects the Exchange to assess its surveillance procedures from time to time to determine whether they are adequate to ensure that market makers do not engage in manipulative or improper trading practices. Further, the Commission expects CBOE to consider whether any additional surveillance procedures are necessary to prevent manipulative or other improper practices.

The second condition required CBOE to develop a workable plan for the electronic incorporation of non-bookable orders in ROS. On CBOE, non-bookable orders include broker-dealer and customer contingency orders. CBOE stated that few, if any, non-bookable orders are present at the open and that, based in its observations, firms consistently wait until after the ROS opening has been completed to represent non-bookable orders.[13] CBOE has developed a procedure, albeit not an electronic one, for including non-bookable orders into the opening process. This procedure has been incorporated into CBOE Rule 6.2A and has been detailed in two regulatory circulars.[14] CBOE argues a systems change to electronically incorporate non-bookable order in the ROS opening would have very little impact on ROS trading due to the few non-bookable orders present before the open.[15] Furthermore, Phase V of the Consolidated Options Audit Trail (''COATS'') Plan would require that all non-electronic orders be captured electronically for audit trail purposes.[16] CBOE represents that this will facilitate its Regulatory staff's ability to investigate with more speed and efficiency any complaint regarding the execution received by a non-bookable order on the opening, in that the Exchange will now have an electronic record of the time of receipt of the order, in addition to the order information and the execution price of the order.[17] The Commission has determined at this time to waive the requirement that CBOE develop a workable plan for the electronic incorporation of non-bookable orders in ROS based on the limited number of non-bookable orders that are present at the open and CBOE's ability to record information on non-bookable orders in COATS. The Commission also expects that CBOE will use COATS to respond to complaints about non-bookable orders, as well as to actively monitor the quality of executions received by non-bookable orders. The Commission also expects CBOE to continue to explore methods to electronically incorporate non-bookable orders in the event that non-bookable

[5] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (''Pilot Program Approval Order''). ROS is governed by CBOE Rule 6.2A. CBOE Rules 6.2, 6.45, and 8.60 also reference ROS.

[6] For a detailed description of how ROS operates, *see* Pilot Program Approval Order, *supra* note 5.

[7] The Commission has extended the ROS pilot program five times. *See* Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot program until September 30, 2000); 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot program until September 30, 2001); 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot program until September 30, 2002); 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002) (extending the pilot program until March 31, 2003; and 47573 (March 26, 2003), 68 FR 15780 (April 1, 2003) (extending the pilot program until September 30, 2003).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] Under Interpretation .02 to CBOE Rule 6.2A, the term ''AutoQuote'' means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd where the particular ROS class is traded.

[11] *See* ROS Notice, *supra* note 4.

[12] *See* letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated August 13, 2003. CBOE requested confidential treatment for these surveillance procedures pursuant to 17 CFR 200.83.

[13] *See* ROS Notice, *supra* note 4.

[14] *See* CBOE Rule 6.2A(ii), and Regulatory Circulars RG99–35 (February 10, 1999) and RG00–40 (March 13, 2000).

[15] *See* ROS Notice, *supra* note 4.

[16] The COATS Plan is a plan that the options exchanges are required to submit to the Commission in order to comply with Section IV.B.e. of the *Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. See* In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268, September 11, 2000; Administrative Proceeding File No. 3–10282.

[17] *See* Amendment No. 1, *supra* note 3.

orders are more actively represented in the opening.

Lastly, the third condition required CBOE to study issues related to the Commission's concerns and report back to the Commission. In response, CBOE submitted a report to the Commission addressing each of the Commission's concerns. The Commission believes that CBOE has satisfied this condition.

In conclusion, the Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE. The Commission hereby approves the ROS pilot on a permanent basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2002–55) and Amendment No. 1 thereto, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24867 Filed 9–30–03; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48539; File No. SR–ISE–2003–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Market Maker Obligations

September 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On September 15, 2003, the Exchange amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers (''PMMs'') if they receive orders from persons who are not brokers or dealers in securities (''Public Customers'') when there is a better price available on another exchange. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

Rule 803. Obligations of Market Makers

* * * * *

(c) Primary Market Makers. In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to:

(1) Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten (10) contracts.

(2) *As soon as practical,* [A]*a*ddress Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange, *either (i) by executing a Public Customer Order at a price that matches the better price displayed or (ii) by sending to any other exchange(s) displaying a better price a Linkage Order(s) according to the Rules contained in Chapter 19.*

* * * * *

Supplementary Material to Rule 803

.01 No change.

.02 A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the obligations of PMMs when they receive orders from Public Customers and there is a better price available on another exchange. When the ISE receives a Public Customer order in this situation, the ISE does not provide immediate execution of that order. Rather, the PMM is informed that the order is pending, and ISE Rule 803 requires that the PMM ''address'' such order. In practice, the PMM historically either has executed the order at the better price or has attempted to use whatever means the PMM had available to access the better market on behalf of the customer.

On January 31, 2003, the intermarket linkage (''Linkage'') between the ISE and the other options exchanges became operational. Among other things, the Linkage permits PMMs to send Principal Acting as Agent Orders (''P/A Orders'') to other exchanges. This is a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 12, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the proposed rule change to be more specific in the obligations of Primary Market Makers in handling customer orders.

[4] At the request of the Exchange, Commission staff has revised the text of the proposed rule change set forth in Amendment No. 1 to (i) correct a typographical error; and (ii) make a non-substantive technical change correcting the numbering of the Supplementary Material to Rule 803. The Exchange plans to submit an amendment to the Commission to make these technical corrections. Telephone conversation among Michael J. Simon, Senior Vice President and General Counsel, Exchange, Jennifer Colihan, Special Counsel, Division, Commission, and Ann E. Leddy, Attorney, Division, Commission on September 24, 2003.

vehicle that provides PMMs with much-improved access to away markets on behalf of Public Customer orders they are holding.

With Linkage in place, the ISE believes that it is appropriate to be more specific regarding the PMM's obligations to ''address'' Public Customer orders when there is a better price on another market. Accordingly, the Exchange proposes to amend ISE Rule 803 to specify that the PMM must, as soon as practical, either execute the order at the best available price or send a P/A Order through Linkage to obtain the best price for the order. Proposed Supplementary Material .02 to ISE Rule 803 states that a PMM must act with due diligence in handling such Public Customers orders and must accord such orders priority over the PMM's principal orders.

2. Statutory Basis

The ISE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[5] in general, and section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change, as amended, imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change, as amended. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–03 and should be submitted by October 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24866 Filed 9–30–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48541; File No. SR–NASD–2003–122]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposal To Conduct Background Verification and Charge Application Fee for NASD Neutral Roster Applicants

September 25, 2003.

On August 5, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to conduct background verification and charge an application fee for NASD neutral roster applicants. NASD does not propose any textual changes to the By-Laws or Rules of NASD.

The Commission published the proposed rule change for comment in the **Federal Register** on August 14, 2003.[3] The Commission received no comments relating to the proposal. This order approves the proposed rule change.

NASD maintains a pool of approximately 7000 available arbitrators. Currently, arbitrator applicants submit biographical profile forms, together with two letters of reference. The biographical profile forms require applicants to provide detailed information on their business and employment histories, education, training, possible conflicts, experience, expertise, associations with industry members, and other matters. The application also requires a narrative background information statement in which applicants are asked to explain why they believe their experience and knowledge would benefit the process. Attorneys and accountants are further directed to provide specific details about their practices.

Arbitrator information is entered into NASD's database and is provided to parties in the form of a disclosure report during the arbitrator selection process. Arbitrators must update this biographical information on a regular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48294 (August 6, 2003), 68 FR 48653 (''Notice of Proposal'').

basis. NASD sends frequent reminders to arbitrators about the importance of this obligation, especially after they are notified regarding possible service as an arbitrator. NASD requires arbitrators in each case to affirm that they have reviewed their disclosure report and that it is accurate, and to complete a disclosure checklist attached to the oath. NASD provides each arbitrator on a panel with the co-panelists' biographical profiles in order to facilitate peer reviews for accuracy.[4]

In addition to gathering the above information, NASD currently checks records on the Central Registration Depository (CRD) for arbitrator applicants who have been registered with NASD, most of whom would be categorized as ''non-public'' arbitrators under NASD Rule 10308(a)(4). NASD currently does not verify any of the information provided by arbitrator applicants who do not have CRD records, most of whom would be classified as ''public'' arbitrators under NASD Rule 10308(a)(5).

NASD proposes to expand its verification of background information to cover all arbitrator applicants. NASD believes this will provide additional protection to parties using the Dispute Resolution forum, raise the standards of the neutral roster, and enhance investor confidence in the integrity of the forum.[5]

Specifically, NASD Dispute Resolution has identified a vendor to provide the following verification services:

- Criminal check in the county of the applicant's residence;
- Federal criminal check;
- Employment verification; and
- Professional license verification.

The verification fee will be $80.00 per application. This fee will cover the vendor's expected charge for verification of each application, with the understanding that the actual work required to verify each application will vary. For example, some applicants will have only one employer over the past ten years, and some will have two or more. NASD believes that having a single, reasonable fee for background verification will be more practical administratively than charging different fees that vary depending on each applicant's background.[6] For this amount, the vendor will perform county and federal criminal record checks; verify any professional licenses; and check the last employer or, if the applicant has been employed for fewer than ten years by the same employer, then the last two employers. To keep the fee reasonable, NASD will assume that verification of professional licenses provides an indirect check on the applicant's education, since licensing authorities generally verify an applicant's educational history. If the applicant does not have a professional license, however, then the vendor will substitute verification of the last degree awarded.

The background verification fee will be charged for new arbitrator applications that are received by NASD after the effective date of the proposed rule change. It will not apply to arbitrators currently on NASD's arbitrator roster who wish to update information they supplied previously. Applications received after the effective date will not be processed until NASD receives the proper fee.

NASD Dispute Resolution represents that the effective date of this proposal will be October 1, 2003.[7]

The Commission finds that the proposed rule change is consistent with the provisions of section 15A(b) of the Act,[8] in general, and furthers the objectives of section 15A(b)(6),[9] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that verifying background information and credentials for arbitrator applicants will protect investors and the general public and enhance the integrity of the arbitration process.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2003–122) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24865 Filed 9–30–03; 8:45 am]

BILLING CODE 8010–01–P

[4] For additional information on procedures designed to reveal potential conflicts of interest, see Professor Michael A. Perino, *Report to the SEC Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations* (Nov. 12, 2002), available on the Commission's Web site, Market Regulation page, at: *http://www.sec.gov/pdf/arbconflict.pdf.*

[5] *See* Notice of Proposal, *supra* note 3.

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78*o*–3(b)

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4500]

30-Day Notice of Proposed Information Collection: Form DS–1648, Application for A, G, or NATO Visa; OMB Control Number 1405–0100

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Revision of Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Application for A, G, or NATO Visa.

Frequency: On occasion.

Form Number: DS–1648.

Respondents: Aliens applying for A, G or NATO visas.

Estimated Number of Respondents: 20,000 per year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 10,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection 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.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW, RM L–703, Washington, DC 20520, who may be reached on 202–663–1166. Public comments and questions should be directed to the State Department

Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 10, 2003.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–24896 Filed 9–30–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4483]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC), through the Working Group on Radio Communications and Search and Rescue of the Subcommittee on Safety of Life at Sea, will conduct open meetings at 9 a.m. on Thursday, October 9, November 6, December 11, and January 29, 2004. The meetings will be held at the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. Call the point of contact below for room numbers. The purpose of the meeting is to prepare for the Eighth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue (COMSAR), which is scheduled for the week of February 16–20, 2004, at IMO headquarters in London, England.

The primary matters to be considered are:

—Maritime Safety Information for GMDSS
—Development of a procedure for recognition of mobile satellite systems
—Revision of performance standards for NAVTEX equipment
—Emergency radiocommunications, including false alerts and interference
—Large passenger ship safety
—Issues related to maritime security
—Developments in maritime radiocommunication systems and technology, including long-range tracking
—Matters concerning Search & Rescue
—Planning for the 8th session of COMSAR

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil* and viewing *http://www.navcen.uscg.gov/marcomms/imo/meetings.htm.*

Dated: September 24, 2003.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–25016 Filed 9–30–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–15025]

Notice of Request for Clearance of a New Information Collection: Truck Driver Fatigue Management Survey

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1995. On May 30, 2003, the FMCSA published a ''Notice of Request for Clearance of a New Information Collection: Truck Driver Fatigue Management Survey'' in the **Federal Register**. Comments on the proposed information collection burden were solicited. No comments regarding the ICR were received.

DATES: Comments must be submitted on or before October 31, 2003.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goals of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms on information technology.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carroll, Transportation Specialist, (202) 385–2388, Research Division, Office of Research and Technology, Federal Motor Carrier Safety Administration, 600 Virginia Avenue, SW., Suite 600, Washington, DC 20024. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Driver Fatigue Management Survey.

Background: The Conference Report on the Department of Transportation (DOT) and Related Agencies Appropriations Act, 2002 (Pub. L. 107–87, 115 Stat. 833, December 18, 2001) noted that the conferees included $400,000 to study fatigue management techniques, as outlined in the Senate report (H.R. Rep. No. 107–308, at 94 (2001)). The Senate Report on the FY 2002 DOT Appropriations Act directed FMCSA to perform a ''study to determine the fatigue management techniques used by truck drivers during overnight operations with an organization representing unionized motor carriers in cooperation with their labor organization'' (S. Rep. 107–38, at 83–84 (2001)).

The Federal Highway Administration (FHWA), on FMCSA's behalf, published a Pre-solicitation Notice on July 1, 2002, on the Department of Transportation's (DOT) Federal Business Opportunities Web site, describing the anticipated sole-source award to the Motor Freight Carriers Association (MFCA), and on September 30, 2002, FMCSA awarded the MFCA a contract to conduct a Truck Driver Fatigue Management Study.

Recent research has underscored the influence of time of day on truck driver alertness. The same research has shown that there are significant individual differences in alertness during night driving, even when drivers have adequate sleep. Yet the trucking industry must operate 24 hours a day in order to meet customer demands. In addition, the highways are least congested between midnight and six a.m. The unionized less-than-truckload (LTL) segment has a long history of safe operations at night. Indeed, most of its over-the-road operations occur at night. A major reason for the safety record of MFCA companies is the professionalism of the drivers they employ—more than 8,000 of the 42,000 drivers have at least one million accident-free driving miles with the same company. This truck driver workforce offers an untapped source of knowledge about techniques and lifestyle practices that are used to manage fatigue during night operations.

Specifically, the study will randomly survey Teamster drivers in MFCA companies who regularly operate on

overnight runs. The survey will collect detailed information on such items as the nature of their job, what helps them cope, what are the challenges, how much and how long they sleep, their physical condition, the use of naps, and the impact of other road users on their alertness. A control group of Teamster drivers without one million accident free driving miles will also be surveyed. A sample of drivers will be studied prospectively using unobtrusive, objective wrist actigraphy watches to confirm the sleep-wake behaviors identified in the survey as being most likely to mitigate fatigue and maintain alertness during nighttime operations.

Respondents: The respondents to the planned survey will include approximately 2,000 selected motor carrier truck drivers of CMVs.

Average Burden Per Response: The estimated average burden per response is 30 minutes. This includes time needed for reading survey instructions, searching existing data sources, completing the survey instrument and returning the information by mail.

Estimated Total Annual Burden: The estimated total annual burden is 1000 hours.

Frequency: The survey will be conducted once.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: September 23, 2003.

Warren E. Hoemann,

Deputy Administator.

[FR Doc. 03–24875 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 23, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 31, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0118.

Form Number: IRS Form 1099-PATR.

Type of Review: Extension.

Title: Taxable Distributions Received From Cooperatives.

Description: Form 1099–PATR is used to report patronage dividends paid by cooperatives (Internal Revenue Code section 6044). The information is used by IRS to verify compliance on the part of the recipient.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 4,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 16 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 509,895 hours.

OMB Number: 1545–0717.

Form Number: IRS Form W–4S.

Type of Review: Extension.

Title: Request for Federal Income Tax Withholding From Sick Pay.

Description: Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payment.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—39 min.

Learning about the law or the form—10 min.

Preparing and sending the form to the IRS—41 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 765,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–24880 Filed 9–30–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 190

Wednesday, October 1, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AK01

Extended Assignment Incentives

Correction

In rule document 03–23132 beginning on page 53667 in the issue of Friday, September 12, 2003 make the following correction:

§575.511 [Corrected]

On page 53671, in the first column, in §575.511, in the first line ''is voluntarily'' should read ''is involuntarily''.

[FR Doc. C3–23132 Filed 9–30–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 1, 2003

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 2, et al.

Federal Acquisition Regulations; Final and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–16; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–16. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, *see* separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–16 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Central Contractor Registration	2002–018	Parnell.
II	Electronic Commerce in Federal Procurement	1997–304	Davis.
III	Unique Contract and Order Identifier Numbers (Interim)	2002–025	Zaffos.
IV	Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack; and Temporary Emergency Procurement Authority.	2002–026 2002–003	Zaffos.
V	Notification of Overpayment, Contract Financing Payments	2001–005	Parnell.
VI	Caribbean Basin Country—Dominican Republic	2003–006	Davis.
VII	Prohibited Sources	2001–015	Davis.
VIII	Economic Planning, Employee Morale, and Travel Cost Principles	2002–001	Loeb.
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–16 amends the FAR as specified below:

Item I—Central Contractor Registration (FAR Case 2002–018)

This final rule amends FAR parts 1, 2, 4, 13, 32, and 52 to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement on or after October 1, 2003. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

Item II—Electronic Commerce in Federal Procurement (FAR Case 1997–304)

This final rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Governmentwide point of entry on the Internet designated in the FAR or via the Commerce Business Daily (CBD). The objectives of the rule are (1) to designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov,* where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to require electronic access to notices of solicitation through the single Governmentwide point of entry as a replacement for paper (or electronic) publication in the CBD.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

This interim rule amends the FAR to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

Item IV—Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority (FAR Cases 2002–026 and 2002–003)

This rule finalizes interim rules 2002–026 and 2002–003, which increased the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule also amends the FAR to add the querying of commercial databases that provide information relevant to the agency acquisition as a technique for conducting market research.

Item V—Notification of Overpayment, Contract Financing Payments (FAR Case 2001–005)

This final rule amends FAR parts 12, 32, and 52 to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing

payment under either a commercial item or a noncommercial item contract.

Item VI—Caribbean Basin Country—Dominican Republic (FAR Case 2003–006)

This final rule amends FAR 25.003, 25.400, and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Commercial Items, and FAR 52.225–5, Trade Agreements, to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as published by the USTR in the Federal Register at 68 FR 27883, May 21, 2003. This change will allow Government purchase of products originating in the Dominican Republic that are not excluded from duty-free treatment under 19 U.S.C. 2703(b), unless otherwise restricted by law.

Item VII—Prohibited Sources (FAR Case 2001–015)

This final rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html*. The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by the OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

Item VIII—Economic Planning, Employee Morale, and Travel Costs Principles (FAR Case 2002–001)

This final rule amends the FAR to revise three cost principles: (1) FAR 31.205–12, Economic planning costs; (2) FAR 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits; and (3) FAR 31.205–46, Travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability. The rule does not change the allowability of costs. The case was initiated to consider suggestions made at a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item IX—Technical Amendments

This amendment makes editorial changes at FAR 8.404(b)(6) and 24.202(a).

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–16 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–16 are effective October 31, 2003, except for Items I, II, III, IV, and IX, which are effective October 1, 2003.

Dated: September 22, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: September 23, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: September 15, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–24581 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 13, 32, and 52

[FAC 2001–16; FAR Case 2002–018; Item I]

RIN 9000–AJ61

Federal Acquisition Regulation; Central Contractor Registration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require registration of contractors in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003. The rule also revises the source list of supplies in the FAR (*see* Simplified Acquisition Procedures) to reflect statutory changes.

DATES: *Effective Date:* October 1, 2003.

Applicability Date: This final rule applies to contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or modifications awarded on or after October 1, 2003. Existing contracts, basic agreements, basic ordering agreements, or blanket purchase agreements with a period of performance beyond December 31, 2003, are also covered by this final rule and must be modified pursuant to FAR 4.1103.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–16, FAR case 2002–018.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 16366, April 3, 2003, with a request for comments. Thirty-one respondents submitted 106 comments. The following discussion of the comments is provided:

1. The proposed rule requires registration of contractors in the CCR

database for new awards and modifications to existing contracts by September 30, 2003.

Comment: A number of respondents recommended some sort of transition period.

Response: Concur that there should be a short transition period. Departments and agencies were informed in OMB letters in mid-2001 that the CCR was a goal under the President's Management Agenda. For existing contracts and agreements, the final rule allows agencies until December 31, 2003, or sooner, to accomplish the transition to CCR so that they may still fulfill, in a timely fashion, an important objective of the integrated acquisition initiative, *i.e.*, to eliminate repetitive vendor registration.

2. Unless one of the exceptions applies, the rule applies to contractors with new contracts and existing contracts.

Comment: A number of respondents did not believe that it was in the best interest of the Government to require existing contracts to be modified to include the CCR registration requirement. One respondent suggested a ''grandfathering'' of existing contracts.

Response: Do not concur. Modification of current contracts benefits both the Government and contractors, by eliminating the need to maintain paper-based sources of contract information, by enabling contractors to update their information in one place via a website, and by allowing contracting officers to access contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. Since other systems are using CCR data, modifications will ensure that the correct information provided by the vendor is used. Wholesale ''grandfathering'' is not considered an option as it would defeat one reason for CCR; *i.e.*, having one accurate and complete database for intergovernmental use.

3. Unless one of the exceptions applies, the rule requires small entities to register in CCR before contract award.

Comment: A number of respondents voiced concern regarding small businesses not having access to computers, refusing to register, not accepting payment by EFT. The possibility of an alternative procedure regarding small contractors was proposed.

Response: Partially concur. Language was added to the exceptions to cover micropurchases that do not use the electronic funds transfer (EFT) method and are not required to be reported. Additional changes were not considered necessary. As a general matter, this rule benefits small businesses since the CCR requirement (1) simplifies and streamlines the procurement process by eliminating redundant requirements and processes, and (2) increases visibility of contractor sources for specific supplies and services. Contractors have been encouraged for years to utilize the public resources available to them when they do not have Internet access themselves. In addition, since 1998, the DoD has required small and large businesses to register in the CCR database, with no apparent negative impact to small businesses. One respondent concluded the rule would save small business time and money by facilitating paperless procurement and payment through electronic funds transfers.

4. The rule at FAR 4.1102(a)(1) through (a)(5) provides for exceptions when CCR registration is not required.

Comment: A variety of suggestions were made in this area—adding exceptions for Status of Forces Agreement (SOFA) family members performing work OCONUS; contracts whose period of performance will not extend beyond September 30, 2003; waivers to recognize the occasional need to contract with a sole source; including a dollar threshold. Several respondents requested clarification of the term purchasing mechanism''. While other respondents requested that the exception listed in paragraph (a)(5) concerning foreign vendors be expanded to include all awards to foreign vendors for work performed outside the U.S. In addition, two respondents pointed out that the exception in paragraph (a)(5) implies registration of foreign vendors is required after award.

Response: Changes were made to 4.1102(a)(1), (a)(2), and (a)(5). Paragraph (a)(1) was revised to read, ''Purchases that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method.'' With this change, a threshold exception was considered unnecessary as this could include many micro-purchases. Paragraph (a)(2) was revised to delete the words ''or purchases'' since the FAR defines ''classified contracts'', while paragraph (a)(5) was revised to delete the words ''before award''. However, the Councils believe that an attempt to register foreign vendors should be made. Many foreign vendors are currently registered.

5. The Paperwork Burden Statement in the **Federal Register** notice of the proposed rule.

Comment: Two respondents questioned the subject paragraph; *i.e.*, the estimated respondents are too low (54,199) and the total burden hours (54,199) are too low; and the 1 hour estimate to complete the information is too low.

Response: No change. When drafted, the burden for this rule was to represent only new transactions. The numbers were provided by FPDS and represent new transactions for the year 2001 over $25,000. A DoD clearance (OMB Control No. 0704–0400) provides for the current 226,000 enrolled in the CCR.

6. The Central Contractor Registration. Comments pertaining to the system, not the rule.

Comment: A variety of comments were received that related to the CCR and not to the rule. Examples of these comments include: Adding additional fields to the CCR; Confusion between the words Business Partner Network, CCR, and Federal Registration; Problems obtaining DUNS numbers; CCR as an unfunded mandate for agencies; Concerns that the financial community have implementing the requirement; The cost of using the CCR, both for the contractor and agency; and how agencies will be informed if contractors make changes to the information contained in the CCR.

Response: No change to the rule. The Councils considered these comments outside the scope of the case.

7. Individual comments and concerns that resulted in no change to the rule.

Comment: A variety of comments were received under this category. Examples of these comments include: Proposed revisions to the FAR clauses at 52.204–7 and 52.212–4(t) that reduces contractor liability for incorrect information; Will contractors be required to provide banking information?; Suspend rule for 90 days to convene a public meeting; Suggestion that each company elect to have a single annual renewal date for all its CCR registrations; Can COs require contractors with existing contracts to register in CCR?; What type of modification is required to amend existing contracts?; What happens if a contractor refuses to register; and who verifies the information in CCR?

Response: No change to the rule. The Councils did not believe the comments included under this category required changes to the rule.

8. Editorial changes to the rule.

Comment: A variety of comments offered editorial changes to the rule as follows:

1. A variety of editorials, including typos and updating references.

2. New telephone numbers for D&B.

3. Deletion of an incorrect e-mail address at the FAR provision at 52.204–6(c).

4. A revision to FAR 13.102 to emphasize the use of the CCR database.

5. Changes to the definitions of DUNS number and DUNS+4 at FAR 2.101 and 52.204–7(a). Changes were also made to FAR 52.204–6(b)(2), 52.204–7(c), and 52.212–1(j) to clarify and correct information related to D&B and to obtaining DUNS numbers.

6. A revision to FAR 52.204–7(c) to include a verification timeframe of ''normally takes less than 48 hours.''

7. A revision to FAR 13.201(d) to add a reference to 4.1104.

8. A revision to FAR 4.1104 to delete a redundant phrase.

9. A revision to FAR 52.212–4(t) to include language that addresses novation and change of name agreements included in FAR 52.204–7(g)(2).

10. A revision to FAR 4.203(e) and 4.905 to preclude furnishing information that may be required by CCR.

Response: The rule reflects editorial revisions.

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

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule imposes a reporting, recordkeeping, or other compliance requirements. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreement, or blanket purchase agreement falls within one of the six exceptions. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is as follows:

Final Regulatory Flexibility Analysis—FAR Case 2002–018, Central Contractor Registration

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. *Description of the reasons why action by the agency is being considered.*

In an effort to broaden use and reliance upon e-business applications, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. The Central Contractor Registration (CCR) System is a centrally located, searchable database, accessible via the Internet to develop, maintain, and provide sources for future procurements. The CCR data is the most up to date and complete data available. As a single validated source of data on contractors doing business with the Government, the CCR database enables prospective contractors to update their information in one place via a web site (*http://www.CCR.gov*). The information is then available via the Internet. Contracting officers will now be able to access contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. This rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning stages, which are complementary and will also become part of the total electronic commerce initiative.

2. *Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

No comments were received in response to the Initial Regulatory Flexibility Analysis for this rule.

3. *Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.*

To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. However, some agencies (*e.g.*, DoD) already require contractors to register in the CCR and there does not appear to be any adverse impact on small business. Based on Governmentwide data, approximately 42,675 small businesses were awarded contracts of $25,000 or more in fiscal year 2001. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 200,000 registrants in CCR. Information is not available to identify the additional number of small businesses that were awarded contracts of less than $25,000, or were awarded basic agreements, basic ordering agreements, or blanket purchase agreements.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

This rule imposes a reporting, recordkeeping, or other compliance requirements. However, this requirement will be significantly reduced from that currently required. Existing regulations require contractors to submit duplicate information each time they enter into contracts and certain types of agreements with the Government. This rule eliminates this duplication so that information the Government needs to do business with a contractor will be collected once (with periodic update by the contractor) for use many times. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreements, or blanket purchase agreements fall within one of the six exceptions. A contractor's administrative or financial personnel, who have general knowledge of the contractor's business, including the contractor's bank account and financial agent, may register by providing the pertinent information into the CCR database.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

There are no significant practical alternatives that will accomplish the objective of this rule. Continued reliance on a paper-based system would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-out of the paper-based *Commerce Business Daily* in favor of reliance on FedBizOpps demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 1, 2, 4, 13, 32, and 52 in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–16, FAR case 2002–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The paperwork burden analysis takes into account the burden required for information current, complete and accurate and the burden required for new registrants to review instructions, search existing data sources, gather and maintain the data needed, and completing and reviewing the collection of information. Accordingly, the FAR Secretariat has forwarded a request for approval of the increased information collection requirement, OMB Control Number 9000–0159, concerning FAR Case 2002–018, Central Contractor Registration, to the Office of Management and Budget. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 1, 2, 4, 13, 32, and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 13, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 13, 32, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by adding FAR segments ''52.204–7'', ''52.212–1(k)'', and ''52.212–4(t)'' and corresponding OMB Control Numbers ''9000–0159'', respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101(b) by adding, in alphabetical order, the definitions ''Central Contractor Registration (CCR) database'', ''Data Universal Numbering System (DUNS) number'', ''Data Universal Numbering System +4 (DUNS+4) number'', and ''Registered in the CCR database'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Central Contractor Registration (CCR) database means the primary Government repository for contractor information required for the conduct of business with the Government.

* * * * *

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* subpart 32.11) for the same concern.

* * * * *

Registered in the CCR database means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record ''Active''.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 4. Amend section 4.203 by revising the introductory text of paragraph (e)(1) to read as follows:

4.203 Taxpayer identification information.

* * * * *

(e) * * *

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract (if the contractor is not required to provide this information to a central contractor registration database)—

* * * * *

■ 5. Amend section 4.603 by revising paragraph (a) to read as follows:

4.603 Solicitation provisions.

(a) Insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form; and

(2) Do not contain the clause at 52.204–7, Central Contractor Registration.

* * * * *

■ 6. Revise section 4.905 to read as follows:

4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in solicitations that—

(a) Do not include the clause at 52.204–7, Central Contractor Registration; and

(b) Are not conducted under the procedures of part 12.

■ 7. Add subpart 4.11 to read as follows:

Subpart 4.11—Central Contractor Registration

Sec.

4.1100 Scope.
4.1101 Definitions.
4.1102 Policy.
4.1103 Procedures.
4.1104 Solicitation provision and contract clauses.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

4.1101 Definitions.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

Business Partner Network means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method;

(2) Classified contracts (*see* 2.101) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (*see* 6.302–2);

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and

(6) Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported (*see* subpart 4.6).

(b) If practical, the contracting officer shall modify the contract or agreement

awarded under paragraph (a)(3) or (a)(4) of this section to require CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, ''doing business as'' name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in the CCR database; comply with the requirements of Subpart 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (g)(1)(i) of the clause at 52.204–7, Central Contractor Registration, or fails to perform the agreement at 52.204–7(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the ''Suspension of Payment'' paragraph of the EFT clause of the contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* subpart 32.8, Assignment of Claims).

(3) Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the ''Suspension of payment'' paragraph of the EFT clause of the contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (*see* paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at *http://www.ccr.gov*;

(ii) By calling toll-free: 1–888–227–2423, commercial: (269) 961–5757, or Defense Switched Network (DSN) (used at certain Department of Defense locations): 932–5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond December 31, 2003—

(i) To incorporate, as appropriate, the clause at 52.204–7, Central Contractor Registration, and its Alternate I, or, for a contract for commercial items, an addendum to 52.212–4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by December 31, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by December 31, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204–7, or 52.212–4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (*see* 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204–7, Central Contractor Registration, in solicitations and contracts. If modifying a contract or an agreement to require registration, use the clause with its Alternate I.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Amend section 13.102 by revising paragraph (a) to read as follows:

13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (*see* Subpart 4.11) at *http://www.ccr.gov* as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(1) Small business.

(2) Small disadvantaged business.

(3) Women-owned small business.

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

(6) Veteran-owned small business.

* * * * *

13.201 [Amended]

■ 9. Amend section 13.201 in the first sentence of paragraph (d) by removing ''32.1110'' and adding ''4.1104 and 32.1110'' in its place.

PART 32—CONTRACT FINANCING

■ 10. Amend section 32.805 by adding paragraph (d)(4) to read as follows:

32.805 Procedure.

* * * * *

(d) * * *

(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

* * * * *

32.1103 [Amended]

■ 11. Amend section 32.1103 by removing the word ''where'' from paragraph (d).

■ 12. Amend section 32.1110 by revising the introductory text of paragraph (a), (a)(1), and (a)(2)(i) to read as follows:

32.1110 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in solicitations and contracts that include the clause at 52.204–7 or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (*see* 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232–34, Payment by Electronic Funds TransferùOther than Central Contractor Registration, in solicitations and contracts that require EFT as the method for payment but do not include the clause at 52.204–7, Central Contractor Registration, or a similar agency clause that requires the contractor to be registered in the CCR database.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Revise section 52.204–6 to read as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

As prescribed in 4.603(a), insert the following provision:

Data Universal Numbering System (DUNS) Number (Oct 2003)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation ''DUNS'' or ''DUNS+4'' followed by the DUNS number or ''DUNS+4'' that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–866–705–5711 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

■ 14. Add section 52.204–7 to read as follows:

52.204–7 Central Contractor Registration.

As prescribed in 4.1104, use the following clause:

Central Contractor Registration (Oct 2003)

(a) *Definitions.* As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

Registered in the CCR database means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record ''Active''.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation ''DUNS'' or ''DUNS +4'' followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–866–705–5711 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, ''doing business as'' name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect

information within the meaning of the ''Suspension of Payment'' paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the ''Suspension of payment'' paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at *http://www.ccr.gov* or by calling 1–888–227–2423, or 269–961–5757.

Alternate I (Oct. 2003). As prescribed in 4.1104(a), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall be registered in the CCR database by _____ [*Contracting Officer shall insert a date no later than December 31, 2003*]. The Contractor shall maintain registration during performance and through final payment of this contract.

(2) The Contractor shall enter, in the block with its name and address on the cover page of the SF 30, Amendment of solicitation/Modification of Contract, the annotation ''DUNS'' or ''DUNS +4'' followed by the DUNS or DUNS +4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.

■ 15. Amend section 52.212–1 by revising the date of the provision and paragraph (j); and adding paragraph (k) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items, (Oct. 2003)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding $25,000, and offers of $25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation ''DUNS'' or ''DUNS +4'' followed by the DUNS or DUNS +4 number that identifies the offeror's name and address. The DUNS +4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1–866–705–5711 or via the internet at *http://www.dnb.com*. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 269–961–5757.

■ 16. Amend section 52.212–4 by revising the date of the clause; and adding paragraph (t) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items, (OCT 2003)

* * * * *

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, ''doing business as'' name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the ''Suspension of Payment'' paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the ''Suspension of payment'' paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 269–961–5757.

52.212–5 [Amended]

■ 17. Amend section 52.212–5 by revising the date of the clause to read ''(OCT 2003); and in paragraph (b)(29) of the clause by removing ''(MAY 1999)'' and adding ''(OCT 2003)'' in its place.

52.213–4 [Amended]

■ 18. Amend section 52.213–4 by removing from the clause heading ''(Aug 2003)'' and in paragraph (b)(1)(ix) ''(May 1999)'' and adding in their places ''(Oct 2003)''.

■ 19. Amend section 52.232–33 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (e);

■ c. Redesignating paragraphs (f) through (j) as (e) through (i), respectively; and

■ d. Revising newly designated paragraph (g) to read as follows:

52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration.

* * * * *

Payment by Electronic Funds Transfer—Central Contractor Registration, (Oct 2003)

* * * * *

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to

the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

* * * * *

[FR Doc. 03–24582 Filed 9–30–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

[FAC 2001–16; FAR Case 1997–304; Item II]

RIN 9000–AI10

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to further implement section 850 of the National Defense Authorization Act for Fiscal Year 1998; and implement section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. This includes the designation in the FAR of a single point of universal electronic public access to Governmentwide procurement opportunities (the ''Governmentwide Point of Entry'' or ''GPE''). Section 810 allows agencies to provide access to notices through the GPE, as designated in the FAR, instead of publishing them via the Commerce Business Daily (CBD).

This rule finalizes the interim rule that designated Federal Business Opportunities (FedBizOpps) as the GPE. In addition, this final rule makes the GPE the exclusive official source for public access to notices of procurement actions over $25,000.

DATES: Effective Date: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 1997–304.

SUPPLEMENTARY INFORMATION:

A. Background

1. Implementation of Section 850 of the Defense Authorization Act for Fiscal Year 1998

Section 850, which is codified at section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426), requires agencies to ''establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of their procurement systems.'' Among other things, section 850 called for ''any notice of agency requirements or agency solicitation for contract opportunities'' to be provided in a form that allows ''convenient and universal user access through a single, government-wide point of entry'' (GPE). In addition, section 850 amended titles 10, 15, 40, and 41 of the United States Code to eliminate the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically.

On October 30, 1998, the Councils published an interim rule (63 FR 58590), which amended FAR subpart 4.5 and made associated changes to FAR parts 2, 5, 13, 14, and 32 to implement section 850. In particular, the interim rule amended the FAR to—

- Promote the cost-effective application of electronic commerce in Federal procurement; and
- Require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Around the time that the interim rule was developed, the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA), and other agencies piloted, and later began using, ''FedBizOpps'' (formerly known as the Electronic Posting System) to take greater advantage of electronic tools. Among other things, these efforts were designed to provide sellers with ''one-stop'' access to business opportunities (*i.e.*, where sellers, after identifying pre-solicitation notices of interest for actions above $25,000, could quickly access related solicitation information through a direct link). These efforts were also intended to streamline agency buyers' preparation and issuance of notices and solicitation information without disrupting, eliminating, or otherwise requiring the replacement of current agency electronic commerce software.

In the spring of 2000, the Office of Federal Procurement Policy (OFPP) recommended that FedBizOpps (*http://www.fedbizopps.gov*) be designated as the GPE. The Councils published a proposed rule in the **Federal Register** to reflect this recommendation (65 FR 50872, August 21, 2000). The preamble to the proposed rule described the Government's objectives in designating a GPE (*i.e.*, to create a central point for electronic access to business opportunities, to follow the commercial lead, and to modernize processes used by sellers and buyers) and how FedBizOpps met these objectives.

After considering public comments on the proposed rule, the Councils published an interim rule in the **Federal Register** to make the proposed designation of FedBizOpps as the GPE effective (66 FR 27406, May 16, 2001). That rule required agencies to make notices of contracting opportunities that meet the criteria in FAR 5.101 and 5.201 accessible via FedBizOpps by October 1, 2001. In addition, the rule—

- Added place of contract performance and set-aside status as two new data fields to the required notice content;
- Required agencies to make accessible through FedBizOpps other notices that were being published in the CBD, such as presolicitation notices and award notices supporting subcontracting opportunities;
- Required agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps web site;
- Permitted contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permitted agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

This final rule finalizes the GPE designation that was proposed at 65 FR 50872, August 21, 2000, and made effective by the interim rule published

in the **Federal Register** at 66 FR 27406, May 16, 2001

2. Implementation of Section 810 of the Defense Authorization Act for Fiscal Year 2001

Section 810 amends section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)). As amended, these provisions allow agencies to provide access to their notices of solicitation either by transmitting them to the GPE designated in the FAR or by publishing them in the CBD, rather than mandating notices only through the CBD as had previously been required.

To implement section 810, the interim rule that was published on May 16, 2001 (66 FR 27406), established FedBizOpps (*i.e.*, the designated GPE) as the principal venue for procurement notices. Pursuant to that rule, agencies have been required to transmit notices to FedBizOpps since October 1, 2001. The rule required duplicate notices in the CBD through January 1, 2002, using the current format prescribed for the electronic version of the CBD, Commerce Business Daily Network (CBDNet). The duplication of notices transmitted to FedBizOpps in the CBD through the end of the calendar year 2001 was designed to provide additional time for vendors to become acclimated to FedBizOpps as the GPE.

The interim rule provided that agencies need not provide duplicate notice in the CBD as of January 1, 2002, and instead may rely exclusively on the mandatory notice in FedBizOpps to satisfy the required access. Thus, the interim rule effectively laid the foundation for the phase-out of the CBD and CBDNet by making their use non-mandatory. Agencies have been relying exclusively on FedBizOpps since the beginning of January 2002.

This final rule clarifies that the GPE is the exclusive source for public access to notices of procurement actions over $25,000. Sole reliance on FedBizOpps is enabling the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

3. Public Comments

Public comments regarding the proposed designation of FedBizOpps as the GPE were solicited and received in response to the proposed rule published in the **Federal Register** at 65 FR 50872, August 21, 2000. For this reason, the subsequent interim rule that was published in the **Federal Register** at 66 FR 27406, May 16, 2001, sought comments on the issues unique to that rule—namely, those relating to the implementation of section 810—for consideration in the formulation of this final rule.

The majority of the comments received in response to the interim rule focused on technical considerations related to the use of FedBizOpps, as opposed to the policies set forth in the rule. Those comments were referred to the FedBizOpps ''users group'' for consideration. The users group is comprised of agency representatives who help to manage their agency's use of FedBizOpps. The remaining comments are briefly summarized as follows:

- Two commenters suggested continuing the publication of printed synopses. This suggestion was not accepted. The Councils believe the cost of issuing printed notices would be excessive for the small number of firms that would be interested in printed copies. Continued operation of a paper-based process would force the Government to shoulder unnecessary cost and burden. By contrast, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.
- One commenter indicated that the rule should have addressed the underlying requirements for publication of notices and the content of notices. No changes were made to the rule based on this comment. The general requirement to synopsize and the contents of synopses are already addressed in FAR subpart 5.2. This rule does not change the underlying requirement to synopsize, which is rooted in section 18 of the Office of Federal Procurement Policy Act, 41 U.S.C. 416. Agencies' internal review procedures provide the necessary oversight of contracting personnel to ensure compliance with these requirements.
- One commenter indicated that the interim FAR coverage failed to modify the timeframes for presumption of publication even though FedBizOpps will provide a near-instantaneous display of notices. FAR 5.203(g) has been amended to shorten to one day the time for presumption of publication.
- Finally, one commenter offered several editorial changes to improve the readability of the rule. These comments were accepted where possible.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The final rule further implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Government point of entry (FedBizOpps) or via the CBD.

The objectives of the rule are (1) designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov,* where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to permit electronic access to notices of solicitation through the single Governmentwide point of entry as a substitute for the previously required paper publication in the CBD.

One comment was received in response to the Initial Regulatory Flexibility Analysis. The commentor recommended that the rule continue dual publishing of contracting opportunities in FedBizOpps and the CBD so that small businesses would have two sources from which to identify notices and solicitations. The IRFA should then be republished discussing Section 810 based on an interpretation that it does not preclude dual publishing of notices in the CBD and FedBizOpps. In addition, the comment suggested that the time for agencies to become fully compliant with the regulation be extended and that the rule mention the linkage between FedBizOpps and the Procurement Marketing and Access Network (PRO-Net).

No changes were made to the rule based on the comment. While Section 810 does not preclude the continuation of dual publicizing vehicles, the Federal Government is currently taking steps to eliminate duplicative systems in order to reduce operating costs for the Government and to provide one face to industry. Equally, if not more importantly, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes. With regard to extending the time provided for agencies to become compliant, this extension was not considered necessary since agencies have already completed their transition to FedBizOpps, in compliance with the interim rule, which made agency use of FedBizOpps mandatory as of October 1, 2001. With regard to linkage between FedBizOpps and PRO-Net, such linkage has been made on the cover page of FedBizOpps. The Councils do not

believe this linkage needs to be the subject of a regulatory promulgation.

The final rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 49,101 small and 19,382 large businesses to have easy access to Government business opportunities over $25,000.

The rule imposes no reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will accomplish the objectives of this rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 that were published in the **Federal Register** at 63 FR 48590, October 30, 1998, and 66 FR 27406, May 16, 2001, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 5, 9, 10, 12, 13, 14, 22, 25, and 35 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) by removing the definition ''Commerce Business Daily (CBD)''.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Revise section 5.003 to read as follows:

5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

5.101 [Amended]

■ 4. Amend section 5.101 in paragraph (a)(1) by removing '', unless covered by 5.003''; and by removing ''5.207(d) and (g)'' from the introductory text of paragraph (a)(2) and paragraph (a)(2)(i) (twice) and adding ''5.207(c)'' in its place.

■ 5. Amend section 5.201 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2); and revising newly designated paragraph (b)(2) and paragraph (d) to read as follows:

5.201 General.

* * * * *

(b)(1) * * *

(2) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE.

* * * * *

(d) The GPE may be accessed via the Internet at *http://www.fedbizopps.gov.*

■ 6. Amend section 5.203 by revising the introductory text of paragraph (a); and removing the first and second sentences from paragraph (g) and adding a sentence in its place to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) An agency must transmit a notice of proposed contract action to the GPE (*see* 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume the notice was published one day after transmission to the GPE. * * *

* * * * *

5.205 [Amended]

■ 7. Amend section 5.205 by removing the last sentence of paragraph (b), the second and third sentences of paragraph (d)(1), the last sentence of paragraph (e), and the second sentence of paragraph (f).

5.206 [Amended]

■ 8. Amend section 5.206 by removing from the introductory text of paragraph (a) '', the CBD, or both''; and by removing from paragraph (b)(1) '', following the standard CBD format for items 7, 10, 11, and 17 in 5.207(b)(4)''.

■ 9. Revise section 5.207 to read as follows:

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Government Printing Office (GPO) Billing Account Code.

(5) Contracting Office Zip Code.

(6) Classification Code.

(7) Contracting Office Address.

(8) Subject.

(9) Proposed Solicitation Number.

(10) Opening and Closing Response Date.

(11) Contact Point or Contracting Officer.

(12) Contract Award and Solicitation Number.

(13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date.

(16) Contractor.

(17) Description.

(18) Place of Contract Performance.

(19) Set-aside Status.

(b) *Transmittal.* Transmissions to the GPE must be in accordance with the interface description available via the Internet at *http://www.fedbizopps.gov.*

(c) *General format for ''Description.''* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

(1) National Stock Number (NSN) if assigned.

(2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (*see* subpart 9.2).

(3) Manufacturer, including part number, drawing number, etc.

(4) Size, dimensions, or other form, fit or functional description.

(5) Predominant material of manufacture.

(6) Quantity, including any options for additional quantities.

(7) Unit of issue.
(8) Destination information.
(9) Delivery schedule.
(10) Duration of the contract period.
(11) For a proposed contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter—
(i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and
(ii) The anticipated award date.
(12) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.
(13) Numbered notes (*see* paragraph (e) of this section), including instructions for set-asides for small businesses.
(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (*see* paragraph (e) of this section) and insert a statement of the reason justifying the lack of competition.
(15) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.
(16) If solicitations synopsized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.
(17) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.
(18) In the case of a very small business set-aside, identify the Designated Region (see Subpart 19.9).
(19) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, if any, from which the technical data may be obtained.

(d) *Set-asides.* When the proposed acquisition provides for a total, partial, or very small business set-aside or a HUBZone small business set-aside, the appropriate Numbered Note will be cited.

(e) *Numbered notes.* Numbered Notes are footnotes to be used by contracting officers to eliminate the unnecessary duplication of information that appears in various announcements. An explanation of the numbered notes appears at *http://www.fedbizopps.gov.*

(f) *Codes to be used in Synopses to identify services or supplies.* Contracting officers must use one of the classification codes identified at *http://www.fedbizopps.gov/* to identify services or supplies in synopses.

(g) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

■ 10. Amend section 5.301 by revising paragraph (c) and removing paragraph (d) to read as follows:

5.301 General.

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit their publication in the GPE not later than 60 days after award.

PART 9—CONTRACTOR QUALIFICATIONS

9.204 [Amended]

■ 11. Amend section 9.204 in paragraph (a)(1) by removing the last sentence.

9.205 [Amended]

■ 12. Amend section 9.205 in the introductory text of paragraph (a) by removing the third sentence.

PART 10—MARKET RESEARCH

10.002 [Amended]

■ 13. Amend section 10.002 by removing ''(*see* 5.207(e)(4))'' from the end of paragraph (d)(2) and adding ''(*see* 5.207(e))'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.603 [Amended]

■ 14. Amend section 12.603 in paragraph (a) by removing the last sentence; in paragraph (c)(1) by removing ''for items 1–16''; and in paragraph (c)(2) by removing ''item 17,'' and adding ''the'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.104 [Amended]

■ 15. Amend section 13.104 in the first sentence of paragraph (b) by removing ''neither using FACNET nor'' and adding ''not using either FACNET or'' in its place.

PART 14—SEALED BIDDING

14.503–2 [Amended]

■ 16. Amend section 14.503–2 in paragraph (b) by removing ''(see 5.207(b)(1))'' and adding ''(see 5.207)'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1009–4 [Amended]

■ 17. Amend section 22.1009–4 in the introductory text of paragraph (b) by removing ''(see 5.207(g)(4))''.

PART 25—FOREIGN ACQUISITION

25.408 [Amended]

■ 18. Amend section 25.408 in paragraph (a)(2) by removing ''(5.207(e)(2))'' and adding ''(5.207(e))'' in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.016 [Amended]

■ 19. Amend section 35.016 in paragraph (c) by removing the last sentence.

[FR Doc. 03–24583 Filed 9–30–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–16; FAR Case 2002–025; Item III]

RIN 9000–AJ70

Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to issue an interim rule amending the Federal Acquisition Regulation (FAR) to require that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS). Agencies must be

in compliance with this requirement no later than October 1, 2003, when the next generation of FPDS, ''FPDS–NG,'' becomes operational.

DATES: *Effective Date:* October 1, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before October 31, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–025@gsa.gov.*

Please submit comments only and cite FAC 2001–16, FAR case 2002–025, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–16, FAR case 2002–025.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). As part of this modernization process, agencies are being asked to establish and use a unique contract and order identification number scheme for the information reported to FPDS. These unique identifiers will help to improve the quality of information FPDS makes available to agencies for managing their programs and to the public for better understanding how taxpayer funds are spent.

Therefore, the FAR is being amended at 4.602 to add a paragraph requiring that each agency that reports to the FPDS have in place no later than October 1, 2003, a process that will ensure that each procurement instrument identifier reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award; and to require that agencies submit their proposed identifier to the Federal Procurement Data Center, which will maintain a registry of identifiers and validate their use in all transactions.

The agency's identifier must comply with the contract numbering guidelines established by the Joint Financial Management Improvement Project (JFMIP). Delivery orders, task orders, and call numbers must be unique in combination with the basic reference contract vehicle identifier. When the basic reference contract is available for multi-agency use, an ordering agency must use the same agency identification prefix for its delivery orders, task orders, and call numbers as it uses for its contractual instruments. Agencies may submit their proposed identifier to *john.cochran@gsa.gov.* Agencies are encouraged to submit their proposed identifier as soon as possible. If an agency is not in compliance by October 1, 2003 (*i.e.*, the date FPDS–NG becomes operational), FPDS–NG will reject the agency's reports.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule simply requires that agencies assign a unique identifier for contracts, purchase orders, and agreements reported to the FPDS. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments and are issuing this rule as an interim rule with request for comments. Pursuant to Public Law 8–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.602 by adding paragraph (e) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(e) *Unique Procurement Instrument Identifier (PIID).* (1) The FPDS requires that each reporting agency assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to FPDS. Such identifiers shall comply with the contract numbering guidelines established by the Joint Financial Management Improvement Project. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureau, offices, or other administrative subdivisions. The last portion of the PIID shall be numbered sequentially. The PIID may include other elements, as appropriate, such as fiscal year. Delivery orders, task orders, and call numbers must be unique in combination with the basic reference contract vehicle identifier. When the basic reference contract is available for multi-agency use (GWAC, Federal Supply Schedule contract, etc.), an ordering agency shall use the same agency identification prefix for its delivery orders, task orders, and call numbers as it uses for its contractual instruments.

(2) Agencies are required to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. To eliminate the possibility of duplication between agencies, agencies must submit their proposed identifier to the Federal Procurement Data Center, which will maintain a registry of the identifiers on the FPDC website and validate their use in all transactions.

[FR Doc. 03–24584 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 13, 19, and 25

[FAC 2001–16; FAR Cases 2002–026 and 2002–003; Item IV]

RINS 9000–AJ54 and 9000–AJ40

Federal Acquisition Regulation; Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act and sections 852 through 856 and section 858 of the Homeland Security Act. Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

DATES: *Effective Date:* October 1, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–16, FAR cases 2002–026 and 2002–003.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Case 2002–026, Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack. An interim rule implementing sections 852 through 856 and section 858 of the Homeland Security Act (Public Law 107–296) was published in the **Federal Register** at 68 FR 4048, January 27, 2003. The interim rule provided Federal emergency procurement flexibilities by increasing the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provided expanded access to streamlined procedures for acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The special increased thresholds and authorities under the Act apply to acquisitions resulting from solicitations issued before November 25, 2003.

A total of four comments from five commentors was received in response to the interim rule. Two commentors suggested that micropurchases should be subject to the small business reservation. This comment was not accepted.

Micropurchase authority is designed to enable agencies to make purchases in a highly simplified manner, generally without application of provisions and clauses and with minimal application of Government-unique requirements. While agencies should always actively consider the products and services of small businesses, irrespective of the size of the purchase, the Councils believe that imposition of a Government-unique regulatory buying mandate is generally inconsistent with the overall purpose of micropurchase authority. The Councils note that 41 U.S.C. 428(b) states that micro-purchases not be subject to the small business reservation: ''(b) Exclusion for micro-purchases. A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (*15 U.S.C. 644*(j)) and the Buy American Act (*41 U.S.C. 10a*–10c).''

Two commentors suggested that orders against GSA Schedules be subject to small business set-aside. This comment was not accepted as it was outside the scope of this case.

One commentor suggested that FAR 10.001 be revised to include language from the statute requiring use of commercially available market research methods, including use of commercial databases. This comment was partially accepted and a change was made to FAR 10.002 to add querying commercial databases as a market research technique. The balance of the recommendation was not accepted because the regulation already provides for using various market research methods.

This final rule finalizes the interim rule with the one change addressed above.

FAR Case 2002–003, Temporary Emergency Procurement Authority. This final rule also finalizes the interim rule issued in the **Federal Register** at 67 FR 56116, August 30, 2002, to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act. That interim rule increased the amount of the micropurchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during Fiscal Years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, the rule provided that contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items. No comments were received in response to that interim rule.

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

B. Regulatory Flexibility Act

The rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it affects the pool of acquisitions that are reserved for small businesses. We have prepared a Final Regulatory Flexibility Analysis. The analysis is summarized as follows:

This rule finalizes two interim rules that amend the Federal Acquisition Regulation (FAR) to implement Section 836 of the Fiscal Year 2002 National Defense Authorization Act and Sections 852 through 856 and Section 858 of the Homeland Security Act (Public Law 107–296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The rule affects the pool of acquisitions subject to the small business reservation by raising the threshold for application of the reservation for specified acquisitions to the increased micro-purchase threshold (from $2,500 to $7,500/$15,000) and correspondingly increasing the limitation to the increased simplified acquisition threshold (from $100,000 to

$200,000/$250,000). No comments were received in response to the Initial Regulatory Flexibility Analysis for either case. The increased thresholds are limited to specified procurements. In addition, the special authorities are only available for a short period of time. There are no data available on the number of procurements that will be eligible. However, we expect the number of small entities that will be impacted by the increased thresholds to this limited class of procurements to be very small.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 19, and 25

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

Interim Rules Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 10, 12, 13, 19, and 25, which were published in the **Federal Register** at 67 FR 56116, August 30, 2002, and 68 FR 4048, January 27, 2003, as a final rule with the following change:

PART 10—MARKET RESEARCH

■ 1. The authority citation for 48 CFR part 10 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.002 [Amended]

■ 2. Amend section 10.002 in paragraph (b)(2)(iv) by removing ''Government'' and adding ''Government and commercial'' in its place.

[FR Doc. 03–24585 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, and 52

[FAC 2001–16; FAR Case 2001–005; Item V]

RIN 9000–AJ20

Federal Acquisition Regulation; Notification of Overpayment, Contract Financing Payments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or noncommercial item contract.

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–16, FAR case 2001–005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55676, August 29, 2002, with request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 4 below.

1. *Comment:* There is concern that credit invoices, due to a revision of indirect billing rates, contractual actions impacting negotiated price, adjustments to progress payments as a result of change in the contract's estimated cost at completion, and authorized borrow-payback transfers will all be potentially misconstrued as overpayments because they may result in a need for the contractor to pay a sum back to the Government as a result of the normal and expected operation of contractual terms and conditions. Therefore, the following definition should be added at the beginning of each of the proposed paragraphs imposing a notification requirement:

An overpayment is a payment of an amount greater than the value the contractor is entitled to receive at the time of the payment.

Councils' response: Do not concur. The intent of the rule is to require contractors to notify the Government when they become aware that an incorrect payment has been made. The Councils do not believe there is a demonstrated need for such a definition. First, the term ''overpayment'' is used in Government contracting in a variety of contexts, and we are concerned that establishing a definition in the payment clauses could have unintended consequences. Second, when a contract is modified to reflect the incorporation of new billing rates, or some other contract administration action, the contract modification should identify whether a credit is due the Government. The Councils do not anticipate that a contracting officer would issue a notification of overpayment in these instances. If, in the future, it becomes apparent that, in practice, contracting officers are taking an overly broad and needlessly burdensome interpretation of what constitutes an overpayment for the purposes of this notification requirement, then the Councils will revisit this issue.

2. *Comment:* A dollar threshold of $25,000, or some other reasonable threshold, should be established for the notification of overpayment requirement. The requirement for providing a notification for any overpayment, no matter how small or insignificant in amount, is not cost-effective. In addition, instead of immediate notification, DoD should give contractors thirty days to notify the contracting officer, after the overpayment has been verified to source documents. Finally, the contract should require that the disposition instructions provided by the contracting officer be broadened, *i.e.*, that the payment office be required to provide both the contractor and contracting officer with appropriation-level detail of how all overpayment refunds are posted back to the contract.

Councils' response: The Councils do not agree with the premise that a threshold is needed. Many, if not most, contractors now provide notice to the Government when they believe an overpayment, or any other payment

error, has occurred, and there is no threshold involved. Notification helps to reinforce the public's trust that taxpayer dollars are being properly expended and is important, even for smaller dollar transactions, because there may be a mistake in the payment process that will cause future payment errors. Notification will enable the Government to identify and correct any systemic problems that may have arisen. The Councils also do not believe the rule needs to specify a notification timeframe. If it is not clear to the contractor that an overpayment has actually occurred, the contractor could double-check its records expeditiously prior to notification. On the other hand, if the contractor provides notification and later determines that it was in error, the contractor can retract the notification as easily and as swiftly as it was made. The Councils believed that further disposition instructions should be addressed on a case-by-case basis.

3. *Comment:* The analyses required by the Regulatory Flexibility Act and Paperwork Burden Act should be revised since they do not adequately address the burden that the proposed rule places on contractors, especially small businesses.

Councils' response: The Councils believe that it is a normal business practice for contractors to have billing systems in place that identify what is owed them, and to submit payment requests to the Government accordingly. Consequently, the inclusion of notification of overpayment language in payment and financing clauses is the formalization of a practice that normally is already followed by most contractors, *i.e.*, to inform the entity that pays you when you believe a mistake has been made. Therefore, the proposed case, and the notification requirement (already instituted in FAR case 1999–023 published in the **Federal Register** at 66 FR 65353, December 18, 2001, for most invoicing payments), would only reflect a new burden for contractors that routinely ignore payment mistakes. The Councils believe the increase in the paperwork burden, as stated in the proposed rule, adequately reflects this impact.

In addition, it is not expected that this change will impact a substantial number of small entities since the overpayments cited by GAO in its July 1999 report GAO/NSIAD–99–131, Greater Attention Needed to Identify and Recover Overpayments, were all related to large businesses.

4. *Comment:* Government inaction when overpayments occur is a major problem in addition to the overpayment itself. Therefore, it is recommended that the words ''promptly'' and ''timely'' be added to the rule, as indicated below, to emphasize the need for quick response on the part of a contracting officer to the contractor's notification of overpayment.

''If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.''

Councils' response: Concur. The proposed rule has been changed at FAR 12.215 and FAR 32.008.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, since the overpayments cited by GAO in its report GAO/NSIAD–99–131 were all related to large businesses (*see* reconciliation of comment #3).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. This final rule requires the contractor to notify the contracting officer if the contractor becomes aware that the Government has overpaid on a financing payment under a contract for noncommercial items, and on financing and invoice payments under a contract for commercial items. Although this estimated burden requires approval under the Act, it is so small (less than 1 percent increase) that it does not substantially impact the estimated total burden under Office of Management and Budget Control Number 9000–0102 (in lieu of OMB Control Number 9000–0070, which was inadvertently listed in the proposed rule). (*See* reconciliation of comment #3.)

List of Subjects in 48 CFR Parts 12, 32, and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Add section 12.215 to read as follows:

12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 32—CONTRACT FINANCING

■ 3. Add section 32.008 to read as follows:

32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–4 by revising the date of the clause and paragraph (i) to read as follows (the undesignated paragraph following paragraph (i) is removed):

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Oct. 2003)

* * * * *

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and

prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212–5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(iv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Oct. 2003).

(a) * * *

(2) * * *

(iv) 52.232–25, Prompt Payment (Oct. 2003).

* * * * *

■ 6. Amend section 52.232–25 by revising the date of the clause and paragraph (d) to read as follows:

52.232–25 Prompt Payment.

* * * * *

Prompt Payment (Oct. 2003).

* * * * *

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

* * * * *

■ 7. Amend section 52.232–26 by revising the date of the clause and paragraph (c) to read as follows:

52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

* * * * *

Prompt Payment for Fixed-Price Architect-Engineer Contracts (Oct. 2003).

* * * * *

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

■ 8. Amend section 52.232–27 by revising the date of the clause and paragraph (1) to read as follows:

52.232–27 Prompt Payment for Construction Contracts.

* * * * *

Prompt Payment for Construction Contracts (Oct. 2003).

* * * * *

(1) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

[FR Doc. 03–24586 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001–16; FAR Case 2003–006; Item VI]

RIN 9000–AJ71

Federal Acquisition Regulation; Caribbean Basin Country—Dominican Republic

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reinstate the treatment of the products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as directed by the U.S. Trade Representative (USTR).

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 2003–006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.003, 25.400, and the clauses at 52.212–5 and 52.225–5 to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act (TAA), as published by the USTR in the **Federal Register** at 68 FR 27883, May 21, 2003.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–16, FAR case 2003–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003 in the definition ''Caribbean Basin country'' by adding ''Dominican Republic,'' after ''Dominica,''.

25.400 [Amended]

■ 3. Amend section 25.400 in paragraph (a)(2) by removing ''the Dominican Republic and''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 4. Amend section 52.212–5 by removing ''(June 2003)'' from the clause heading and in paragraph (b)(23) and adding ''(Oct 2003)'' in its place.

52.225–5 [Amended]

■ 5. Amend section 52.225–5 by revising the date of the clause to read ''(Oct 2003)''; and in paragraph (a) of the clause, in the definition ''Caribbean Basin country,'' by adding ''Dominican Republic,'' after ''Dominica,''.

[FR Doc. 03–24587 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001–16; FAR Case 2001–015; Item VII]

RIN 9000–AJ35

Federal Acquisition Regulation; Prohibited Sources

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement recent Executive orders and to reflect the regulations of the Department of the Treasury's Office of Foreign Assets Control (OFAC).

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 2001–015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13080, March 20, 2002. The proposed rule implemented Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and reflected the regulations of OFAC in the Department of the Treasury.

One respondent submitted public comments. The Councils considered the public comments before agreeing to convert the proposed rule to a final rule with minor changes.

The respondent recommended that we restore the statement at FAR 25.701(a) that the restrictions apply to acquisitions of supplies and services, even for overseas use. The Councils do not concur. This statement regarding overseas use was included at FAR 25.701(a) because we were trying to make a distinction between prohibitions on import of some supplies and services into the United States and the voluntary policy of the Government not to acquire such supplies for overseas use. However, the Department of the Treasury brought to the attention of the Councils that most of the prohibitions already applied to overseas acquisition and use as well as to importation. The regulations at 31 CFR chapter V provide details as to whether the prohibitions apply to acquisition for overseas use as well as importation.

The respondent also was concerned that we should retain paragraph (c) of FAR 52.225–13, Restrictions on Certain Foreign Purchases. Paragraph (c) provides for flowdown of the restrictions to subcontractors. The proposed rule did not delete paragraph (c) from the clause. It was not reprinted in the **Federal Register** notice because no changes were proposed to that paragraph.

There are other recent directives which are relevant to subpart 25.7, which are not yet implemented in the OFAC regulations:

- Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism;
- Executive Order 13288, Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe;
- Executive Order 13268, Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001; and
- The general license issued on May 23, 2003, by the Department of the Treasury entitled ''Iraqi Sanctions Regulations.''

Contracting officers are to refer to the above directives and the most recent version of the regulations of OFAC at 31 CFR chapter V.

Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea. This rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html*.

The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

This rule also amends the legal basis for use of the clause 52.225–13, Restrictions on Certain Foreign Purchases, that is provided in the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). The rule replaces the list of specific Executive orders, which is incomplete and outdated, with a general reference to all proclamations, Executive orders, and statutes administered by OFAC.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects acquisitions from prohibited sources.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Revise section 25.701 to read as follows:

25.701 Restrictions.

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.epls.gov/Terlist1.html*. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at *http://www.treas.gov/ofac*.

25.702 [Amended]

■ 3. Amend section 25.702 by removing ''622–2520'' and adding ''622–2490'' in its place.

25.1103 [Amended]

■ 4. Amend section 25.1103 in paragraph (a) by removing ''(*see* 25.701(a)(2))''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(24) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct. 2003)

* * * * *

(b) * * *

(24) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

* * * * *

■ 6. Amend section 52.213–4 by revising paragraph (a)(1)(iv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(a) * * *

(1) * * *

(iv) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

* * * * *

■ 7. Amend section 52.225–13 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.225–13 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Oct. 2003)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.epls.gov/Terlist1.html*. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at *http://www.treas.gov/ofac*.

* * * * *

[FR Doc. 03–24588 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–16; FAR Case 2002–001; Item VIII]

RIN 9000–AJ46

Federal Acquisition Regulation; Economic Planning, Employee Morale, and Travel Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising three cost principles regarding economic planning costs; employee morale, health, welfare, food service, and dormitory costs and credits; and travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability.

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–16, FAR case 2002–001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55686, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in Section B, Comments 1 and 2, below.

FAR 31.205–12, Economic Planning Costs

Comment 1: Revise proposed FAR 31.205–12(a). The respondent agrees with the deletion of the current paragraphs (b) and (c). However, the respondent believes that by deleting the phrase ''and that may take into account the eventual possibility of economic dislocation or fundamental alterations in those markets in which the contractor currently does business'' from the first sentence in the current paragraph (a), the Councils may be unintentionally narrowing the allowability of economic planning costs. Specifically, the respondent stated that ''costs associated with the generalized planning of possible divestitures may no longer be considered economic planning costs by auditors and ACOs but be considered unallowable organization costs instead.''

Councils' response: Partially concur. It was not the Council's intent to change the scope of this cost principle; the Councils simply concluded that the phrase in question was unnecessary. But, since industry believes its deletion would narrow the allowability of costs under this cost principle, the phrase is reinstated to the first sentence in paragraph (a). However, the Councils also want to go on record as not agreeing with the assertion that planning costs related to divestiture efforts are economic planning costs covered by this cost principle. Efforts by a contractor to analyze future market conditions and assess the impact of those conditions on its current organization are economic planning costs. Any efforts by a contractor to analyze, initiate, or change its current organization to meet future market conditions are organization or reorganization costs covered under FAR 31.205–27, Organization costs. Contractors' general long-range planning efforts involving the contractor's organization will need to be reviewed on a case-by-case basis.

Comment 2: Revise proposed FAR 31.205–12(a). The respondent believes that it is not necessary to include the words ''determining the allowability of'' in the last sentence of paragraph (a), since there is no determination to be made under FAR 31.205–38, Selling costs, regarding the allowability of other market planning costs.

Councils' response: Concur. The Councils agree and have deleted the phrase from the last sentence in paragraph (a).

FAR 31.205–13, Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits

Comment 3: Delete proposed FAR 31.205–13(d). The respondent recommended the elimination of paragraph (d) regarding the cost allowability of food and dormitory services provided for employees. The respondent states that differing interpretations on how to apply the detailed provisions in paragraph (d) often occur. The respondent believes that the Government would still be adequately protected by FAR 31.201–3, Determining reasonableness, even if paragraph (d) is eliminated.

Councils' response: Nonconcur. This section of the cost principle clarifying the allowability of dining facilities costs is statutorily required by 10 U.S.C. 2324 (f)(1)(G) and 41 U.S.C. 256 (f)(1)(G). In addition, while the respondent provided some examples where they believe subjective and interpretational differences may occur, they did not cite any specific cost principle language that is problematic. The Councils believe the current cost principle language provides adequate criteria for properly determining cost allowability in their examples.

FAR 31.205–46, Travel Costs

Comment 4: Revise proposed FAR 31.205–46. The respondent has no objection to the deletion of the current paragraphs (b) and (c) to remove duplicative coverage. However, the respondent believes this cost principle can be further streamlined by removing the existing per diem ceiling limitations on the costs incurred for lodging, meals, and incidentals by allowing reimbursement of such costs on a ''reasonable charge'' basis. The respondent pointed out its endorsement of the Government's proposed rule associated with FAR case 1994–753, Travel Costs.

Councils' response: Partially concur. The Councils agreed to delete paragraphs (b) and (c) to remove duplicative coverage.

The recommendation to remove the existing per diem ceiling limitations provided in paragraph (a)(2) for lodging, meals, and incidental expenses is outside the scope of this case. During the deliberations on FAR case 1994–753, Travel Costs, several respondents raised concerns over the potential for increased costs to the Government and potential inequities between the treatment of contractor travel costs and Federal employee travel costs. The FAR Council placed the case on hold in November 2001, pending resolution of these concerns. The Councils have not identified procedures to mitigate the risks associated with the proposed change to the travel cost principle and are taking no further action on FAR case 1994–753.

General Reformatting of FAR 31.205

Comment 5: The respondent also recommended that the Councils consider a general reformatting of FAR part 31, Contract Cost Principles and Procedures. Specifically, consideration should be given to establishing a uniform structure for the selected costs detailed in FAR 31.205, which the respondent believes will increase the clarity and understanding of the cost principles and thereby reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to ''force-fit'' such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date, including the recent major revisions to the relocation cost principle (FAR 31.205–35) that made employee ''tax gross-ups'' and spouse employment assistance payments allowable for the first time, as well as increased the maximum allowable lump-sum amount for miscellaneous expenses from $1,000 to $5,000. In addition, cost principle

streamlining cases are currently in process regarding compensation (FAR 31.205–6), training and education (FAR 31.205–44), selling (FAR 31.205–38), depreciation (FAR 31.205–11), and expanded relocation lump-sum (FAR 31.205–35). The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–6 [Amended]

■ 2. Amend section 31.205–6 in paragraph (m)(2) by removing ''(*see* 31.205–46(f))'' and adding ''(*see* 31.205–46(d))'' in its place.

■ 3. Revise section 31.205–12 to read as follows:

31.205–12 Economic planning costs.

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by 31.205–27. See 31.205–38 for market planning costs other than economic planning costs.

■ 4. Amend section 31.205–13 by revising paragraphs (a), (d), and (f) to read as follows:

31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are—

(1) House publications;

(2) Health clinics;

(3) Wellness/fitness centers;

(4) Employee counseling services; and

(5) Food and dormitory services for the contractor's employees at or near the contractor's facilities. These services include—

(i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and

(ii) Similar types of services.

* * * * *

(d)(1) The allowability of food and dormitory losses are determined by the following factors:

(i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.

(ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.

(iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:

(A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.

(B) The contractor's charged (but unproductive) labor costs would be excessive if the services were not available.

(C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

* * * * *

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205–46 [Amended]

■ 5. Amend section 31.205–46 as follows:

■ a. Remove paragraphs (b) and (c), and redesignate paragraphs (d), (e), and (f) as (b), (c), and (d), respectively; and

■ b. In the introductory text of newly designated paragraph (c)(2), remove ''paragraph (d)'' each time it appears (twice) and add ''paragraph (b)'' in their place; and remove ''subparagraph (e)(3)'' and add ''paragraph (c)(3)'' in its place.

[FR Doc. 03–24589 Filed 9–30–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 24

[FAC 2001–16; Item IX]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition

Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* October 1, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–16, Technical Amendments.

List of Subjects in 48 CFR Parts 8 and 24

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 24 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 24 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.404 by revising the first sentence of paragraph (b)(6) to read as follows:

8.404 Using schedules.

* * * * *

(b) * * *

(6) * * * When conducting evaluations and before placing an order, consider including, if available, one or more small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, woman-owned small business, and/or small disadvantaged business schedule contractor(s). * * *

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

§ 24.202 [Amended]

■ 3. Amend section 24.202 by—

■ a. Removing the em dash at the end of the introductory text of paragraph (a);

■ b. Removing paragraph (a)(1); and

■ c. Removing paragraph designation ''(a)(2)'' and the word ''Set'' and adding ''set'' in its place.

[FR Doc. 03–24590 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–16 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–16 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–16

Item	Subject	FAR case	Analyst
* I	Central Contractor Registration	2002–018	Parnell.
* II	Electronic Commerce in Federal Procurement	1997–304	Davis.
III	Unique Contract and Order Identifier Numbers (Interim)	2002–025	Zaffos.
* IV	Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack; and Temporary Emergency Procurement Authority.	2002–026 2002–003	Zaffos.
V	Notification of Overpayment, Contract Financing Payments	2001–005	Parnel.l
VI	Caribbean Basin Country—Dominican Republic	2003–006	Davis.
VII	Prohibited Sources	2001–015	Davis
VIII	Economic Planning, Employee Morale, and Travel Cost Principles	2002–001	Loeb.
IX	Technical Amendments.		

Item I—Central Contractor Registration (FAR Case 2002–018)

This final rule amends FAR parts 1, 2, 4, 13, 32, and 52 to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement on or after October 1, 2003. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

Item II—Electronic Commerce in Federal Procurement (FAR Case 1997–304)

This final rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Governmentwide point of entry on the Internet designated in the FAR or via the Commerce Business Daily (CBD). The objectives of the rule are (1) to

designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov,* where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to require electronic access to notices of solicitation through the single Governmentwide point of entry as a replacement for paper (or electronic) publication in the CBD.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

This interim rule amends the FAR to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

Item IV—Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority (FAR Cases 2002–026 and 2002–003)

This rule finalizes interim rules 2002–026 and 2002–003, which increased the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule also amends the FAR to add the querying of commercial databases that provide information relevant to the agency acquisition as a technique for conducting market research.

Item V—Notification of Overpayment, Contract Financing Payments (FAR Case 2001–005)

This final rule amends FAR parts 12, 32, and 52 to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or a noncommercial item contract.

Item VI—Caribbean Basin Country—Dominican Republic (FAR Case 2003–006)

This final rule amends FAR 25.003, 25.400, and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.225–5, Trade Agreements, to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as published by the USTR in the Federal Register at 68 FR 27883, May 21, 2003. This change will allow Government purchase of products originating in the Dominican Republic that are not excluded from duty-free treatment under 19 U.S.C. 2703(b), unless otherwise restricted by law.

Item VII—Prohibited Sources (FAR Case 2001–015)

This final rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html.* The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by the OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

Item VIII—Economic Planning, Employee Morale, and Travel Costs Principles (FAR Case 2002–001)

This final rule amends the FAR to revise three cost principles: (1) FAR 31.205–12, Economic planning costs; (2) FAR 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits; and (3) FAR 31.205–46, Travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability. The rule does not change the allowability of costs. The case was initiated to consider suggestions made at a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item IX—Technical Amendments

This amendment makes editorial changes at FAR 8.404(b)(6) and 24.202(a).

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–24591 Filed 9–30–03; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 275 and 279

Custody of Funds or Securities of Clients by Investment Advisers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2176; File No. S7–28–02]

RIN 3235–AH 26

Custody of Funds or Securities of Clients by Investment Advisers

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the custody rule under the Investment Advisers Act of 1940. The amendments modernize the rule by conforming the rule to modern custodial practices and requiring advisers that have custody of client funds or securities to maintain those assets with broker-dealers, banks, or other qualified custodians. The amended rule also provides a definition of ''custody'' and illustrates circumstances under which an adviser has custody of client funds or securities. The amendments are designed to enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

DATES: *Effective Date:* November 5, 2003. *Compliance Date:* April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at 202–942–0719 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 206(4)–2 (17 CFR 275.206(4)–2) [1] under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (the ''Advisers Act'' or ''Act'') and to Part 1A, Item 9 and Part II, Item 14 of Form ADV (17 CFR 279.1).

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Executive Summary

The Commission is amending rule 206(4)–2, the custody rule under the Advisers Act, to reflect modern custodial practices and clarify circumstances under which an adviser has custody of client assets. The amendments require advisers that have custody to maintain client funds and securities with a broker-dealer, bank, or other ''qualified custodian.'' If the qualified custodian sends account statements directly to an adviser's clients, the adviser is relieved from sending its own account statements and from undergoing an annual surprise examination. The amendments also add a definition of ''custody'' to the rule and illustrate circumstances under which an adviser has custody of client funds or securities. Finally, the amendments remove the Form ADV requirement that advisers with custody include an audited balance sheet in their disclosure brochure to clients.

I. Background

Rule 206(4)–2 regulates the custody practices of advisers registered under the Advisers Act. The rule requires advisers that have custody of client securities or funds to implement a set of controls designed to protect those client assets from being lost, misused, misappropriated or subject to the advisers' financial reverses.

Last year we proposed comprehensive amendments to rule 206(4)–2. Our proposal was designed to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody.[2] We received 49 comment letters in response to our proposed rule. Commenters strongly supported the approach of the proposal. One noted that our proposal would replace ''highly detailed compliance requirements with an overall regulatory framework in order to achieve greater accountability and transparency of transactions in client accounts.'' [3] We are adopting the amendments to rule 206(4)–2 with certain changes that respond to commenters' recommendations.

II. Discussion

A. Definition of Custody

We have added to the rule a definition of the term ''custody.'' An adviser has custody of client assets, and therefore must comply with the rule, when it holds, ''directly or indirectly, client funds or securities or [has] any authority to obtain possession of them.''[4] We provide three examples designed to illustrate circumstances under which an adviser has custody of client funds or securities. Commenters agreed that the examples will be helpful to advisers.

The first example clarifies that an adviser has custody when it has possession of client funds or securities, even briefly.[5] An adviser that holds clients' stock certificates or cash, even temporarily, puts those assets at risk of misuse or loss. The amendments, however, expressly exclude inadvertent receipt by the adviser of client funds or securities, so long as the adviser returns them to the sender within three business days of receiving them.[6] The rule does not permit advisers to forward

[1] Unless otherwise noted, when we refer to rule 206(4)–2 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–2 of the Code of Federal Regulations in which the rule is published.

[2] *Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)] (''Proposing Release'').

[3] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *http://www.sec.gov/rules/extra/s72802csumm.htm*.

[4] Amended rule 206(4)–2(c)(1). One commenter asked whether an adviser with multiple lines of business within the same corporation or other business entity has ''custody'' if its non-advisory business gives the adviser or its personnel authority to obtain customers' funds or securities. For example, an adviser might provide investment advice and also offer, separately, a bill-paying service through which the adviser's employees gain signatory power over a customer's checking account. If the customer is not an advisory client of the adviser, the adviser does not have custody of ''client funds and securities.'' If, however, the customer is also an advisory client, the adviser has access to a client's assets, and therefore has custody, even though that access arises through a separate line of business.

The same access could also arise through an affiliate of the adviser. An adviser may, for example, have custody if its affiliate holds funds or securities of the adviser's clients under circumstances in which the adviser or its personnel have access to those client assets through the affiliate. Our staff previously has expressed similar views in *Crocker Investment Management Corp.,* SEC Staff Letter (Apr. 14, 1978).

[5] Amended rule 206(4)–2(c)(1)(i). In our proposed rule, our first example of custody referred to ''possession or control'' of client funds or securities, but commenters suggested that the term ''control'' improperly suggested that an adviser that merely has trading authority over a client's securities account has custody for purposes of the rule. *See infra* note. We believe that the definition and other examples make it clear that an adviser has custody when it can control client funds or securities for purposes other than authorized trading, and that the word ''control'' is therefore not needed in the first example.

[6] We had proposed requiring the adviser to return the funds and securities in one day, but commenters suggested that a longer period was needed to reduce inadvertent violations of the rule.

clients' funds and securities without having ''custody,'' although advisers may certainly assist clients in such matters.[7] In addition, the amendments clarify that an adviser's possession of a check drawn by the client and made payable to a third party is not possession of client funds for purposes of the custody definition.[8]

The second example clarifies that an adviser has custody if it has the authority to withdraw funds or securities from a client's account.[9] An adviser with power of attorney to sign checks on a client's behalf, to withdraw funds or securities from a client's account, or to dispose of client funds or securities for any purpose other than authorized trading has access to the client's assets.[10] Similarly, an adviser authorized to deduct advisory fees or other expenses directly from a client's account has access to, and therefore has custody of, the client funds and securities in that account.[11] These advisers might not have possession of client assets, but they have the authority to obtain possession.

Several commenters suggested that we change the definition of ''custody'' to exclude advisers' access to client funds through fee deductions. We are not adopting this suggestion. Removing this form of custody from the definition would mean that clients would not receive the quarterly account statements that are required under the rule, and which are needed so that clients may confirm that the adviser has not improperly withdrawn amounts in excess of its fees.[12] We are, however, amending Form ADV so advisers that have custody only because they deduct fees will not need to amend their registration statements.[13]

The last example clarifies that an adviser has custody if it acts in any capacity that gives the adviser legal ownership of, or access to, the client funds or securities.[14] One common instance is a firm that acts as both general partner and investment adviser to a limited partnership.[15] By virtue of its position as general partner, the adviser generally has authority to dispose of funds and securities in the limited partnership's account and thus has custody of client assets.[16]

B. Use of Qualified Custodians

We are adopting, as proposed, a requirement that advisers with custody of client funds and securities maintain them with qualified custodians.[17] The qualified custodian must hold the funds or securities in an account either under the client's name or under the adviser's name as agent or trustee for its clients.[18]

''Qualified custodians'' under the amended rule include the types of financial institutions that clients and advisers customarily turn to for custodial services. These include banks and savings associations [19] and registered broker-dealers.[20] In order to allow advisers that also offer futures advice to comply with Commodity Futures Trading Commission rules, ''qualified custodians'' also include registered futures commission merchants.[21] Finally, ''qualified custodians'' include foreign financial

[7] We understand that some advisers meet with clients to prepare or compile documents, including stock certificates, for forwarding to a custodian or third party. Nothing in the amended rule suggests that preparing these documents with a client gives the adviser ''custody.''

[8] Checks payable to an adviser for payment of advisory or similar fees due to the adviser also do not represent ''client funds'' within the meaning of the custody rule and therefore advisers would not have custody as a result of receiving those checks. An adviser would, however, have custody of client funds if it holds a check drawn by the client and made payable to the adviser with instructions to pass the funds through to a custodian or to a third party.

[9] Amended rule 206(4)–2(c)(1)(ii).

[10] An adviser's authority to issue instructions to a broker-dealer or a custodian to effect or to settle trades does not constitute ''custody.'' Clients' custodians are generally under instructions to transfer funds (or securities) out of a client's account only upon corresponding transfer of securities (or funds) into the account. This ''delivery versus payment'' arrangement minimizes the risk that an adviser could withdraw or misappropriate the funds or securities in its client's custodial account.

[11] Some commenters asked whether they could, instead of complying with the amended rule, continue following procedures established under certain no-action letters, *e.g., Investment Counsel Association of America, Inc.,* SEC Staff Letter (June 9, 1982); *John B. Kennedy,* SEC Staff Letter (June 5, 1996); and *Securities America Advisers Inc.,* SEC Staff Letter (Apr. 4, 1997). The staff is withdrawing those letters. Advisers, including those firms that have relied on these letters in the past, must comply with the amended rule.

[12] *See* Section II.C. of this Release. We note, however, that rule 206(4)–2 defines ''custody'' broadly in order to serve the remedial purposes of the rule, and to ensure that advisory clients receive timely reports on transactions in their assets and thus can take action to protect themselves in the event of an adviser's misuse of their funds. Consequently, an adviser that has ''custody'' for purposes of rule 206(4)–2 may not necessarily have custody for other purposes.

[13] *See* Section II.E of this Release.

[14] Amended rule 206(4)–2(c)(1)(iii).

[15] This example applies equally to an adviser that acts as both managing member and investment adviser of a limited liability company or another type of investment vehicle, or as both trustee and investment adviser of a trust. A firm may also have custody when a supervised person fills one of these roles, such as when a portfolio manager serves as trustee of a client trust. *E.g., In the Matter of Gofen and Glossberg, Inc.,* Investment Advisers Act Release No. 1400 (Jan. 11, 1994). We understand that supervised persons may, on occasion, engage the advisory firm to advise an estate, conservatorship or personal trust for which the supervised person serves as executor, conservator or trustee. We would not view the adviser to have custody of the funds or securities of the estate, conservatorship, or trust solely because the supervised person has been appointed in these capacities as a result of family or personal relationship with the decedent, beneficiary or grantor (and not a result of employment with the adviser).

The amended rule contains a limited exception from the rule for client accounts that are limited partnerships subject to an annual audit. *See infra* Section II.D.2 of this Release. Some commenters asked whether they could, instead of complying with the amended rule, continue following procedures established under certain no-action letters, *e.g., Bennett Management Co.,* SEC Staff Letter (Feb. 26, 1990); *PIMS, Inc.,* SEC Staff Letter (Oct. 21, 1991); *Canyon Management Co.,* SEC Staff Letter (Oct. 15, 1991); *Pacific Management, Ltd.,* SEC Staff Letter (Oct. 29, 1991); *Lee Capital Management,* SEC Staff Letter (Oct. 29, 1991); *Eichler Magnin, Inc.,* SEC Staff Letter (Nov. 4, 1991); *GBU, Inc.,* SEC Staff Letter (Apr. 22, 1993). The staff is withdrawing those letters. Advisers, including those firms that have relied on these letters in the past, must comply with the amended rule.

[16] Investment advisers that also act as general partners for real estate partnerships in which their advisory clients are limited partners requested clarification about the rule's application to such partnerships. In such circumstances, the rule does not apply to the assets of the real estate partnership unless the partnership is an advisory client of the investment adviser.

[17] Amended rule 206(4)–2(a)(1). The amended rule does not prohibit an adviser from using more than one qualified custodian to hold funds and securities of a client.

[18] Under the amendments, client funds and securities must be held on behalf of the client by the qualified custodian so that the qualified custodian can provide account information to the clients. Keeping stock certificates in the adviser's bank safe deposit box, for example, would not satisfy the requirements of the rule.

[19] Amended rule 206(4)–2(c)(3)(i). A ''bank'' under section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–202(a)(2)) includes national banks, members of the Federal Reserve System, and other banks and trust companies having similar authority to national banks and supervised by State or Federal banking agencies. A ''savings association'' is a financial institution as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) and insured and supervised by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811).

[20] Amended rule 206(4)–2(c)(3)(ii). ''Qualified custodian'' includes any broker-dealer that is registered with and regulated by us under the Securities Exchange Act of 1934 (the ''Exchange Act''), holding the client assets in customer accounts.

[21] Amended rule 206(4)–2(c)(3)(iii). Futures commission merchants are registered with the Commodity Futures Trading Commission (''CFTC'') under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) and regulated by the CFTC. ''Qualified custodian'' includes a registered futures commission merchant holding the client assets in customer accounts. Registered investment advisers that also provide clients with advice about futures, including ''security futures,'' may also be subject to CFTC rules; CFTC rules require that ''customer funds'' be custodied with a futures commission merchant. *See* rule 4.30 (17 CFR 4.30) under the Commodity Exchange Act. *See also* Commodity Futures Modernization Act (Pub. L. 106–554, 114 Stat. 2763 (2000)) (security futures are both securities and futures). The rule also allows advisers to maintain client securities with a futures commission merchant to the extent the securities are incidental to client futures transactions.

institutions that customarily hold financial assets for their customers, provided that the foreign financial institution keeps advisory clients' assets in customer accounts segregated from its proprietary assets.[22]

Many advisers registered with us are themselves qualified custodians under the amended rule.[23] These advisers may maintain their own clients' funds and securities, subject to the account statement requirements described below and the custody rules imposed by the regulators of the advisers' custodial functions. Advisers may also maintain client assets with affiliates that are qualified custodians.

The amended rule contains special provisions for two types of securities: mutual fund shares and private issues. Commenters noted that, at times, a client or adviser may purchase shares of a mutual fund directly from the fund's transfer agent rather than through another intermediary such as a broker-dealer. In these cases, the mutual fund's transfer agent maintains the securities for the client on the mutual fund's books. The adviser, however, may also have custody because, for example, the adviser has check-writing or fee-deduction authority over the assets.[24] The amended rule allows an adviser to use the mutual fund transfer agent in lieu of a qualified custodian with respect to those shares.[25]

Commenters also pointed out that, on occasion, a client may purchase privately-offered securities and that maintaining certain of these assets in accounts with qualified custodians poses difficulties because the client's ownership of the security is recorded only on the books of the issuer. The client may receive copies of subscription or partnership agreements that are not maintained with a custodian.[26] The amendments except advisers from the rule with respect to privately-offered uncertificated securities in their clients' accounts, if ownership of the securities is recorded only on the books of the issuer or its transfer agent, in the name of the client, and transfer of ownership is subject to prior consent of the issuer or holders of the issuer's outstanding securities.[27] These impediments to transferability provide some external safeguards against the kinds of abuse the rule seeks to prevent. These safeguards, however, may be ineffective in the case of limited partnerships (or other pooled investment vehicles). Because the private securities are held in the name of the limited partnership and the adviser acts for the partnership, the adviser has apparent authority to arrange transfers that would be recognized by the issuer of the securities. Accordingly, an adviser may use the exception for private securities with respect to the account of a limited partnership only if the limited partnership is audited annually, and the audited financial statements are distributed, as described in amended rule 206(4)–2(b)(3).[28]

C. Delivery of Account Statements to Clients

Rule 206(4)-2, as amended, requires that advisers with custody of clients' funds or securities have a reasonable belief that the qualified custodian holding the assets provides periodic account statements to those clients.[29] A number of commenters asserted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses substantially. In response to these comments, the amended rule requires quarterly account statements rather than the monthly statements we proposed. This provision, which requires qualified custodians to deliver account statements directly to advisory clients (and not through the adviser), is designed to assure the integrity of those account statements and permit clients to identify any erroneous or unauthorized transactions or withdrawals by an adviser.[30]

As we discussed in the Proposing Release, we recognize that there may be circumstances in which an adviser would need to continue using the approach of the current rule.[31] Accordingly, if a client does not receive account statements directly from the qualified custodian, the adviser must continue sending quarterly account statements to that client and to undergo an annual surprise examination by an independent public accountant[32] to verify the funds and securities of that client.[33] The amendments require the

[22] Amended rule 206(4)–2(c)(3)(iv). We proposed to include foreign financial institutions only for securities whose primary trading market was in the country where the custodian was located. Some commenters urged that we permit foreign custodians to be used more broadly, arguing that some advisers, and some clients, especially those residing overseas, may at times have reason to use a foreign firm as a custodian or may have existing relationships with foreign institutions. We are modifying the rule from the proposal to avoid disrupting these existing practices. Where an adviser selects a foreign financial institution to hold clients' assets, we believe the adviser's fiduciary obligations require it either to have a reasonable basis for believing that the foreign institution will provide a level of safety for client assets similar to that which would be provided by a ''qualified custodian'' in the United States or to fully disclose to clients any material risks attendant to maintaining the assets with the foreign custodian.

[23] For example, Form ADVs submitted by SEC-registered advisers indicate that as of May 16, 2002, 647 advisers were broker-dealers registered with us under section 15 of the Exchange Act (15 U.S.C. 78o) and 77 advisers were banks (or separately identifiable departments or divisions of banks).

[24] Commenters were concerned that without an exception, an advisory client or adviser would have to use a qualified custodian in addition to the mutual fund transfer agent.

[25] *See* amended rule 206(4)-2(b)(1). The fund transfer agent must fulfill all aspects of the role of a qualified custodian under the rule, including sending statements directly to the client, or the adviser will be subject to annual surprise examinations. *See* discussions in Section II.C. of this Release.

[26] Commenters specifically mentioned clients' investments in limited partnerships, where clients receive only a copy of the partnership agreement as evidence of their investment. Commenters also mentioned assignment agreements for debt or equity interests in a private company, or other types of customized agreements. *See* our staff's summary of comments posted on our web site at www.sec.gov/rules/extra/s72802csumm.htm.

[27] For example, in many privately-offered limited partnerships transfer of a limited partnership interest must be approved by a majority or some other percentage of the other limited partners. The rule does not require a specific number or percentage of the other security holders that must approve the transfer; applicable partnership law or the limited partnership agreement would set that standard.

[28] *See* Section II.D.2 of this Release. Otherwise, an adviser to a limited partnership (or other types of pooled investment vehicles) will still be required to maintain custody of privately-offered securities in accordance with the requirements of the rule.

Some privately-offered securities may be difficult to value. Account statements that must be delivered to a client under the rule must report the amount of the client's securities, but the rule does not require those statements to include a valuation of the securities.

[29] Amended rule 206(4)-2(a)(3)(i). An adviser could form this reasonable belief if, for example, the qualified custodian provides the adviser with a copy of the account statement that was delivered to the client.

Account statements may be delivered electronically as well as on paper. Electronic delivery must comply with the Commission's interpretive guidelines on delivering documents electronically. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940,* Release No. 33–7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)]. The guidelines are available at www.sec.gov/rules/concept/33–7288.txt. *See also* New York Stock Exchange's June 13, 1997 Information Memo (No. 97–32) entitled *''Electronic Delivery of Information to Customers by Members and Member Organizations.''*

[30] We understand qualified custodians sometimes use service providers to deliver account statements. The amended rule does not prohibit a qualified custodian from doing so, as long as the statements are not routed through the adviser.

[31] *See* Section II.C. of the Proposing Release.

[32] Article 2 of Regulation S-X sets forth Commission standards for the independence of accountants. 17 CFR 210.2–01.

[33] Amended rule 206(4)-2(a)(3)(ii). If qualified custodians deliver account statements directly to

accountant to notify our Office of Compliance Inspections and Examinations within one business day of finding any material discrepancies during an examination.[34]

We understand that some clients may not wish to receive custodial reports. Under rule 206(4)–2, as amended, clients can choose to have an independent representative receive account statements on their behalf.[35] An ''independent representative'' is a person that (i) acts as agent for an advisory client and by law or contract is obligated to act in the best interest of the advisory client; (ii) does not control, is not controlled by, and is not under common control with the adviser; and (iii) does not have, and has not had within the past two years a material business relationship with the adviser.[36]

The rule requires that account statements be delivered to clients. Advisers that take legal title to the client assets they manage, such as advisers that also serve as general partner to investment pools, have asked how they should apply this provision. Because this arises most often in connection with pooled investment vehicles, rule 206(4)–2, as amended, contains a special provision clarifying that account statements (whether delivered by the qualified custodian or the adviser) must be sent directly to the investors in the pool if the adviser to the pool also acts as its general partner, managing member, or in a similar capacity and has custody of client funds or securities.[37] Delivery of account statements to the adviser but not to the limited partners would not deter the adviser's misuse of client assets.[38]

D. Exemptions

1. Registered Investment Companies

Advisers need not comply with the rule with respect to clients that are registered investment companies.[39] Registered investment companies and their advisers must comply with the strict requirements of section 17(f) of the Investment Company Act of 1940 and the custody rules we have adopted under that section.[40]

2. Pooled Investment Vehicles

Advisers need not comply with the reporting requirements of the rule with respect to pooled investment vehicles, such as limited partnerships or limited liability companies, if the pooled investment vehicle (i) is audited at least annually; and (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year.[41] We had proposed a complete exemption for audited pools, but have decided to exempt them only from the reporting requirement and to retain application of the other provisions of the rule, including the requirement that funds and securities be held with a qualified custodian; these requirements provide meaningful protections to investors in these pools for which an annual audit provides an insufficient substitute.

3. Registered Broker-Dealers

The amendments eliminate the exemption from the rule for advisers that are also registered broker-dealers, which are qualified custodians under the rule and for which the exemption is unnecessary.

E. Amendments to Form ADV

We are revising an instruction to Item 9 of Part 1A of Form ADV, which asks whether the adviser has custody of client funds or securities. A large number of advisers registered with us deduct their fees directly from client accounts and therefore have custody, but currently answer ''no'' to Item 9 in

some, but not all, of an adviser's clients (or with respect to some, but not all, of a client's funds and securities), the adviser's quarterly statements and the scope of the surprise examination could cover only the client funds and securities for which custodial statements are not delivered directly. The accountant must ensure, however, that all client funds and securities either are covered by statements sent directly from the qualified custodian or are covered by the surprise examination.

The accountant should perform the examination in accordance with U.S. Generally Accepted Auditing or Attestation Standards, except that the accountant must verify or substantiate all client funds and securities covered by the examination. The examination should include confirmation of all cash and securities held by custodians, including a physical examination of securities if applicable, and reconciliation of all such cash and securities to the books and records of client accounts maintained by the adviser, as well as confirmation of such information with the adviser's clients. *See American Institute of Certified Public Accountants, Audit and Accounting Guide: Audits of Investment Companies § 11.12 (2002); Statement of the Commission Describing Nature of Examination Required to be Made of All Funds and Securities Held by an Investment Adviser and the Content of Related Accountant's Certificate,* Investment Advisers Act Release No. 201 (May 26, 1966) (31 FR 7821). The examination must be performed at a time chosen by the accountant without prior notice or announcement to the adviser, and the timing of the examination must be irregular from year to year, so that the adviser will be unaware of the date on which it will take place.

The accountant must file a certificate on Form ADV–E with the Commission within 30 days after the completion of the examination. We would expect that, ordinarily, an accountant should be able to complete its examination and file Form ADV–E within 90 to 120 days of commencing the examination.

[34] Amended rule 206(4)-2(a)(3)(ii)(C). The independent accountant may first take reasonable steps to establish the basis for believing a material discrepancy exists. The obligation to notify the Commission arises once the accountant has a basis for believing there is a material discrepancy. Ordinarily, an accountant should be able to determine promptly whether it has a basis for believing there is a material discrepancy.

[35] Our proposed amendments permitted the use of independent representatives only for investors in pooled investment vehicles. In response to the suggestions of several commenters, we have decided to permit all advisory clients to designate independent representatives under the rule.

[36] Amended rule 206(4)–2(c)(2).

[37] Amended rule 206(4)–2(a)(3)(iii). These account statements may be sent to the investors' independent representative(s) under amended rule 206(4)–2(a)(4). However, as discussed below in more detail, the amendments provide an exemption from amended rule 206(4)–2(a)(3) for advisers with respect to pooled investment vehicles that are audited annually. *See* discussions in Section II.D.2 of this Release.

[38] Registered advisers that provide their advisory services through trusts must also ensure that account statements are delivered to their clients. Where an adviser acts as trustee for its client's trust, the investment advisory agreement often takes the form of a trust instrument. These advisers are acting in a capacity that gives them legal ownership of the client assets and thus have custody. In many cases, the advisory client is also the trust grantor and beneficiary. In other circumstances, the adviser may need to have quarterly statements delivered to an independent representative who may be a co-trustee, lead beneficiary, trust attorney, executor, or, in the case of court-supervised trusts, the court.

[39] Rule 206(4)–2(b)(4).

[40] 15 U.S.C. 80a–17(f) and rules 17f–1 through 17f–7 under the Investment Company Act of 1940 (17 CFR 270.17f–1 through 17 CFR 270.17f–7)

[41] Amended rule 206(4)–2(b)(3). We are aware that a small percentage of advisers subject to the rule advise foreign pooled investment vehicles that prepare their financial statements in accordance with International Accounting Standards or some comprehensive body of accounting standards other than U.S. Generally Accepted Accounting Principles (''U.S. GAAP''). An adviser may use such financial statements to qualify for this exception with respect to pools that have a place of organization outside the U.S. or a general partner or other manager with a principal place of business outside the U.S., if such financial statements contain information that is substantially similar to financial statements prepared in accordance with U.S. GAAP and contain a footnote reconciling any material variations between such comprehensive body of accounting standards and U.S. GAAP. To ensure such material variations are adequately described, the financial statements should discuss and quantify them in the manner described in Item 17 of Form 20–F (17 CFR 249.220f) (except that the financial statements need not provide reconciliation to Regulation S–X as required of issuers under Form 20–F). For both U.S. and foreign pooled investment vehicles, the rule provides that ''audit'' has the meaning under section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)), and pooled investment vehicles' financial statements must be audited in accordance with U.S. Generally Accepted Auditing Standards.

We proposed to require distribution of the audited financial statements within 90 days, but have extended that period to 120 days so that funds of funds will have enough time to complete their financial statements. Funds of funds, as pointed out by commenters, usually wait for the completion of the financial statements of the underlying investment funds before confirming their own data and finalizing their own financial statements.

reliance on no-action letters issued by our staff.[42] Commenters requested that we modify Item 9 to avoid requiring these advisers to amend their Form ADVs in this respect. The new instruction specifies that advisers that have custody only because they deduct fees may answer ''no'' to Item 9.[43] It will be some number of months before the NASD, which operates the IARD for us, completes reprogramming the IARD to implement this change to Item 9. In the interim, advisers registered with the Commission that have custody only because they deduct fees should answer ''no'' to Item 9 of current Form ADV.

Finally, we are eliminating the requirement that advisers with custody of client assets include an audited balance sheet in their disclosure statements (''brochures'') sent to clients.[44] Commenters agreed that the requirement is no longer necessary due to the adoption of rule 206(4)–4, which requires every adviser to disclose to its clients any financial condition that is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients.[45]

III. Effective Date

The effective date of the amendments is November 5, 2003. Advisers must comply with the amended rule by April 1, 2004. By this compliance date, an adviser with custody of clients' funds and securities must ensure that those assets are kept in accounts with qualified custodians. Also by this date, the adviser must have established its reasonable belief that the qualified custodians send quarterly account statements directly to the clients or to their independent representatives, or as an alternative, follow the requirements of sending quarterly statements and undergoing an annual surprise examination.[46] In addition, by this date, advisers to limited partnerships that are not currently subject to annual audits must ensure that those partnerships have become obligated to undergo annual audits if the adviser intends to rely on the exception in paragraph (b)(3) of the amended rule.[47]

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[48]

The amendments eliminate unnecessary burdens and thus may permit advisers to operate more efficiently. Because they apply equally to all advisers registered with us, we do not anticipate that they create any competitive disadvantages. We do not expect them to have an effect on capital formation or the capital markets.

V. Cost-benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits resulting from its rules. The amendments we adopt today are designed to harmonize the custody rule with current custodial practices, enhance the protections afforded to advisory clients' assets, and reduce advisers' compliance burden. The amended rule requires advisers with custody of client funds and securities to maintain those funds and securities with broker-dealers, banks, or other ''qualified custodians.'' The amended rule relieves advisers from sending clients quarterly account statements and undergoing an annual surprise examination if qualified custodians send account statements directly to the clients at least quarterly. The amended rule also defines ''custody,'' incorporating a definition already used in Form ADV, and illustrates common circumstances under which an adviser has custody. Finally, the amendments make two custody-related changes to Form ADV.

In our Proposing Release, we carefully analyzed the costs and benefits of our proposed amendments and requested comment regarding the costs and benefits to individual advisers and to the industry as a whole. We estimated based on advisers' filings with us that 867 advisers registered with us (approximately 11 percent) have custody of clients' assets, that 156 of these firms were broker-dealers (123) or banks (33), that would keep custody of their own clients' assets and, in their capacity as qualified custodians, send account statements to those clients,[49] and that in 95 percent of the remaining advisers with custody[50] qualified custodians would send account statements to 99 percent of clients and the adviser would prepare account statements for the remaining 1 percent of clients.[51] We estimated that the remaining 36 advisory firms[52] would prepare their own statements for all clients.[53] Commenters strongly favored the amendments and agreed that they would ease the regulatory burden on advisers and increase investor protections.[54] We did not, however, receive specific comments on our cost benefit analyses.

We are adopting the amendments substantially as proposed, with some revisions in response to comments. We believe our original analyses regarding the benefits and costs of the amendments remain accurate. Most of the benefits and costs under the amended rule, however, are not quantifiable.

B. Benefits

Improved protection for advisory clients. The amended rule requires advisers to maintain clients' securities, as well as clients' funds, with qualified custodians. Although most advisers

[42] We are, as indicated earlier, withdrawing those staff letters. *See supra* note 11.

[43] The revised instruction applies only with respect to an adviser's registration with us, and does not affect advisers registered or registering with the states. We note, also, that advisers registering with one or more states must respond separately to Part 1B of Form ADV, which specifically asks whether the adviser deducts fees from its clients' accounts.

[44] Part II, Item 14 of Form ADV.

[45] 17 CFR 275.206(4)–4. *See also* Section II.E. of the Proposing Release.

[46] Until the compliance date, advisers may rely on SEC staff letters for exemption from the surprise examination. *See* SEC staff letters listed in supra notes 11 & 15.

[47] Amended rule 206(4)–2(b)(3). Advisers to limited partnerships that are currently subject to annual audits may rely on this exception immediately upon the rule's effective date. The rule requires that the limited partnership be subject to an annual audit, but does not specify the means by which that binding commitment must be made. In most cases, we expect that the limited partnership agreement itself will require that the partnership be audited annually. In other cases, the adviser may evidence the commitment through an ongoing letter of engagement with an independent public accountant, or may use its disclosure statement to commit to the investors that the audit will be performed annually.

[48] 15 U.S.C. 80b–2(c). We are adopting amendments to Form ADV under sections 203(c)(1) and 204 of the Advisers Act. These sections authorize the Commission to prescribe rules as necessary or appropriate in the public interest or for the protection of investors.

[49] Registered broker-dealers or banks are ''qualified custodians'' under the amended rule and may custody their own clients' funds and securities.

[50] 867–156 = 711 advisers. 95 percent of 711 advisers = 675 advisers.

[51] We based this estimate on our experience examining investment advisers. We estimated that SEC-registered investment advisers have a mean of 670 clients each. Thus, this group of advisers would be preparing their own statements for an aggregate group of 4,725 clients (670 mean clients per adviser × 1% = 7 clients per adviser × 675 advisers = 4,725 clients).

[52] 867 − 156 − 675 = 36.

[53] We estimated that these 36 advisers would have 24,120 clients in the aggregate (36 × 670 = 24,120).

[54] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *www.sec.gov/rules/extra/s72802csumm.htm.*

with custody already maintain their clients' securities with banks or broker-dealers as a matter of practice, the rule has not previously required it. Including this requirement in the rule will ensure that all advisers with custody provide this protection to their clients.

Under the amended rule, when qualified custodians send quarterly account statements directly to advisory clients, the adviser is no longer required to send its own quarterly statements and to undergo an annual surprise examination.[55] Receiving quarterly account statements directly from the qualified custodians will enable advisory clients to identify questionable transactions early and allow them to move more swiftly than relying on an annual surprise examination. Many commenters commended this new approach.

For the small group of advisers that cannot use the new approach and therefore must continue to undergo an annual surprise examination,[56] the amended rule requires the independent public accountant conducting the examination to advise the Commission of any material discrepancies it discovers in the examination. The Commission will therefore be able to act promptly to prevent further losses resulting from the adviser's malfeasance.

Remove unnecessary regulatory requirements. Commenters generally agreed that the new compliance requirements would reduce their compliance burden. The compliance requirements under the amended rule focus on investment advisers ascertaining whether qualified custodians are sending quarterly account statements to each of the advisers' clients. This sets forth a much simpler and less expensive compliance procedure for the adviser than sending its own quarterly account statements and undergoing an annual surprise examination.[57] As discussed above, we expect most advisers will have qualified custodians send clients' account statements directly. The amendments also eliminate the costs of complying with staff no-action letters that set out alternative procedures to the annual surprise examination; advisers previously relying on these letters must now comply with the revised rule. We did not receive comments on our estimates or on quantifying these cost reductions.[58]

The amendments eliminate the requirement set forth in Form ADV that advisers with custody must include, in their disclosure brochures sent to clients, a balance sheet prepared and audited by an independent public accountant.[59] Eliminating the balance sheet requirement will reduce advisers' compliance burden.[60] The amendments also revise the instruction to Item 9 of Part 1A of Form ADV, so that SEC-registered advisers that have custody solely because they deduct their advisory fees from clients' assets need not report custody for purposes of Part 1A. These advisers currently rely on our staff's no-action letters to report that they do not have custody; they commented that requiring them to change their response to Item 9 would confuse their clients.[61] This revision avoids requiring these advisers to amend their registration statements.[62]

Improved clarity and transparency of the rule. The amendments will improve the clarity and transparency of the rule by adding a definition of ''custody'' to the rule and by providing examples of the custodial situations most likely to be encountered by an adviser in today's securities markets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Commenters generally responded favorably to the insertion of the definition and examples.

C. Costs

The amendments require that all client funds or securities be maintained with qualified custodians. This requirement may impose costs on the advisers that currently have physical possession of client assets. We estimated in the Proposing Release that the additional cost of this requirement, if any, would be minimal because most advisers already maintain client assets with banks or broker-dealers.[63] Many commenters confirmed that their custody arose through their access to their clients' funds or securities, not through any physical possession of them, and this requirement would not impose additional costs on them.

In addition, the amendments exempt advisers with custody from the costs of undergoing annual surprise examinations and sending account statements only when qualified custodians send account statements directly to the advisers' clients at least quarterly. This condition may impose costs on a small number of advisers that do not already have qualified custodians deliver account statements directly to the advisers' clients.[64] These advisers

[55] We proposed that qualified custodians send account statements to clients monthly. A number of commenters asserted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses substantially. In response to these comments, the amended rule requires quarterly account statements rather than the monthly statements we proposed.

[56] As we discussed on our Proposing Release, based on information collected from Form ADVs, 867 advisers registered with the Commission—approximately 11%—report having custody. Of these, 156 are ''qualified custodians'' that may custody their own clients' assets; we expect these 156 firms will all send quarterly custodial account statements to their clients and thus will be exempt from annual surprise examinations. Of the remaining 711 SEC-registered advisers with custody, we expect 675 (95%) will have qualified custodians deliver account statements directly to 99% of their clients, and will need to send statements and undergo annual surprise examinations only with respect to the remaining 1%. We expect the remaining 36 advisers will continue to be subject to the annual surprise examination requirement with respect to all of their clients.

[57] In the Proposing Release, we estimated that approximately 744 advisers (those that report having custody but are not registered broker-dealers) were required to undergo annual surprise examinations under the current rule, and that on average, an adviser spends approximately 335 hours (0.5 hours per client for an average of 670 clients) and pays $8,000 annually in fees to an independent public accountant in connection with undergoing the examination. We also estimated that under the amended rule, only 36 advisers will continue to incur these full costs of an annual surprise examination with respect to all their clients; we estimated that another 675 advisers will incur these costs only with respect to one percent of their clients, spending approximately 3.5 hours and paying $1,000 annually in fees in connection with the annual surprise examination.

[58] The Commission does not collect information on the number of advisers that currently do not comply with the custody rule in reliance on SEC staff no-action letters, but that will be subject to the revised rule.

[59] This change will not, however, impair client protections. A balance sheet may give an imperfect picture of the financial health of an advisory firm, because many advisers, including very profitable firms, have few financial assets. Moreover, rule 206(4)–4, which did not exist when the balance sheet requirement was adopted, requires every adviser to disclose any financial condition that is likely to impair its ability to meet its contractual commitments to its clients; this disclosure is more useful to clients than a balance sheet.

[60] The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that an adviser not otherwise required to prepare audited financial statements presently spends approximately $15,000 annually to comply with this requirement, and that approximately 580 advisers with custody are currently incurring these costs. *See infra* note and accompanying text.

[61] Because those staff no-action letters are being withdrawn, these advisers must now comply with the amended custody rule.

[62] We have been advised by groups representing advisers registered with us that perhaps as many as 90% of SEC-registered advisers deduct fees from their clients' accounts.

[63] In our Proposing Release, we estimated that no more than 1 percent of advisers with custody keep any clients' securities in places other than accounts with qualified custodians, and even these advisers maintain almost all of their clients' assets with qualified custodians.

[64] In the Proposing Release, we have estimated that most qualified custodians are delivering account statements to advisers' clients and that less than 1% of advisory clients (excluding investors in

Continued

will have to arrange for qualified custodians to deliver account statements directly to their advisory clients, and the qualified custodians may pass any new costs on to the advisers. These costs are necessary for the protection of advisory clients and we estimated in the Proposing Release that they should be no greater, at an aggregate level, than the costs incurred under the current account statement delivery requirement. We received no specific comments on these assumption and estimates, and we believe they remain accurate.

VI. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments contain several ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[65] The titles for the collections of information are ''Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers'' and ''Form ADV, Financial Information'' under the Advisers Act. The Commission submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection of information for the rule and the form has been approved by OMB under control numbers 3235–0241 and 3235–0049, respectively (both expire on September 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collections of information under rule 206(4)–2 are necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. The respondents are investment advisers registered with us that have custody of clients' funds or securities. The collections of information under Form ADV are necessary for use by staff of the Commission in its examination and oversight program. The respondents are investment advisers seeking to register with the Commission or to update their registration. Responses provided to the Commission are not kept confidential.

A. Rule 206(4)–2

We are adopting the amendments substantially as proposed. The amendments require advisers with client funds and securities to maintain those funds and securities in custodial accounts with banks, broker-dealers, or other ''qualified custodians.'' The amendments exempt advisers with custody of client assets from the current requirements of sending their clients quarterly account statements and undergoing an annual surprise examination if qualified custodians send account statements directly to the advisory clients at least quarterly.[66] The amendments exempt advisers from the rule with respect to accounts of registered investment companies, and exempt advisers from the reporting requirement with respect to pooled investment vehicles that are audited annually and have the audit results distributed to their investors.[67] We received no comments on the collection of information burden of the amendments.

We estimated in our Proposing Release that the amendments would generally reduce the paperwork burden for advisers. We estimated the aggregate burden under the current rule at 1,246,200 hours, and the aggregate cost under the current rule at $5,952,000, assuming that an adviser would pay an independent public accountant $8,000 to conduct an annual surprise examination.

For purposes of calculating the burden hours under the amendments, we estimated in the Proposing Release that (i) of the 867 advisers reporting that they had custody of clients' assets, 156 would be fully exempted from the requirements of sending quarterly advisory account statements and undergoing an annual surprise examination,[68] (ii) 95 percent (675 advisers) of the remaining 711 advisers would be eligible for the exemption from these two requirements with respect to 99 percent of their clients, and (iii) 5 percent (36 advisers) of the remaining 711 advisers would continue to be subject to both requirements with respect to all of their clients. Assuming an average of 670 clients per adviser registered with us, we estimated that the aggregate annual burden that advisers would face under the amended rule would be 72,113 hours rather than the estimated 1,246,200 hours under the current rule.[69]

We further estimated in the Proposing Release that (i) the aggregate cost for accounting fees for the annual surprise examination would be $288,000 for the 36 advisers who would be subject to the collection of information for all of their clients;[70] and (ii) the accounting fees for the 675 advisers who would be subject to the collection of information for 1 percent of their clients would decrease to $1,000 per adviser, for an aggregate of $675,000. The aggregate cost for information collection burden under the amended rule would therefore be $963,000 rather than the estimated $5,952,000 under the current rule.[71] We received no comments on these estimates and assumptions.

As stated above, we are adopting the amendments substantially as proposed. Accordingly, our estimate of the annual aggregate burden of collection for the amended rule remains 72,113 hours and our estimate of the aggregate cost remains $963,000. This collection of information is mandatory, and responses are not kept confidential.

B. Form ADV

The amended rule eliminates the requirement set forth in Part II, Item 14 of Form ADV that an adviser with custody must include in its brochure a balance sheet audited by an independent public accountant.[72] This will reduce paperwork burden for

pooled investment vehicles) do not receive account statements directly from custodians. Many commenters indicated that their custodians do deliver account statements to their clients directly.

[65] 44 U.S.C. 3501 to 3520.

[66] We proposed that qualified custodians send account statements to clients monthly. A number of commenters noted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses. In response to these comments, the amended rule requires only quarterly account statements. This revision will not affect our original estimate of information collection burden, which was based on an assumption that the amendments would not result in any change in qualified custodians' reporting cycles.

[67] We had proposed a complete exemption for advisers to audited pooled investment vehicles, but are adopting an exemption from the account statement delivery requirements only. Exempting audited investment pools from the account statement delivery requirement will eliminate both the adviser's burden of sending account statements and its burden in undergoing an annual surprise examination. This modification does not affect estimate of the information collection burden.

[68] Advisers that are registered broker-dealers (123 firms) or banks (33 firms) will be ''qualified custodians'' under the amended rule and may keep custody of their own (and other advisers') clients' assets. We understand that broker-dealers and banks generally send account statements at least quarterly. These advisers will therefore be in compliance with the amended rule without incurring any additional burden under the rule.

[69] The 675 advisers facing this burden with respect to 1% of their clients will spend 2.5 hours per client for 7 clients annually. 675 advisers × 7 clients × 2.5 hours = 11,812.5 hours. The 36 advisers facing this burden with respect to all of their clients will spend 2.5 hours per client for 670 clients annually. 36 advisers × 670 clients × 2.5 hours = 60,300 hours. 11,812.5 hours + 60,300 hours = a total hour burden of 72,112.5 (rounded to 72,113) hours annually for all advisers in the aggregate.

[70] These 36 advisers would be subject to a surprise examination. Based on our experience examining investment advisers, we estimated that each surprise examination would cost $8,000. 36 advisers × $8,000 = $288,000.

[71] $288,000 + $675,000 = $963,000.

[72] *See supra* Section II.E. of this Release.

advisers that have custody of client assets.

In the Proposing Release, we estimated the current aggregate annual cost of this requirement at $11,460,000.[73] For purposes of calculating this cost under the amendments, we estimated the 580 advisers that are paying accountants' fees to comply with the balance sheet requirement under the current rule would no longer incur these costs. Therefore, we estimated in the Proposing Release that the number of advisers subject to this requirement would be reduced to 184, and the aggregate annual cost of this requirement would be reduced to $2,760,000, for an average annual cost for each adviser registered with us of $364.[74]

Commenters generally supported the elimination of the balance sheet requirement, but made no specific comment on our estimated numbers. We are adopting this amendment as proposed. These estimated numbers therefore remain the same.

We are also adding an instruction to Item 9 of Part 1A of Form ADV, which asks whether the adviser has custody of clients' funds or securities. Many advisers registered with us deduct fees from clients' accounts but currently answer ''no'' to Item 9 in reliance on no-action letters issued by our staff. The new instruction would permit advisers that have custody solely because they deduct fees to continue answering ''no'' to Item 9. Consequently, the new instruction does not affect the collection of information burden of Form ADV.

This collection of information is mandatory, and responses are not kept confidential.

[73] We estimated that each adviser that needed an audited balance sheet in order to comply with the requirement paid approximately $15,000 on average in accounting fees. According to our records, 184 advisers registered with us require prepayment of fees, and 887 advisers registered with us provide an audited balance sheet to their clients under Part II, Item 14 of Form ADV. (Because advisers are not presently required to file Part II of ADV with the Commission, the 887 figure is from data collected before January 1, 2001.) Since 867 advisers report having custody of their clients' assets, and this number of advisers combined with those who require prepayment of fees exceeds the 887 providing balance sheets by 164, we have estimated that 164 of the advisers with custody also require prepayment of fees. Of the 703 advisers providing balance sheets because of the custody provision (867 advisers with custody − 164 also requiring prepayment of fees = 703), 123 are also broker-dealers that are required to maintain audited financial statements under other rules, and only the remaining 580 advisers incur accountants' fees to comply with the balance sheet requirement under the custody provision. $15,000 in fees × (184 advisers with advance fees + 580 additional advisers with custody) = $11,460,000.

[74] (184 × $15,000) / 7,583 = $364.

VII. Final Regulatory Flexibility Analysis

The Commission proposed amendments to rule 206(4)–2, the custody rule under the Advisers Act, in a release issued on July 18, 2002 (''Proposing Release'').[75] An initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding amendments to rule 206(4)–2 and Form ADV, in accordance with 5 U.S.C. 604.

A. Need for the Amendments

We are adopting the amendments substantially as proposed. The amendments are necessary to harmonize the advisers' custody rule with current custodial practices, enhance the protections afforded to client assets, and clarify circumstances under which advisers have custody of client assets. The amendments require advisers to maintain client funds and securities with broker-dealers, banks, or other ''qualified custodians.'' If the qualified custodian sends account statements directly to an adviser's clients at least quarterly, the adviser will be relieved from sending its own account statements and from undergoing an annual surprise examination of those clients' accounts. The amendments exempt advisers from the rule with respect to clients that are registered investment companies and exempt advisers to limited partnerships (or other types of pooled investment vehicles) from the account statement delivery requirement if the limited partnerships are subject to annual audit and distribute the audit results to their limited partners.

The amendments add a definition of ''custody'' to the rule and illustrate the circumstances under which an adviser has custody of client assets. Advisers will benefit from this transparency because they (and their counsel) will no longer need to refer to external materials such as staff no-action letters for these examples. Finally, the amendments eliminate the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochures to clients; other disclosures now provide clients with information that is likely to be more helpful to them in this regard.

[75] *Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)].

B. Significant Issues Raised by Public Comment

The Commission received 49 letters from commenters in response to the Proposing Release.[76] Commenters strongly supported the proposal. As discussed in Section II of this Release, above, the Commission is adopting the amendments substantially as proposed with some changes to respond to commenters' suggestions. The Commission specifically requested comment with respect to the IRFA, but did not receive any comments concerning the IRFA.

C. Small Entities Subject to Rule

In developing the amendments, we have considered their potential effect on small entities. Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[77] The Commission estimates that approximately 28 SEC-registered investment advisers that have custody of client assets are small entities.[78]

D. Projected Reporting, Record-keeping, and Other Compliance Requirements

The amended rule imposes no new reporting and record-keeping requirements. In addition, we believe that most advisers that maintain custody of client assets, including advisers that are small entities, already maintain these assets with qualified custodians. Therefore, the amendments will not materially increase the effort necessary on the advisers' behalf to comply with the Commission's rules. To the contrary, the amendments provide advisers with the opportunity to eliminate costs they incur complying with the present rule's requirements to send account statements to clients and undergo an

[76] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *http://www.sec.gov/rules/extra/s72802csumm.htm.*

[77] 17 CFR 275.0–7(a).

[78] This estimate is based on the information provided submitted by SEC-registered advisers in Form ADV, Part 1A [17 CFR 279.1] as of May 2002.

annual surprise examination.[79] In addition, we are amending Form ADV to eliminate the requirement that an adviser with custody of client assets provide its clients with a copy of its audited balance sheet, thereby further reducing the advisers' compliance costs. We are also amending Form ADV to add an instruction to Item 9 of Part 1A; this instruction permits SEC-registered advisers that have custody only because they deduct their fees from their clients' assets to continue responding ''no'' to Item 9.[80]

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amended rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

The overall impact of the amendments is to decrease regulatory burdens on advisers. Small advisers, as well as large ones, will benefit from the amended rule. Moreover, the amendments achieve the rule's objectives through alternatives that are already consistent in large part with advisers' current custodial practices. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the amendments, such as differing compliance or reporting requirements, simplification of compliance and reporting requirements, or the use of performance rather than design standards, are unlikely to minimize any impact that the amended rule may have on small entities. Regarding exemption from coverage of the rule amendments, or any part thereof, for small entities, such an exemption would deprive small entities of the burden relief provided by the amendments. Moreover, since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities or to establish different compliance or reporting requirements for small entities with regard to this requirement.

VIII. Statutory Authority

We are adopting amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

We are adopting amendments to Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(4)–2 is revised to read as follows:

§ 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless:

(1) *Qualified custodian.* A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(3) *Account statements to clients.*—(i) *By qualified custodian.* You have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(ii) *By adviser.* (A) You send a quarterly account statement to each of your clients for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(B) An independent public accountant verifies all of those funds and securities by actual examination at least once during each calendar year at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year, and files a certificate on Form ADV-E (17 CFR 279.8) with the Commission within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(C) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

(iii) *Special rule for limited partnerships and limited liability companies.* If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (a)(3)(i) or (a)(3)(ii) of this section must be sent to each limited partner (or member or other beneficial owner).

(4) *Independent representatives.* A client may designate an independent representative to receive, on his behalf,

[79] Under the amended rule, an adviser will not be required to send quarterly account statements or undergo a surprise examination with respect to accounts for which a qualified custodian sends account statements directly to clients at least quarterly.

[80] These advisers, in reliance on no-action letters issued by the Commission's staff, have responded ''no'' to Item 9 and have not been required to comply with the custody rule. The letters are being withdrawn and these advisers must now comply with the revised rule.

notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.

(a) *Exceptions.*—(1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)) (''mutual fund''), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section;

(2) *Certain privately offered securities.* (i) You are not required to comply with this section with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(B) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(3) of this section.

(3) *Limited partnerships subject to annual audit.* You are not required to comply with paragraph (a)(3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year; and

(4) *Registered investment companies.* You are not required to comply with this section (17 CFR 275.206(4)–2) with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(c) *Definitions.* For the purposes of this section:

(1) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:

(i) Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties,) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(2) *Independent representative* means a person that:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(3) *Qualified custodian means:*

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

■ 4. Form ADV (referenced in § 279.1) is amended by:

■ a. In Part 1A, Item 9, revising the introductory text to add, after the first sentence, ''If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer ''no'' to Item 9A.(1) and 9A.(2).''; and

■ b. In Part II, Item 14, adding ''(unless applicant is registered or registering only with the Securities and Exchange Commission),'' after the words ''client funds or securities''.

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Dated: September 25, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24813 Filed 9–30–03; 8:45 am]

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Federal Register

Wednesday,
October 1, 2003

Part IV

Department of Housing and Urban Development

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4852–N–02]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2004

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2004 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. Today's notice provides final FY 2004 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2004.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, telephone (202) 708–0477, responsible for decisions on how fair market rents are used; or John Garrity, Director, Office of Special Needs Assistance Programs, telephone (202) 708–4300, responsible for administration of the Mod Rehab Single Room Occupancy program. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call HUD USER at 1–800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* Further questions on the methodology may be addressed to Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, (e-mail: *marie__l.__lihn@hud.gov*). Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TTY) at 1–800–927–7589. (Other than the ''800'' HUD User and TTY numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is used to determine the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503.) In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org/cgi/index.cgi.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

How HUD Sets FMRs

HUD Standard for Setting the FMR

FMRs are gross rent estimates that include both shelter rent paid by the tenant to the landlord, and the cost of tenant-paid utilities, except telephones. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units in neighborhoods and low enough to serve as many families as possible.

FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area (see 24 CFR 888.113). FMRs are based on the distribution of rents for units that are occupied by recent movers ''renter households who moved into their units within the past 15 months. The distribution does not include rents for units less than two years old or for public housing units. Rents for subsidized housing units are adjusted by adding back the amount of the subsidy.

HUD sets FMRs either at the 40th percentile rent or at the 50th percentile rent. For most FMR areas, the FMR is set at the 40th percentile rent paid by recent movers, which means that 40 percent of all standard quality rental housing units rented within the past 18 months have rents at or below this dollar amount. For some FMR areas, the FMR is set at the 50th percentile rent or the median rent, so that 50 percent of standard units are at or below this dollar amount. An asterisk in Schedule B identifies each of the 39 FMR areas for which HUD set 50th percentile FMRs.

Data Sources

HUD has used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) Bureau of the Census' American Housing Surveys (AHS) conducted after 1990, which are done for the largest metropolitan areas and which have an accuracy comparable to the decennial Census;

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing; and

(4) Data from the 2000 Census were used for a small number of metropolitan areas that had submitted public comments requesting higher FMRs and where 2000 Census data showed FMRs were significantly understated. [Please note that the special 2000 Census tabulations needed to develop FMR estimates were not available when proposed FY 2004 FMRs were released. In addition, the new OMB metropolitan area definitions that will determine how FMR areas are defined had not been released when proposed FMRs needed to be published. A number of analytical issues related to using the 2000 Census rent data are still being studied and need to be resolved prior to implementing the new definitions and data. A set of revised proposed FMRs for FY 2004 based on 2000 Census data and new area definitions will be published for public comment in late 2003 or early 2004.]

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or on HUD regional rent change factors developed from regional RDD surveys. Area-specific annual average CPI data are available for 99 metropolitan FMR areas. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

Some FMR areas have market rents that are at or below long-term operating costs. In addition, research has shown that areas with unusually low Census-

reported rents, especially nonmetropolitan areas with unusually low rents, often have unusually high levels of substandard housing and/or assisted housing that distort FMR estimates. To reduce problems associated with FMR estimates for these areas, HUD has a policy of setting a minimum FMR level for each state. FMRs are established at the higher of the local 40th percentile rent level or a state minimum FMR that is equal to the statewide 40th percentile rent for nonmetropolitan counties. The state minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the state minimum.

Bedroom Size Adjustments

FMR estimates are calculated for two-bedroom units, which are the most common rental units. Rent relationships for units with differing numbers of bedrooms are then used to set FMRs of other bedroom sizes. Bedroom rent intervals are normally based on 1990 Census data rent interval relationships for FMR areas. In FMR areas where FMRs are based on the state minimums, the FMR for each bedroom size category is set at the higher of the 40th percentile rent for the FMR area or for the statewide average for nonmetropolitan counties.

There are some areas where the bedroom intervals were adjusted because the rent intervals between bedroom sizes were above or below an acceptable range (*e.g.*, areas where efficiencies are typically furnished, luxury units with rents higher than typical one-bedroom rents). The acceptable range for intervals between bedroom intervals was based on an examination of unusually high and low bedroom rent ratio intervals for all metropolitan areas. Areas where the intervals were outside the normal range were increased or decreased to bring them back within the range. Higher ratios continue to be used for 3-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units. The FMRs for unit sizes larger than 4-bedroom are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single room occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

Public Comments

In response to the May 27, 2003, proposed FMRs, HUD received 15 public comments covering 21 FMR areas. Rental housing survey information of some form was provided for five of those FMR areas. All survey information submitted was evaluated. Based on that review, the FMRs for four FMR areas are being increased, and the manufactured housing FMRs for five non-metropolitan counties in West Virginia are being increased. The information submitted for the other FMR areas was not considered sufficient to provide a basis for revising the FMRs.

Most comments stated that the proposed FMRs were too low. Some (Delaware State Housing Authority, Knox County Housing Authority, and Pinnacle Housing Group) noted that their utility and rental costs increased significantly over the past year, compared to the modest increases granted in the proposed FMRs. Others (Assumption Parish Housing and Community Development, state of Hawaii, city and county of Honolulu, county of Hawaii, and the Housing Authority of the city of Corsicana, TX) noted tighter rental market conditions over the past year have increased rents significantly. Oklahoma City Housing Authority protested the proposed decrease in its FMRs resulting from a random digit dialing survey done last year. The Housing Authority of the county of Los Angeles argued that all FMRs should be set at the 50th percentile rent for all FMR areas, rather than just the select 39 metropolitan areas.

Two comments were received from Puerto Rico. One from the Puerto Rico Housing Finance Authority argued that the methodology HUD uses to calculate FMRs cannot be applied to Puerto Rico. The Housing Finance Authority did not have a proposal for a more accurate methodology but looks forward to developing one with HUD. The second comment, submitted by Hessel and Aluise, PC, was limited to the impact of the proposed FY 2004 FMRs on the Moderate Rehabilitation program. Addressing this comment would require a regulatory change, and this matter is being studied by the Office of Public and Indian Housing.

In previous years, HUD has sought to conduct surveys in areas with significant numbers of Section 8 vouchers where concerns had been expressed about the accuracy of local FMRs. HUD was able to conduct only one RDD survey this calendar year to date. HUD was, however, able to obtain 2000 Census data in time to use to review FMRs for areas that had submitted comments. These data only recently became available to the Department and are currently being used to develop a method of systemwide rebenchmarking of FMRs. After reviewing all areas that had submitted public comments requesting higher FMRs, HUD identified the following areas as eligible for increases:

Miami, FL
Honolulu, HI
Assumption Parish, LA
Navarre County, TX

Based on survey data submitted, higher manufactured housing FMRs were approved for the following areas:

Logan County, WV
McDowell County, WV
Mercer County, WV
Mingo County, WV
Wyoming County, WV

The Housing Authority of the City of Santa Barbara requested an update of its exception rent to equal 146 percent for the southern portion of the county at the FY 2004 FMR. As the housing authority was advised, exception rent requests must be made directly to the Office of Public Housing and will be acted on separately.

RDD Surveys

The only RDD survey conducted in 2003 was for the Newburgh, NY–PA PMSA. Based on the results of this survey, no change was made in its FMRs.

American Housing Survey

There were no AHS surveys with results that alter proposed FY 2004 FMRs.

FMR Area Definition Changes

New OMB metropolitan area definitions came out on June 6, 2003, subsequent to the publication of the proposed FMRs. Given the number and magnitude of definitional change impacts, HUD plans to issue a revised proposed FMR schedule for FY 2004 to provide an opportunity for public comments. Revised FY 2004 FMRs will be developed to include the new metropolitan areas that also make use of the 2000 Census rent data and published late this calendar year or early next year. After the comment period, these FMRs will be published for effect.

Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the Housing Choice Voucher program is 40 percent of the FMR for a 2-bedroom

unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to estimate the Housing Choice Voucher program FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

HUD Rental Housing Survey Guides

HUD recommends the use of professionally-conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $20,000–$30,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if local rents are thought to be significantly different than the FMR proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request ''Random Digit Dialing Surveys; A Guide to Assist Larger Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain ''Rental Housing Surveys; A Guide to Assist Smaller Housing Agencies in Preparing Fair Market Rent Comments.'' These guides are also available on the Internet at *http://www.huduser.org/datasets/fmr.html.*

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable if they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 26, 2003.

Mel Martinez,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—FMRs are market wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition.

HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions. Schedule B FMRs are issued for the metropolitan areas as defined by OMB, with the exceptions discussed in paragraph (b). The OMB-defined metropolitan areas closely correspond to housing market area definitions.

b. Exceptions to OMB Definitions—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective states under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area Counties Assigned County-Based FMRs

Chicago, IL
  DeKalb, Grundy, and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN
  Brown County, Ohio; Gallatin, Grant, and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX
  Henderson County
Flagstaff, AZ–UT
  Kane County, UT
New Orleans, LA
  St. James Parish
Washington, DC–MD–VA–WV
  Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren Counties in Virginia

c. Nonmetropolitan Area FMRs—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

d. Virginia Independent Cities—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The

FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

BILLING CODE 4210–62–P

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	279	330	413	576	652	Calhoun
Auburn--Opelika, AL MSA	278	388	499	648	820	Lee
Birmingham, AL MSA	425	481	559	758	840	Blount, Jefferson, St. Clair, Shelby
Columbus, GA--AL MSA	377	419	503	656	712	Russell
Decatur, AL MSA	370	374	471	611	730	Lawrence, Morgan
Dothan, AL MSA	335	343	426	586	595	Dale, Houston
Florence, AL MSA	315	361	464	579	649	Colbert, Lauderdale
Gadsden, AL MSA	279	341	393	511	629	Etowah
Huntsville, AL MSA	388	455	561	747	890	Limestone, Madison
Mobile, AL MSA	407	455	523	703	825	Baldwin, Mobile
Montgomery, AL MSA	425	454	537	731	881	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	367	392	523	717	758	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	261	311	370	480	550	Bibb	261	311	370	500	599
Bullock	261	311	370	480	550	Butler	261	311	370	480	550
Chambers	261	311	370	480	551	Cherokee	261	311	370	480	550
Chilton	271	311	370	480	550	Choctaw	261	311	370	480	550
Clarke	261	311	370	480	550	Clay	261	311	370	480	550
Cleburne	261	311	370	480	550	Coffee	261	367	477	663	744
Conecuh	261	311	370	480	550	Coosa	261	311	370	480	550
Covington	261	311	370	480	550	Crenshaw	261	311	370	480	550
Cullman	261	311	370	492	598	Dallas	261	311	370	480	550
DeKalb	261	311	370	480	550	Escambia	261	311	370	480	550
Fayette	261	311	370	480	550	Franklin	261	311	370	480	550
Geneva	261	311	370	480	550	Greene	261	311	370	480	550
Hale	261	311	370	480	550	Henry	261	311	370	480	550
Jackson	282	311	370	480	589	Lamar	261	311	370	480	550
Lowndes	261	311	370	480	550	Macon	285	320	427	535	599
Marengo	261	311	370	480	550	Marion	261	311	370	480	550
Marshall	300	311	378	522	619	Monroe	261	311	370	480	550
Perry	261	311	370	480	550	Pickens	261	311	370	480	550
Pike	313	364	434	563	656	Randolph	261	311	370	480	550
Sumter	261	311	370	480	550	Talladega	261	311	370	480	550
Tallapoosa	262	311	370	480	550	Walker	261	322	380	491	624
Washington	261	311	370	480	550	Wilcox	261	311	370	480	550
Winston	261	311	370	480	550						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	565	668	885	1231	1454	Anchorage

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	563	635	718	895	1172	Aleutians West	484	547	612	769	860
Bethel	729	910	1154	1445	1617	Bristol Bay	584	675	757	1054	1145

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Denali	784	905	1153	1533	1593
Fairbanks North Star	444	604	793	1090	1285
Juneau	784	905	1153	1533	1593
Ketchikan Gateway	576	705	943	1313	1382
Lake and Peninsula	450	730	820	1023	1149
Nome	741	917	1030	1434	1618
Northwest Arctic	892	1003	1126	1567	1848
Sitka	620	737	827	1151	1358
Southeast Fairbanks	494	519	625	783	879
Wade Hampton	422	634	716	894	1001
Yakutat	482	490	634	795	892

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dillingham	704	716	951	1190	1333
Haines	525	650	740	1006	1037
Kenai Peninsula	478	608	733	1017	1201
Kodiak Island	749	824	1071	1338	1736
Matanuska-Susitna	504	682	768	1042	1231
North Slope	842	862	1067	1482	1727
Prince of Wales-Outer Ketch	393	625	720	998	1055
Skagway-Hoonah-Angoon	482	490	634	795	892
Valdez-Cordova	589	722	801	1023	1220
Wrangell-Petersburg	429	632	769	978	1075
Yukon-Koyukuk	561	633	714	893	1033

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ--UT MSA	633	683	887	1190	1429	Coconino
*Las Vegas, NV--AZ MSA	606	719	856	1191	1407	Mohave
*Phoenix--Mesa, AZ MSA	549	664	835	1161	1367	Maricopa, Pinal
Tucson, AZ MSA	443	531	707	983	1159	Pima
Yuma, AZ MSA	427	495	659	915	922	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	402	422	537	701	833
Gila	402	422	537	701	833
Greenlee	402	422	537	701	833
Navajo	402	422	537	701	833
Yavapai	427	444	594	828	912

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cochise	402	422	537	701	833
Graham	402	422	537	701	833
La Paz	402	422	537	701	833
Santa Cruz	402	444	553	701	833

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville--Springdale--Rogers, AR MSA	330	416	547	738	764	Benton, Washington
Fort Smith, AR--OK MSA	359	363	479	639	671	Crawford, Sebastian
Jonesboro, AR MSA	389	423	498	685	724	Craighead
Little Rock--North Little Rock, AR MSA	406	451	538	742	867	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN--AR--MS MSA	458	534	626	870	913	Crittenden
Pine Bluff, AR MSA	311	369	486	613	795	Jefferson
Texarkana, TX--Texarkana, AR MSA	331	404	495	652	692	Miller

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	279	303	388	530	575
Baxter	255	324	431	554	675
Bradley	255	303	388	514	575
Carroll	300	327	388	514	614
Clark	279	303	393	514	621
Cleburne	288	303	388	514	582

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	255	303	388	514	608
Boone	302	307	408	568	669
Calhoun	255	303	388	514	575
Chicot	255	303	388	514	575
Clay	255	303	388	514	575
Cleveland	255	303	388	514	575

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	255	303	388	514	575
Cross	265	335	388	521	615
Desha	255	303	388	514	575
Franklin	267	303	388	514	575
Garland	255	324	434	606	716
Greene	273	303	388	514	575
Hot Spring	255	303	388	514	575
Independence	268	310	388	514	575
Jackson	264	303	388	514	575
Lafayette	267	303	388	514	575
Lee	280	303	388	514	575
Little River	255	303	394	547	645
Madison	292	303	394	514	575
Mississippi	291	314	421	555	623
Montgomery	255	303	388	514	575
Newton	255	303	388	514	575
Perry	255	303	388	514	575
Pike	255	303	388	514	575
Polk	255	303	388	514	575
Prairie	255	303	388	514	575
St. Francis	255	309	388	525	617
Searcy	255	303	388	514	575
Sharp	255	303	388	514	575
Union	319	337	405	544	665
White	255	303	388	531	575
Yell	265	303	388	514	575

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Conway	255	314	421	526	589
Dallas	255	303	388	514	575
Drew	255	330	440	609	620
Fulton	264	303	388	514	575
Grant	265	314	388	514	580
Hempstead	255	303	388	514	575
Howard	255	303	388	514	575
Izard	255	303	388	514	575
Johnson	255	303	388	514	575
Lawrence	255	303	388	514	575
Lincoln	275	303	394	527	575
Logan	267	303	388	514	575
Marion	255	303	388	514	575
Monroe	259	303	388	514	575
Nevada	255	303	388	531	575
Ouachita	298	303	388	535	631
Phillips	255	303	388	514	575
Poinsett	255	303	388	514	575
Pope	255	333	421	584	673
Randolph	255	303	388	514	575
Scott	255	303	388	514	575
Sevier	278	303	388	514	575
Stone	255	303	388	514	575
Van Buren	255	303	388	514	634
Woodruff	255	303	388	514	575

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	421	473	595	826	914	Kern
Chico--Paradise, CA MSA	385	496	660	905	1082	Butte
Fresno, CA MSA	451	504	603	840	967	Fresno, Madera
Los Angeles--Long Beach, CA PMSA	674	807	1021	1378	1646	Los Angeles
Merced, CA MSA	460	519	630	871	1027	Merced
Modesto, CA MSA	549	589	719	1002	1182	Stanislaus
*Oakland, CA PMSA	936	1132	1420	1947	2325	Alameda, Contra Costa
*Orange County, CA PMSA	903	987	1220	1698	1889	Orange
Redding, CA MSA	438	486	608	844	994	Shasta
Riverside--San Bernardino, CA PMSA	535	596	729	1011	1193	Riverside, San Bernardino
*Sacramento, CA PMSA	674	759	950	1318	1554	El Dorado, Placer, Sacramento
Salinas, CA MSA	719	841	1014	1408	1478	Monterey
*San Diego, CA MSA	822	939	1175	1636	1928	San Diego
San Francisco, CA PMSA	1084	1405	1775	2435	2577	Marin, San Francisco, San Mateo
*San Jose, CA PMSA	1294	1475	1821	2496	2803	Santa Clara
San Luis Obispo--Atascadero--Paso Robles, CA MSA	641	724	917	1276	1505	San Luis Obispo
Santa Barbara--Santa Maria--Lompoc, CA MSA	721	800	1015	1412	1595	Santa Barbara
Santa Cruz--Watsonville, CA PMSA	843	1004	1341	1865	2185	Santa Cruz

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Rosa, CA PMSA	792	897	1163	1617	1909	Sonoma
Stockton--Lodi, CA MSA	522	589	757	1054	1242	San Joaquin
Vallejo--Fairfield--Napa, CA PMSA	809	920	1121	1557	1836	Napa, Solano
*Ventura, CA PMSA	785	902	1142	1518	1769	Ventura
Visalia--Tulare--Porterville, CA MSA	427	455	592	826	943	Tulare
Yolo, CA PMSA	551	628	779	1077	1274	Yolo
Yuba City, CA MSA	380	444	571	796	919	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	341	512	579	804	865	Amador	471	518	692	963	1074
Calaveras	412	477	635	885	1041	Colusa	373	417	537	748	865
Del Norte	348	478	635	886	1043	Glenn	341	417	537	748	865
Humboldt	352	487	638	891	1054	Imperial	384	482	593	826	865
Inyo	354	477	612	803	865	Kings	395	460	574	799	940
Lake	383	488	653	821	1070	Lassen	417	422	549	748	865
Mariposa	369	469	602	789	930	Mendocino	472	568	698	971	979
Modoc	373	417	537	748	865	Mono	520	624	830	1154	1364
Nevada	427	584	778	1081	1252	Plumas	376	417	537	748	865
San Benito	587	691	864	1205	1409	Sierra	341	458	563	782	923
Siskiyou	358	417	537	748	865	Tehama	357	417	537	748	865
Trinity	382	417	537	748	865	Tuolumne	377	515	687	956	1127

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder--Longmont, CO PMSA	640	767	983	1371	1615	Boulder
Colorado Springs, CO MSA	490	526	701	977	1153	El Paso
*Denver, CO PMSA	607	724	964	1337	1579	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins--Loveland, CO MSA	484	597	739	1026	1212	Larimer
Grand Junction, CO MSA	445	463	579	780	929	Mesa
Greeley, CO PMSA	536	592	745	1034	1223	Weld
Pueblo, CO MSA	469	486	608	818	976	Pueblo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	419	434	543	732	873	Archuleta	501	548	648	875	1040
Baca	419	434	543	732	873	Bent	419	434	543	732	873
Chaffee	419	434	543	732	873	Cheyenne	419	434	543	732	873
Clear Creek	419	489	552	769	905	Conejos	419	434	543	732	873
Costilla	419	434	543	732	873	Crowley	419	434	543	732	873
Custer	419	434	543	732	873	Delta	419	434	543	732	873
Dolores	419	434	543	732	873	Eagle	562	614	818	1139	1343
Elbert	463	512	587	732	961	Fremont	419	434	543	732	873
Garfield	486	521	658	822	1077	Gilpin	419	556	708	933	1032
Grand	498	502	635	795	963	Gunnison	419	434	543	732	873
Hinsdale	419	443	543	732	873	Huerfano	419	434	543	732	873
Jackson	419	434	543	732	873	Kiowa	419	434	543	732	873

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kit Carson	419	434	543	732	873
La Plata	547	605	797	1110	1311
Lincoln	419	434	543	732	873
Mineral	419	434	543	732	873
Montezuma	419	434	543	732	873
Morgan	419	434	543	732	873
Ouray	419	434	549	732	889
Phillips	419	434	543	732	873
Prowers	419	434	543	732	873
Rio Grande	419	434	543	732	873
Saguache	419	434	543	732	873
San Miguel	770	1112	1223	1527	1972
Summit	539	645	828	1152	1418
Washington	419	434	543	732	873

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lake	419	434	543	732	873
Las Animas	419	448	543	732	873
Logan	419	434	543	732	873
Moffat	419	434	543	732	873
Montrose	419	434	549	762	897
Otero	419	434	543	732	873
Park	419	464	604	838	954
Pitkin	628	860	1145	1510	1717
Rio Blanco	419	434	543	732	873
Routt	419	506	668	929	1095
San Juan	419	434	543	732	873
Sedgwick	419	434	543	732	873
Teller	419	497	661	919	927
Yuma	419	434	543	732	873

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	575	748	900	1126	1404	Fairfield county towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	725	867	1084	1430	1649	Fairfield county towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town, New Milford town, Roxbury town, Washington town
Hartford, CT MSA	519	647	827	1037	1259	Hartford county towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town Middlesex county towns of Cromwell town, Durham town, East Haddam town,

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CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town
						New London county towns of Colchester town, Lebanon town
						Tolland county towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
						Windham county towns of Ashford town, Chaplin town, Windham town
New Haven--Meriden, CT PMSA	620	761	939	1204	1395	Middlesex county towns of Clinton town, Killingworth town
						New Haven county towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
New London--Norwich, CT--RI MSA	541	654	797	997	1140	Middlesex county towns of Old Saybrook town
						New London county towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town
						Windham county towns of Canterbury town, Plainfield town
Stamford--Norwalk, CT PMSA	1046	1225	1493	2001	2210	Fairfield county towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT PMSA	526	711	881	1098	1231	Litchfield county towns of Bethlehem town, Thomaston town, Watertown town, Woodbury town
						New Haven county towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
Worcester, MA--CT PMSA	549	663	827	1033	1158	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Hartford	399	644	727	1010	1191	Hartland town
Litchfield	463	631	842	1050	1196	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex	686	777	1037	1444	1703	Chester town, Deep River town, Essex town, Westbrook town
New London	581	712	808	1042	1323	Lyme town, Voluntown town

CONNECTICUT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Tolland	399	644	727	1010	1017	Union town
Windham	459	561	727	911	1142	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	527	583	663	861	980	Kent
Wilmington--Newark, DE--MD PMSA	502	661	771	1048	1266	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	460	489	624	820	876

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	419	492	628	833	885	Flagler, Volusia
*Fort Lauderdale, FL PMSA	567	668	827	1151	1353	Broward
Fort Myers--Cape Coral, FL MSA	450	518	625	874	911	Lee
Fort Pierce--Port St. Lucie, FL MSA	501	549	711	925	997	Martin, St. Lucie
Fort Walton Beach, FL MSA	436	477	542	735	866	Okaloosa
Gainesville, FL MSA	436	477	580	795	939	Alachua
Jacksonville, FL MSA	501	561	675	892	993	Clay, Duval, Nassau, St. Johns
Lakeland--Winter Haven, FL MSA	419	459	518	642	702	Polk
Melbourne--Titusville--Palm Bay, FL MSA	419	491	613	821	956	Brevard
*Miami, FL PMSA	577	726	904	1241	1439	Miami-Dade
Naples, FL MSA	467	658	793	1102	1227	Collier
Ocala, FL MSA	436	477	542	711	834	Marion
Orlando, FL MSA	606	687	820	1076	1312	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	436	477	542	691	741	Bay
Pensacola, FL MSA	436	477	542	723	853	Escambia, Santa Rosa
Punta Gorda, FL MSA	436	502	668	926	1092	Charlotte
Sarasota--Bradenton, FL MSA	438	557	708	910	991	Manatee, Sarasota
Tallahassee, FL MSA	446	496	652	852	1027	Gadsden, Leon
*Tampa--St. Petersburg--Clearwater, FL MSA	530	630	781	1037	1257	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach--Boca Raton, FL MSA	570	665	823	1092	1352	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	410	449	508	630	684	Bradford	410	449	508	630	684
Calhoun	410	449	508	630	684	Citrus	410	449	508	630	684

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	410	449	508	630	684
Dixie	410	449	508	630	684
Gilchrist	410	449	508	630	684
Gulf	410	449	508	630	684
Hardee	410	449	508	630	684
Highlands	410	449	508	632	707
Indian River	410	513	660	826	924
Jefferson	410	449	508	630	684
Levy	410	449	508	630	684
Madison	410	449	508	630	684
Okeechobee	410	449	508	630	690
Sumter	410	449	508	630	684
Taylor	410	449	508	630	685
Wakulla	410	449	508	630	684
Washington	410	449	508	630	684

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
DeSoto	410	449	508	630	684
Franklin	410	449	508	630	684
Glades	410	449	508	630	684
Hamilton	410	449	508	630	684
Hendry	410	449	522	656	735
Holmes	410	449	508	630	684
Jackson	410	449	508	630	684
Lafayette	410	449	508	630	684
Liberty	410	449	508	630	684
Monroe	588	663	852	1174	1397
Putnam	410	449	508	630	684
Suwannee	410	449	508	630	684
Union	410	449	508	630	684
Walton	410	449	508	654	818

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	326	382	466	636	689	Dougherty, Lee
Athens, GA MSA	401	432	560	764	921	Clarke, Madison, Oconee
*Atlanta, GA MSA	727	810	944	1259	1523	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton
Augusta--Aiken, GA--SC MSA	411	493	580	788	931	Columbia, McDuffie, Richmond
Chattanooga, TN--GA MSA	393	460	552	713	814	Catoosa, Dade, Walker
Columbus, GA--AL MSA	377	419	503	656	712	Chattahoochee, Harris, Muscogee
Macon, GA MSA	421	469	546	752	775	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	392	489	568	765	796	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	298	359	439	569	648
Bacon	298	359	439	569	648
Baldwin	298	382	465	597	652
Ben Hill	298	359	439	569	656
Bleckley	298	359	439	569	648
Brooks	298	359	439	569	648
Burke	298	359	439	569	648
Calhoun	298	359	439	569	648
Candler	298	359	439	569	648
Chattooga	298	359	439	569	648
Clinch	298	359	439	569	648
Colquitt	298	359	439	569	648
Crawford	298	359	439	569	648
Dawson	298	389	516	647	796
Dodge	298	359	439	569	648

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atkinson	298	359	439	569	648
Baker	298	359	439	569	648
Banks	298	359	439	569	648
Berrien	298	359	439	569	648
Brantley	298	359	439	569	648
Bulloch	359	365	468	604	767
Butts	298	395	523	702	735
Camden	418	472	528	735	869
Charlton	298	359	439	569	648
Clay	298	359	439	569	648
Coffee	298	359	439	569	656
Cook	298	359	439	569	648
Crisp	302	359	439	569	648
Decatur	298	359	439	569	648
Dooly	298	359	439	569	648

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Early	298	359	439	569	648
Elbert	298	359	439	569	648
Evans	298	359	439	569	648
Floyd	298	359	440	580	648
Gilmer	298	359	439	569	648
Glynn	416	465	526	708	867
Grady	304	359	439	569	648
Habersham	320	359	439	569	653
Hancock	298	359	439	569	648
Hart	298	359	439	569	648
Irwin	298	359	439	569	648
Jasper	298	359	445	604	648
Jefferson	298	359	439	569	656
Johnson	298	359	439	569	648
Lanier	298	359	439	569	648
Liberty	371	414	471	655	660
Long	298	389	439	569	648
Lumpkin	298	402	452	605	742
Macon	298	359	439	569	648
Meriwether	298	359	439	569	648
Mitchell	298	359	439	569	648
Montgomery	298	359	439	569	648
Murray	298	359	439	569	648
Pierce	298	359	439	569	648
Polk	298	359	439	595	648
Putnam	298	359	439	569	656
Rabun	298	359	439	569	648
Schley	298	359	439	569	648
Seminole	298	359	439	569	648
Stewart	298	359	439	569	648
Talbot	298	359	439	569	648
Tattnall	298	359	439	569	648
Telfair	298	359	439	569	648
Thomas	298	370	439	569	648
Toombs	298	359	439	569	648
Treutlen	298	359	439	569	648
Turner	298	359	439	569	648
Upson	309	359	439	569	648
Warren	298	359	439	569	648
Wayne	309	359	439	569	648
Wheeler	298	359	439	569	648
Whitfield	298	392	471	602	710
Wilkes	298	359	439	569	648
Worth	298	359	439	569	648

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Echols	298	359	439	569	648
Emanuel	298	359	439	569	648
Fannin	298	359	439	569	648
Franklin	298	359	439	569	648
Glascock	298	359	439	569	648
Gordon	353	359	448	577	738
Greene	298	359	439	569	648
Hall	316	480	564	707	788
Haralson	298	359	439	569	648
Heard	298	359	439	569	648
Jackson	332	359	451	569	742
Jeff Davis	298	359	439	569	648
Jenkins	298	359	439	569	648
Lamar	298	369	439	569	696
Laurens	305	359	439	569	648
Lincoln	298	359	439	569	648
Lowndes	334	404	489	685	759
McIntosh	298	359	439	569	648
Marion	298	359	439	569	648
Miller	298	359	439	569	648
Monroe	298	359	439	578	648
Morgan	298	359	455	569	648
Oglethorpe	298	359	439	569	648
Pike	346	375	476	662	666
Pulaski	298	359	439	569	648
Quitman	298	359	439	569	648
Randolph	298	359	439	569	648
Screven	298	359	439	569	648
Stephens	298	359	439	569	648
Sumter	298	365	439	569	648
Taliaferro	298	359	439	569	648
Taylor	298	359	439	569	648
Terrell	298	359	439	569	648
Tift	298	359	439	569	648
Towns	298	359	439	569	648
Troup	298	406	457	571	648
Union	298	359	458	574	648
Ware	330	370	439	569	683
Washington	298	359	439	569	648
Webster	298	359	439	569	648
White	298	359	439	569	662
Wilcox	298	359	439	569	648
Wilkinson	298	359	439	569	648

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 10

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	642	769	905	1225	1325	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	474	618	711	944	1164	Kauai	605	904	1102	1458	1577
Maui	765	950	1159	1496	1695						

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	428	487	593	822	973	Ada, Canyon
Pocatello, ID MSA	335	388	499	679	803	Bannock

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	302	351	452	600	710	Bear Lake	302	351	452	600	710
Benewah	302	351	452	600	710	Bingham	323	351	452	600	710
Blaine	467	515	686	957	1127	Boise	302	390	452	600	710
Bonner	348	431	535	739	850	Bonneville	309	388	535	718	876
Boundary	302	351	452	600	710	Butte	302	351	452	600	710
Camas	302	351	452	600	710	Caribou	302	351	452	600	710
Cassia	302	351	452	600	710	Clark	302	351	452	600	710
Clearwater	302	351	452	600	710	Custer	302	351	452	600	710
Elmore	302	351	452	600	710	Franklin	302	351	452	600	710
Fremont	302	351	452	600	710	Gem	302	351	452	600	710
Gooding	302	351	452	600	710	Idaho	302	351	452	600	710
Jefferson	312	351	452	600	710	Jerome	302	351	452	600	710
Kootenai	385	452	592	824	974	Latah	302	351	452	600	720
Lemhi	302	351	452	600	710	Lewis	302	351	452	600	710
Lincoln	302	351	452	600	710	Madison	302	351	452	600	710
Minidoka	302	351	452	600	710	Nez Perce	309	351	452	600	710
Oneida	303	351	452	600	710	Owyhee	302	351	452	600	710
Payette	302	351	452	600	710	Power	302	351	452	600	710
Shoshone	302	351	452	600	710	Teton	330	351	452	612	725
Twin Falls	302	351	457	604	710	Valley	315	351	452	600	710
Washington	302	351	452	600	710						

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington--Normal, IL MSA	366	446	598	830	877	McLean
Champaign--Urbana, IL MSA	403	495	640	878	1053	Champaign
*Chicago, IL PMSA	665	797	951	1189	1330	Cook, DuPage, Kane, Lake, McHenry, Will
Davenport--Moline--Rock Island, IA--IL MSA	302	417	515	666	723	Henry, Rock Island
Decatur, IL MSA	292	378	485	656	679	Macon
DeKalb County MSA**	508	591	748	1041	1207	DeKalb
Grundy County MSA**	440	509	676	894	950	Grundy

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kankakee, IL PMSA	400	484	643	823	904	Kankakee
Kendall County MSA**	614	699	843	1173	1179	Kendall
Peoria--Pekin, IL MSA	406	447	600	799	981	Peoria, Tazewell, Woodford
Rockford, IL MSA	390	499	607	763	891	Boone, Ogle, Winnebago
*St. Louis, MO--IL MSA	439	536	695	905	999	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	336	417	555	738	840	Menard, Sangamon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	277	311	400	525	638	Alexander	277	311	400	525	589
Bond	277	311	400	525	589	Brown	277	311	400	525	589
Bureau	277	350	409	525	589	Calhoun	277	311	400	525	589
Carroll	277	311	400	525	589	Cass	278	311	400	525	589
Christian	298	311	402	528	589	Clark	277	311	400	525	589
Clay	277	311	400	525	589	Coles	292	349	463	616	727
Crawford	277	311	400	525	589	Cumberland	277	311	400	525	589
De Witt	281	311	400	530	589	Douglas	296	311	400	525	589
Edgar	277	311	400	525	589	Edwards	277	311	400	525	589
Effingham	277	320	400	525	589	Fayette	277	311	400	525	589
Ford	263	370	481	618	675	Franklin	277	311	400	525	589
Fulton	285	319	411	540	607	Gallatin	277	311	400	525	589
Greene	277	311	400	525	589	Hamilton	277	312	400	525	589
Hancock	277	311	400	525	589	Hardin	277	311	400	525	589
Henderson	277	311	400	525	589	Iroquois	277	311	400	525	589
Jackson	335	336	426	604	676	Jasper	277	313	400	525	589
Jefferson	278	326	407	555	589	Jo Daviess	306	331	400	525	589
Johnson	277	311	400	525	589	Knox	277	311	400	525	610
La Salle	335	394	525	710	796	Lawrence	277	311	400	525	589
Lee	308	317	425	531	595	Livingston	277	341	456	587	641
Logan	310	329	439	549	688	McDonough	277	316	400	525	631
Macoupin	277	311	400	525	589	Marion	282	311	400	525	589
Marshall	277	311	400	525	589	Mason	277	311	400	525	596
Massac	278	311	400	525	589	Mercer	277	311	400	525	589
Montgomery	277	311	400	525	589	Morgan	277	352	466	622	655
Moultrie	277	311	400	539	589	Perry	278	311	400	525	589
Piatt	277	336	438	596	614	Pike	277	311	400	525	589
Pope	277	311	400	525	589	Pulaski	277	311	400	525	589
Putnam	277	311	400	525	589	Randolph	277	311	400	525	589
Richland	277	311	400	525	589	Saline	277	311	400	525	589
Schuyler	277	311	400	525	589	Scott	277	311	400	525	589
Shelby	277	311	400	525	589	Stark	277	311	400	525	589
Stephenson	292	334	424	530	593	Union	277	311	400	525	589
Vermilion	277	354	441	551	618	Wabash	277	311	400	525	623
Warren	292	311	400	525	589	Washington	277	331	442	553	719
Wayne	277	311	400	525	589	White	277	311	400	525	589
Whiteside	292	332	443	554	625	Williamson	277	311	402	558	589

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	398	514	684	952	1125	Monroe
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Dearborn
Elkhart--Goshen, IN MSA	402	459	579	741	852	Elkhart
Evansville--Henderson, IN--KY MSA	344	410	532	664	744	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	344	438	546	703	762	Adams, Allen, DeKalb, Huntington, Wells, Whitley
Gary, IN PMSA	447	588	732	921	1028	Lake, Porter
Indianapolis, IN MSA	393	492	592	741	830	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby
Kokomo, IN MSA	370	437	571	734	799	Howard, Tipton
Lafayette, IN MSA	375	476	634	882	1042	Clinton, Tippecanoe
Louisville, KY--IN MSA	369	475	583	804	848	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	386	480	570	772	911	Delaware
Ohio County MSA**	325	366	468	603	664	Ohio
South Bend, IN MSA	345	460	603	754	847	St. Joseph
Terre Haute, IN MSA	311	363	465	579	646	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	425	457	551	688	906	Benton	299	336	432	554	611
Blackford	299	336	444	555	623	Brown	299	397	523	726	752
Carroll	299	336	432	554	611	Cass	299	336	432	554	611
Crawford	299	336	432	554	611	Daviess	299	336	432	554	611
Decatur	299	365	466	604	657	Dubois	299	336	432	554	629
Fayette	316	357	456	586	689	Fountain	299	336	432	554	611
Franklin	299	336	432	554	682	Fulton	329	346	432	580	611
Gibson	299	336	432	554	611	Grant	315	336	432	556	611
Greene	299	336	432	554	611	Henry	328	369	472	610	668
Jackson	367	385	475	628	675	Jasper	299	363	432	554	611
Jay	299	336	432	554	611	Jefferson	299	336	432	554	611
Jennings	312	336	432	554	611	Knox	329	364	472	600	662
Kosciusko	299	396	478	620	669	LaGrange	304	352	447	582	677
LaPorte	304	368	493	631	689	Lawrence	299	336	432	558	611
Marshall	355	360	478	601	669	Martin	299	336	432	554	611
Miami	299	336	432	554	611	Montgomery	431	452	565	717	793
Newton	312	336	432	554	611	Noble	346	353	438	565	625
Orange	299	336	432	554	611	Owen	299	336	432	554	639
Parke	299	336	432	554	638	Perry	299	336	432	554	611
Pike	299	336	432	554	611	Pulaski	299	336	432	554	611
Putnam	325	378	465	625	630	Randolph	299	336	432	554	611
Ripley	299	336	432	564	639	Rush	307	336	432	554	639
Spencer	299	336	432	554	611	Starke	299	336	432	554	611
Steuben	366	412	494	618	689	Sullivan	299	336	432	554	611
Switzerland	299	336	432	554	611	Union	299	336	432	554	611
Wabash	299	336	432	554	611	Warren	299	336	432	554	611
Washington	299	336	432	554	611	Wayne	361	405	520	668	734
White	299	336	432	554	674						

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	296	417	536	744	800	Linn
Davenport--Moline--Rock Island, IA--IL MSA	302	417	515	666	723	Scott
Des Moines, IA MSA	420	530	655	848	892	Dallas, Polk, Warren
Dubuque, IA MSA	314	383	493	629	769	Dubuque
Iowa City, IA MSA	370	477	615	853	1009	Johnson
Omaha, NE--IA MSA	362	496	626	821	922	Pottawattamie
Sioux City, IA--NE MSA	368	443	552	688	786	Woodbury
Waterloo--Cedar Falls, IA MSA	345	442	552	734	863	Black Hawk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	282	349	437	556	612	Adams	282	349	437	556	612
Allamakee	282	349	437	562	643	Appanoose	282	349	437	556	616
Audubon	282	349	437	556	612	Benton	289	349	437	556	612
Boone	282	370	437	562	666	Bremer	282	349	437	556	651
Buchanan	296	349	437	556	612	Buena Vista	297	349	437	556	612
Butler	299	349	437	556	612	Calhoun	282	349	437	556	612
Carroll	282	349	437	556	612	Cass	282	349	437	556	612
Cedar	282	354	437	556	612	Cerro Gordo	282	369	457	609	640
Cherokee	282	349	437	556	612	Chickasaw	282	349	437	556	612
Clarke	289	349	437	556	612	Clay	282	349	437	556	612
Clayton	282	349	437	556	612	Clinton	282	349	444	556	621
Crawford	282	349	437	556	612	Davis	282	349	437	556	612
Decatur	282	349	437	556	612	Delaware	282	349	437	556	612
Des Moines	282	360	463	579	647	Dickinson	282	349	437	556	612
Emmet	282	349	437	556	647	Fayette	282	349	437	556	612
Floyd	307	349	437	556	612	Franklin	289	349	437	556	612
Fremont	310	349	437	556	645	Greene	282	349	437	556	612
Grundy	282	349	437	556	630	Guthrie	282	349	437	556	644
Hamilton	322	365	442	556	619	Hancock	282	349	437	556	612
Hardin	282	349	437	556	612	Harrison	282	349	437	556	612
Henry	282	358	454	568	643	Howard	282	349	437	556	640
Humboldt	282	349	437	556	612	Ida	289	349	437	556	612
Iowa	282	349	437	556	612	Jackson	282	349	440	556	616
Jasper	282	358	453	566	635	Jefferson	282	357	474	617	780
Jones	291	349	437	556	612	Keokuk	282	349	437	556	612
Kossuth	282	349	437	556	612	Lee	282	349	451	565	634
Louisa	282	349	437	556	612	Lucas	282	349	437	556	612
Lyon	282	349	437	556	612	Madison	282	349	455	582	639
Mahaska	282	349	437	556	612	Marion	282	388	474	594	666
Marshall	311	385	482	611	676	Mills	282	377	445	559	624
Mitchell	282	349	437	556	612	Monona	282	349	437	556	612
Monroe	282	367	437	556	645	Montgomery	310	351	437	556	612
Muscatine	322	399	529	705	739	O'Brien	282	349	437	556	612
Osceola	282	349	437	556	612	Page	282	349	437	556	612
Palo Alto	282	349	437	556	612	Plymouth	282	349	457	571	640

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pocahontas	282	349	437	556	612
Ringgold	282	349	437	556	612
Shelby	282	349	437	556	612
Story	367	446	527	728	835
Taylor	282	349	437	556	613
Van Buren	282	349	437	556	612
Washington	282	349	437	556	645
Webster	282	349	444	559	622
Winneshiek	282	349	437	556	612
Wright	282	349	437	556	612

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Poweshiek	297	370	474	594	666
Sac	282	349	437	556	612
Sioux	282	349	437	556	612
Tama	282	349	437	556	612
Union	282	349	437	556	645
Wapello	282	349	441	556	617
Wayne	282	349	437	556	612
Winnebago	282	355	437	556	612
Worth	282	349	437	556	622

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Kansas City, MO--KS MSA	471	592	713	987	1094	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	381	457	585	815	938	Douglas
Topeka, KS MSA	357	412	536	724	816	Shawnee
*Wichita, KS MSA	373	448	599	811	876	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	287	326	418	539	600
Atchison	287	326	418	539	643
Barton	287	326	418	539	600
Brown	287	326	418	539	600
Chautauqua	287	326	418	539	600
Cheyenne	287	326	418	539	600
Clay	287	326	418	539	600
Coffey	296	326	418	539	627
Cowley	307	326	418	553	600
Decatur	287	326	418	539	600
Doniphan	287	326	418	539	600
Elk	287	326	418	539	600
Ellsworth	287	326	418	539	600
Ford	330	391	486	612	689
Geary	354	371	465	600	650
Graham	287	326	418	539	600
Gray	287	326	418	539	600
Greenwood	287	326	418	539	600
Harper	287	326	418	539	600
Hodgeman	287	326	418	539	600
Jefferson	287	326	426	565	600
Kearny	320	326	430	578	636
Kiowa	287	326	418	539	600
Lane	287	326	418	539	600
Linn	287	326	418	539	600
Lyon	287	326	418	539	640

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	287	326	418	539	600
Barber	287	326	418	539	600
Bourbon	287	326	418	539	600
Chase	287	326	418	539	600
Cherokee	287	326	418	539	600
Clark	287	326	418	539	600
Cloud	287	326	418	539	600
Comanche	287	326	418	539	600
Crawford	287	326	426	539	600
Dickinson	287	326	418	539	600
Edwards	287	326	418	539	600
Ellis	287	326	418	539	600
Finney	377	402	516	672	849
Franklin	323	339	437	560	682
Gove	287	326	418	539	600
Grant	297	378	433	593	646
Greeley	287	326	418	539	600
Hamilton	287	326	418	539	600
Haskell	287	333	418	539	600
Jackson	287	326	418	539	600
Jewell	287	326	418	539	600
Kingman	287	326	418	539	600
Labette	287	326	418	539	600
Lincoln	287	326	418	539	600
Logan	287	326	418	539	600
McPherson	289	326	418	539	600

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marion	287	326	418	539	600	Marshall	287	326	418	539	600
Meade	287	326	418	539	600	Mitchell	287	326	418	539	600
Montgomery	287	326	418	539	600	Morris	287	326	418	539	600
Morton	287	351	418	539	600	Nemaha	287	326	418	539	600
Neosho	287	326	418	539	600	Ness	287	326	418	539	600
Norton	287	326	418	539	600	Osage	287	326	418	539	600
Osborne	287	326	418	539	601	Ottawa	287	326	418	539	600
Pawnee	287	326	418	539	600	Phillips	287	326	418	539	600
Pottawatomie	287	326	418	539	613	Pratt	287	326	418	551	600
Rawlins	287	326	418	539	600	Reno	287	326	418	539	651
Republic	287	326	418	539	600	Rice	287	326	418	539	600
Riley	357	393	523	652	793	Rooks	287	326	418	539	600
Rush	287	326	418	539	600	Russell	287	326	418	539	600
Saline	376	389	512	708	716	Scott	287	326	418	551	633
Seward	347	378	502	630	702	Sheridan	287	326	418	539	600
Sherman	287	326	418	539	600	Smith	287	326	418	539	600
Stafford	287	326	418	539	600	Stanton	287	326	418	539	600
Stevens	287	327	418	539	616	Sumner	287	326	418	565	600
Thomas	287	326	418	539	600	Trego	287	326	418	539	600
Wabaunsee	287	326	418	539	600	Wallace	287	326	418	539	600
Washington	287	326	418	539	600	Wichita	287	326	430	539	670
Wilson	287	326	418	539	600	Woodson	287	326	418	539	600

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Boone, Campbell, Kenton
Clarksville--Hopkinsville, TN--KY MSA	365	408	481	654	673	Christian
Evansville--Henderson, IN--KY MSA	344	410	532	664	744	Henderson
Gallatin County MSA**	292	397	487	611	797	Gallatin
Grant County MSA**	291	347	459	640	758	Grant
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Boyd, Carter, Greenup
Lexington, KY MSA	370	461	565	769	869	Bourbon, Clark, Fayette, Jessamine, Madison, Scott, Woodford
Louisville, KY--IN MSA	369	475	583	804	848	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	323	334	439	589	617	Daviess
Pendleton County MSA**	294	341	452	569	636	Pendleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	265	324	383	507	557	Allen	265	310	383	495	557
Anderson	292	310	401	501	562	Ballard	265	310	383	495	557
Barren	265	321	383	495	557	Bath	265	310	383	495	557
Bell	265	310	387	495	557	Boyle	316	320	427	535	599
Bracken	265	310	383	495	557	Breathitt	265	310	383	495	557
Breckinridge	265	310	383	495	557	Butler	265	310	383	495	557
Caldwell	265	310	383	495	557	Calloway	265	310	383	495	557

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Carlisle	265	310	383	495	557	Carroll	265	310	383	495	557
Casey	265	310	383	495	557	Clay	265	310	383	495	557
Clinton	265	310	383	495	557	Crittenden	265	310	383	495	557
Cumberland	265	310	383	495	557	Edmonson	265	310	383	495	557
Elliott	265	310	383	495	557	Estill	265	310	383	495	557
Fleming	265	310	383	495	557	Floyd	280	340	383	532	610
Franklin	265	391	479	618	780	Fulton	265	310	383	495	557
Garrard	265	310	383	495	557	Graves	265	310	383	495	557
Grayson	265	310	383	495	557	Green	265	310	383	495	557
Hancock	265	310	383	500	592	Hardin	330	339	424	570	676
Harlan	265	403	459	600	708	Harrison	265	311	393	495	606
Hart	265	310	383	495	557	Henry	265	310	383	495	557
Hickman	265	310	383	495	557	Hopkins	265	310	383	495	562
Jackson	265	310	383	495	557	Johnson	265	310	383	495	557
Knott	265	310	383	495	557	Knox	265	367	469	589	723
Larue	265	310	383	495	557	Laurel	346	392	464	626	650
Lawrence	265	310	383	495	557	Lee	265	310	383	495	557
Leslie	265	310	383	495	557	Letcher	265	310	383	495	557
Lewis	265	310	383	495	557	Lincoln	265	310	383	495	557
Livingston	307	310	412	573	577	Logan	265	310	383	505	557
Lyon	265	310	383	495	557	McCracken	301	323	404	517	664
McCreary	265	310	383	495	557	McLean	265	310	383	495	557
Magoffin	265	310	383	495	557	Marion	265	310	383	495	557
Marshall	265	316	383	495	596	Martin	265	310	383	495	557
Mason	265	310	383	495	557	Meade	275	341	393	518	647
Menifee	265	310	383	495	557	Mercer	265	310	383	505	557
Metcalfe	265	310	383	495	557	Monroe	265	310	383	495	557
Montgomery	265	310	383	495	557	Morgan	265	310	383	495	557
Muhlenberg	265	310	383	495	557	Nelson	291	310	395	495	557
Nicholas	265	310	383	495	557	Ohio	265	310	383	495	557
Owen	265	310	383	495	570	Owsley	265	310	383	495	557
Perry	297	310	399	499	559	Pike	285	325	395	495	585
Powell	265	310	383	495	557	Pulaski	291	310	393	496	557
Robertson	265	310	383	495	557	Rockcastle	265	310	383	495	557
Rowan	265	310	383	495	577	Russell	265	310	383	495	557
Shelby	266	350	393	548	557	Simpson	265	332	389	496	557
Spencer	265	316	383	495	557	Taylor	320	379	424	567	642
Todd	265	310	383	495	557	Trigg	265	310	383	495	557
Trimble	265	310	383	495	557	Union	265	310	383	495	557
Warren	265	343	458	572	662	Washington	265	314	383	495	557
Wayne	265	310	383	495	557	Webster	265	310	383	495	557
Whitley	265	310	383	495	557	Wolfe	265	310	383	495	557

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	302	377	473	655	666	Rapides
*Baton Rouge, LA MSA	347	430	535	741	876	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	298	348	446	619	733	Lafourche, Terrebonne
Lafayette, LA MSA	315	363	431	594	703	Acadia, Lafayette, St. Landry, St. Martin
Lake Charles, LA MSA	347	403	512	670	839	Calcasieu
Monroe, LA MSA	326	365	487	656	681	Ouachita
New Orleans, LA MSA	463	531	661	899	1089	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
St. James Parish MSA**	297	336	447	557	624	St. James
Shreveport--Bossier City, LA MSA	367	418	524	701	861	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	287	312	385	504	562	Assumption	330	356	422	530	591
Avoyelles	287	312	385	504	565	Beauregard	350	382	452	590	651
Bienville	287	312	385	511	604	Caldwell	287	312	385	504	562
Cameron	287	312	385	504	562	Catahoula	287	312	385	504	562
Claiborne	287	312	385	504	562	Concordia	287	312	385	504	562
De Soto	287	312	385	504	567	East Carroll	287	312	385	504	562
East Feliciana	287	312	385	504	562	Evangeline	287	312	385	504	562
Franklin	287	312	385	504	567	Grant	287	312	385	504	562
Iberia	304	316	393	504	562	Iberville	287	312	385	504	579
Jackson	287	312	385	504	562	Jefferson Davis	287	312	385	504	571
La Salle	287	312	385	504	567	Lincoln	338	340	424	582	698
Madison	287	312	385	504	562	Morehouse	287	312	385	504	562
Natchitoches	307	314	407	563	567	Pointe Coupee	287	312	385	504	610
Red River	287	312	385	504	567	Richland	287	312	385	504	567
Sabine	287	320	385	504	593	St. Helena	287	312	385	504	562
St. Mary	314	337	423	577	602	Tangipahoa	308	320	412	540	575
Tensas	287	312	385	504	562	Union	287	312	385	504	567
Vermilion	287	312	385	504	562	Vernon	330	368	419	543	641
Washington	287	312	385	504	562	West Carroll	287	312	385	504	562
West Feliciana	287	375	501	626	703	Winn	287	312	385	504	562

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	382	467	598	782	839	Penobscot county towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town Waldo county towns of Winterport town
Lewiston--Auburn, ME MSA	352	425	546	683	776	Androscoggin county towns of Auburn city,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 18

MAINE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	507	653	859	1076	1204	Cumberland county towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York county towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Portsmouth--Rochester, NH--ME PMSA	604	723	930	1193	1463	York county towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Androscoggin	353	437	579	724	811	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Aroostook	353	415	531	675	778	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Cumberland	517	527	702	953	1095	Baldwin town, Bridgton town, Brunswick town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Franklin	360	415	531	675	778	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock	380	466	577	727	807	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec	367	459	551	693	778	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town, Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox	353	454	590	788	829	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln	460	511	581	808	953	Alna town, Boothbay town, Boothbay Harbor town, Bremen town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford	353	415	531	675	778	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Penobscot	353	415	531	675	778	Alton town, Argyle UT, 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 UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, 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, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Piscataquis	353	415	531	675	778	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Sagadahoc	497	568	702	934	1152	Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
Somerset	370	422	531	675	798	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo	353	415	531	675	778	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
Washington	353	415	531	675	778	Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town
York	437	499	668	836	936	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 22

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						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

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD PMSA	596	727	888	1176	1345	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia, MD MSA**	612	822	958	1267	1583	Columbia
Cumberland, MD--WV MSA	361	435	539	712	812	Allegany
Hagerstown, MD PMSA	401	482	602	787	899	Washington
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington--Newark, DE--MD PMSA	502	661	771	1048	1266	Cecil

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	396	427	534	700	795	Dorchester	354	457	534	696	795
Garrett	354	474	534	696	877	Kent	358	441	589	735	886
St. Mary's	577	685	790	1102	1259	Somerset	422	473	534	740	876
Talbot	468	496	660	827	1084	Wicomico	398	460	594	755	832
Worcester	354	427	535	742	795						

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable--Yarmouth, MA MSA	541	724	967	1212	1357	Barnstable county towns of Barnstable Town city Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA--NH PMSA	1007	1135	1419	1775	2084	Bristol county towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex county towns of Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
						Norfolk county towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
						Plymouth county towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
						Suffolk county towns of Boston city, Chelsea city, Revere city, Winthrop town
						Worcester county towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
Brockton, MA PMSA	647	853	1046	1300	1483	Bristol county towns of Easton town, Raynham town
						Norfolk county towns of Avon town
						Plymouth county towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town
Fitchburg--Leominster, MA PMSA	441	620	805	1035	1125	Middlesex county towns of Ashby town
						Worcester county towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Lawrence, MA--NH PMSA	639	771	971	1214	1492	Essex county towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA--NH PMSA	682	881	1065	1334	1491	Middlesex county towns of Billerica town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA PMSA	592	723	823	1029	1155	Bristol county towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town, Rochester town
Pittsfield, MA MSA	353	501	617	775	959	Berkshire county towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence--Fall River--Warwick, RI--MA MSA	414	564	678	851	1050	Bristol county towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA MSA	439	544	686	857	1055	Franklin county towns of Sunderland town Hampden county towns of Agawam city, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town Hampshire county towns of Amherst town, Belchertown town, Easthampton city, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town
Worcester, MA--CT PMSA	549	663	827	1033	1158	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Barnstable	526	722	960	1202	1347	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire	419	509	600	823	987	Alford town, Becket town, Clarksburg town,

MASSACHUSETTS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Dukes	710	723	961	1203	1350	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Franklin	451	560	716	896	1083	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	455	622	829	1102	1360	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire	639	646	862	1082	1210	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Nantucket	807	1082	1443	1803	2019	Nantucket town
Worcester	508	530	706	884	989	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	546	659	815	1069	1199	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	407	413	542	675	758	Berrien
*Detroit, MI PMSA	488	663	801	1002	1122	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	426	483	607	774	849	Genesee
*Grand Rapids--Muskegon--Holland, MI MSA	445	520	636	796	892	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	320	431	547	681	764	Jackson
Kalamazoo--Battle Creek, MI MSA	379	458	576	722	806	Calhoun, Kalamazoo, Van Buren
Lansing--East Lansing, MI MSA	427	502	649	849	979	Clinton, Eaton, Ingham
Saginaw--Bay City--Midland, MI MSA	373	411	547	681	764	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	308	353	446	580	661	Alger	308	353	446	580	661
Alpena	308	353	446	580	665	Antrim	308	370	446	580	661
Arenac	308	353	446	580	661	Baraga	308	353	446	580	661

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 26

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barry	308	380	506	636	712
Branch	358	366	449	615	661
Charlevoix	375	379	481	654	677
Chippewa	308	353	446	580	661
Crawford	337	353	456	623	661
Dickinson	308	379	468	585	661
Gladwin	308	353	446	580	661
Grand Traverse	408	438	584	730	820
Hillsdale	308	353	446	580	661
Huron	308	353	446	580	661
Iosco	308	353	446	580	700
Isabella	346	368	493	665	808
Keweenaw	308	353	446	580	661
Leelanau	419	452	530	691	866
Mackinac	308	353	446	580	661
Marquette	308	353	446	580	661
Mecosta	308	353	446	604	717
Missaukee	325	353	446	580	661
Montmorency	308	353	446	580	661
Oceana	329	353	446	580	661
Ontonagon	308	353	446	580	661
Oscoda	308	353	446	580	661
Presque Isle	308	353	446	580	661
St. Joseph	308	360	446	582	661
Schoolcraft	308	353	446	580	661
Tuscola	335	366	488	611	682

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benzie	322	353	446	599	661
Cass	308	353	448	613	661
Cheboygan	325	353	446	580	678
Clare	320	353	446	580	661
Delta	308	353	446	580	661
Emmet	346	412	488	641	682
Gogebic	308	353	446	580	661
Gratiot	322	353	446	580	661
Houghton	308	353	446	580	661
Ionia	378	384	480	597	673
Iron	308	353	446	580	661
Kalkaska	308	353	447	582	735
Lake	312	353	446	580	661
Luce	308	353	446	580	661
Manistee	308	353	446	580	661
Mason	308	353	446	580	661
Menominee	308	353	446	580	661
Montcalm	369	416	528	685	781
Newaygo	356	380	447	580	661
Ogemaw	321	354	446	580	661
Osceola	308	353	446	580	661
Otsego	316	384	483	672	777
Roscommon	341	353	446	580	661
Sanilac	308	363	446	582	661
Shiawassee	308	388	466	649	695
Wexford	308	357	462	606	717

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth--Superior, MN--WI MSA	302	389	499	666	776	St. Louis
Fargo--Moorhead, ND--MN MSA	372	512	619	859	919	Clay
Grand Forks, ND--MN MSA	385	458	603	832	929	Polk
La Crosse, WI--MN MSA	306	394	501	670	812	Houston
*Minneapolis--St. Paul, MN--WI MSA	578	743	951	1286	1457	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN MSA	389	546	714	986	1108	Olmsted
St. Cloud, MN MSA	349	453	535	674	861	Benton, Stearns

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	287	372	496	622	693
Beltrami	283	363	485	636	679
Blue Earth	387	466	581	745	944
Carlton	283	346	438	548	627
Chippewa	283	346	438	548	627

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	283	406	457	572	641
Big Stone	283	346	438	548	627
Brown	283	366	438	548	627
Cass	283	346	438	548	627
Clearwater	283	346	438	548	627

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cook	335	346	450	616	641
Crow Wing	283	346	460	576	723
Douglas	283	346	438	548	627
Fillmore	283	346	438	548	627
Goodhue	327	421	560	716	785
Hubbard	289	346	438	548	627
Jackson	283	346	438	548	627
Kandiyohi	350	441	537	673	810
Koochiching	343	350	464	580	760
Lake	283	346	438	548	627
Le Sueur	283	346	438	548	676
Lyon	283	346	438	548	649
Mahnomen	283	346	438	548	627
Martin	283	346	438	548	627
Mille Lacs	370	425	541	753	887
Mower	283	346	438	548	627
Nicollet	356	379	505	670	710
Norman	283	346	438	548	627
Pennington	283	346	438	585	627
Pipestone	283	346	438	548	627
Red Lake	283	358	438	548	627
Renville	283	346	438	548	627
Rock	283	346	438	548	627
Sibley	283	346	438	548	627
Stevens	322	407	460	576	645
Todd	283	346	438	548	627
Wabasha	306	373	472	592	677
Waseca	369	405	514	645	737
Wilkin	283	346	438	548	627
Yellow Medicine	283	346	438	548	627

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cottonwood	283	346	438	548	627
Dodge	283	346	438	548	627
Faribault	283	346	438	548	627
Freeborn	283	346	446	587	629
Grant	283	346	438	548	627
Itasca	363	367	479	597	670
Kanabec	350	442	572	714	801
Kittson	283	346	438	548	627
Lac qui Parle	283	346	438	548	627
Lake of the Woods	283	346	438	548	627
Lincoln	283	346	438	548	627
McLeod	336	434	578	718	806
Marshall	283	346	438	548	627
Meeker	337	397	503	632	722
Morrison	314	346	438	548	627
Murray	283	346	438	548	627
Nobles	283	346	438	548	627
Otter Tail	283	346	438	548	627
Pine	359	396	503	633	720
Pope	283	346	438	548	627
Redwood	283	346	438	548	627
Rice	335	459	613	763	855
Roseau	343	350	458	590	643
Steele	335	390	519	648	726
Swift	283	346	438	548	627
Traverse	283	346	438	548	627
Wadena	283	346	438	548	627
Watonwan	283	346	438	548	627
Winona	330	431	545	681	763

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi--Gulfport--Pascagoula, MS MSA	424	498	573	798	941	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	320	391	480	644	768	Forrest, Lamar
Jackson, MS MSA	422	482	589	784	827	Hinds, Madison, Rankin
Memphis, TN--AR--MS MSA	458	534	626	870	913	DeSoto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	264	314	391	500	636
Amite	264	314	389	500	562
Benton	264	314	389	500	562
Calhoun	264	314	389	500	562
Chickasaw	264	314	389	500	562
Claiborne	264	314	389	500	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	264	314	389	500	562
Attala	264	314	389	500	562
Bolivar	301	314	404	505	576
Carroll	264	314	389	500	562
Choctaw	264	314	389	500	562
Clarke	264	314	389	500	562

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 28

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	264	314	389	500	567
Copiah	264	314	389	500	562
Franklin	267	314	389	500	562
Greene	264	314	389	500	562
Holmes	264	314	389	500	562
Issaquena	278	382	507	634	711
Jasper	264	314	389	500	562
Jefferson Davis	264	314	389	500	562
Kemper	266	314	389	500	562
Lauderdale	264	341	429	557	602
Leake	264	314	389	500	562
Leflore	264	314	389	501	601
Lowndes	326	351	418	522	590
Marshall	264	314	389	500	570
Montgomery	264	314	389	500	562
Newton	264	314	389	500	562
Oktibbeha	324	338	412	573	677
Pearl River	278	314	389	502	562
Pike	268	314	389	500	562
Prentiss	267	314	389	500	562
Scott	264	314	389	500	562
Simpson	267	314	389	500	562
Stone	264	314	389	500	562
Tallahatchie	264	314	389	500	562
Tippah	264	314	389	500	562
Tunica	264	314	389	500	562
Walthall	264	314	389	500	562
Washington	286	340	454	587	647
Webster	266	314	389	500	562
Winston	264	314	389	500	562
Yazoo	268	314	389	500	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Coahoma	308	314	414	519	580
Covington	264	314	389	500	562
George	264	314	389	500	562
Grenada	264	315	389	531	562
Humphreys	264	314	389	500	562
Itawamba	264	314	389	500	562
Jefferson	264	314	389	500	562
Jones	264	314	389	500	562
Lafayette	267	367	489	613	684
Lawrence	264	314	389	500	562
Lee	331	355	429	537	602
Lincoln	264	314	389	500	562
Marion	264	314	389	500	562
Monroe	264	314	389	500	562
Neshoba	264	314	389	500	562
Noxubee	268	314	389	500	562
Panola	274	314	389	500	562
Perry	264	314	389	500	562
Pontotoc	264	314	389	500	562
Quitman	264	314	389	500	562
Sharkey	268	314	389	500	562
Smith	264	314	389	500	562
Sunflower	292	318	389	500	597
Tate	264	357	412	517	679
Tishomingo	264	314	389	500	562
Union	264	314	389	500	562
Warren	264	345	431	596	714
Wayne	264	314	389	500	562
Wilkinson	264	314	389	500	562
Yalobusha	266	314	389	500	562

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	280	395	514	715	843	Boone
Joplin, MO MSA	273	317	421	554	595	Jasper, Newton
*Kansas City, MO--KS MSA	471	592	713	987	1094	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	263	319	426	538	597	Andrew, Buchanan
*St. Louis, MO--IL MSA	439	536	695	905	999	Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	287	364	471	652	677	Christian, Greene, Webster

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	254	318	421	531	637
Audrain	272	292	377	509	589
Barton	254	292	377	489	562
Benton	286	292	390	489	562
Butler	254	292	377	489	562
Callaway	299	305	405	515	667
Cape Girardeau	262	322	428	570	699
Carter	254	292	377	489	562
Chariton	254	292	377	489	562
Cole	254	335	447	597	626
Crawford	279	335	378	498	562
Dallas	254	292	377	489	562
DeKalb	263	292	377	495	562
Douglas	254	292	377	489	562
Gasconade	254	292	377	489	562
Grundy	254	292	377	489	562
Henry	289	294	394	493	647
Holt	254	292	377	489	562
Howell	254	292	377	489	562
Johnson	306	341	445	590	697
Laclede	254	292	377	493	562
Lewis	254	292	377	489	562
Livingston	254	292	378	489	562
Macon	274	315	404	526	603
Maries	254	292	377	489	562
Mercer	254	292	377	489	562
Mississippi	254	292	377	489	562
Monroe	254	292	377	489	562
Morgan	254	292	377	489	562
Nodaway	269	325	400	508	612
Osage	254	292	377	489	562
Pemiscot	254	292	377	489	562
Pettis	273	320	428	538	644
Pike	254	292	377	489	591
Pulaski	254	357	400	530	591
Ralls	254	292	377	489	562
Reynolds	254	292	377	489	562
St. Clair	254	292	377	489	562
St. Francois	279	351	444	557	730
Schuyler	254	292	377	489	562
Scott	306	308	412	556	640
Shelby	254	292	377	489	562
Stone	294	314	391	498	562
Taney	287	318	416	562	660
Vernon	254	292	377	501	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atchison	254	292	377	489	562
Barry	254	303	377	489	562
Bates	254	292	377	489	572
Bollinger	254	292	377	489	562
Caldwell	254	294	397	496	562
Camden	334	338	451	627	737
Carroll	254	292	377	489	562
Cedar	254	292	377	489	562
Clark	254	292	377	489	562
Cooper	254	292	377	489	562
Dade	254	292	377	489	562
Daviess	254	292	377	489	562
Dent	254	292	377	489	562
Dunklin	254	292	377	489	562
Gentry	254	292	377	489	562
Harrison	254	292	377	489	562
Hickory	254	292	377	489	562
Howard	254	292	377	489	564
Iron	254	292	377	489	562
Knox	254	292	377	489	562
Lawrence	270	299	377	489	562
Linn	254	292	377	489	562
McDonald	254	292	377	489	562
Madison	254	292	377	489	562
Marion	254	292	377	489	562
Miller	279	335	377	493	582
Moniteau	254	292	377	489	562
Montgomery	270	310	398	518	594
New Madrid	254	292	377	489	562
Oregon	254	292	377	489	562
Ozark	254	292	377	489	562
Perry	308	313	418	557	586
Phelps	263	316	404	549	596
Polk	254	293	377	489	589
Putnam	254	292	377	489	562
Randolph	254	292	377	489	562
Ripley	254	292	377	489	562
Ste. Genevieve	254	303	390	498	632
Saline	254	292	388	489	562
Scotland	254	292	377	489	562
Shannon	254	292	377	489	562
Stoddard	254	292	377	489	562
Sullivan	254	292	377	489	562
Texas	254	292	377	489	562
Washington	296	360	403	504	565

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	254	292	377	489	562
Wright	254	292	377	489	562
Worth	254	292	377	489	562

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	363	422	563	757	918	Yellowstone
Great Falls, MT MSA	363	420	553	719	856	Cascade
Missoula, MT MSA	363	426	566	730	929	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	325	374	495	641	749
Blaine	325	374	495	641	749
Carbon	369	432	561	731	853
Chouteau	325	374	495	641	749
Daniels	325	396	495	641	749
Deer Lodge	325	374	495	641	749
Fergus	325	374	495	641	749
Gallatin	398	466	625	802	1025
Glacier	325	374	495	641	749
Granite	325	374	495	641	749
Jefferson	342	374	495	641	749
Lake	352	374	495	641	749
Liberty	325	374	495	641	749
McCone	325	394	495	641	749
Meagher	325	396	495	641	749
Musselshell	330	374	495	641	749
Petroleum	325	374	495	641	749
Pondera	325	395	495	641	749
Powell	330	374	495	641	749
Ravalli	325	374	495	641	749
Roosevelt	339	374	495	641	749
Sanders	325	374	495	641	749
Silver Bow	325	374	495	641	749
Sweet Grass	349	374	495	641	749
Toole	332	374	495	641	749
Valley	325	374	495	641	749
Wibaux	325	396	495	641	749

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	325	374	495	641	749
Broadwater	325	374	495	641	799
Carter	325	396	495	641	749
Custer	325	374	495	641	749
Dawson	325	374	495	641	749
Fallon	325	374	495	641	749
Flathead	325	375	502	701	823
Garfield	325	374	495	641	749
Golden Valley	325	395	495	641	749
Hill	335	374	495	641	749
Judith Basin	325	396	495	641	749
Lewis and Clark	361	422	560	779	923
Lincoln	352	374	495	641	749
Madison	332	374	495	641	749
Mineral	325	374	495	641	766
Park	325	374	495	641	758
Phillips	325	374	495	641	749
Powder River	325	379	495	641	749
Prairie	325	374	495	641	749
Richland	325	405	495	641	749
Rosebud	325	374	495	641	749
Sheridan	334	374	495	641	749
Stillwater	332	374	495	641	749
Teton	325	374	495	641	749
Treasure	325	374	495	641	749
Wheatland	325	374	495	641	749

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	337	431	569	755	882	Lancaster
Omaha, NE--IA MSA	362	496	626	821	922	Cass, Douglas, Sarpy, Washington
Sioux City, IA--NE MSA	368	443	552	688	786	Dakota

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	264	354	467	586	701
Arthur	253	326	416	532	605
Blaine	253	326	416	532	605
Box Butte	275	326	416	533	629
Brown	253	326	416	532	617
Burt	253	326	416	532	605
Cedar	253	326	416	532	605
Cherry	253	343	416	535	630
Clay	253	326	416	532	605
Cuming	253	344	416	532	605
Dawes	271	326	416	536	633
Deuel	253	326	416	532	605
Dodge	253	326	429	565	605
Fillmore	253	326	416	532	605
Frontier	284	326	416	532	605
Gage	253	327	424	539	605
Garfield	253	326	416	532	605
Grant	253	326	416	532	605
Hall	304	400	533	701	786
Harlan	253	326	416	533	605
Hitchcock	253	326	416	532	605
Hooker	253	341	416	533	605
Jefferson	253	326	416	532	605
Kearney	253	326	416	532	633
Keya Paha	253	326	416	532	605
Knox	253	338	416	532	605
Logan	253	326	416	532	634
McPherson	253	326	416	533	605
Merrick	253	326	416	532	605
Nance	253	326	416	532	605
Nuckolls	253	326	416	532	605
Pawnee	253	326	416	536	605
Phelps	283	326	416	533	633
Platte	253	326	416	580	605
Red Willow	253	326	416	532	615
Rock	253	333	416	532	605
Saunders	253	326	416	532	605
Seward	314	326	425	532	605
Sherman	253	328	416	532	634
Stanton	253	326	416	532	605
Thomas	253	326	416	532	605
Valley	253	326	416	532	605
Webster	253	326	416	532	605
York	253	326	421	532	605

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Antelope	253	343	416	535	605
Banner	253	326	416	533	605
Boone	253	326	416	532	630
Boyd	253	340	416	532	605
Buffalo	273	395	495	617	747
Butler	253	326	416	532	605
Chase	253	344	416	532	635
Cheyenne	283	326	416	532	605
Colfax	276	339	416	532	605
Custer	283	328	416	532	629
Dawson	278	339	416	536	605
Dixon	282	326	416	532	605
Dundy	253	326	416	532	605
Franklin	253	326	416	537	605
Furnas	253	326	416	532	630
Garden	253	339	416	535	633
Gosper	253	326	416	532	612
Greeley	253	326	416	532	615
Hamilton	253	326	416	536	605
Hayes	253	341	416	532	630
Holt	253	326	416	532	605
Howard	253	326	416	532	605
Johnson	253	330	416	532	605
Keith	253	326	416	532	605
Kimball	253	326	416	533	633
Lincoln	259	339	416	532	605
Loup	253	326	416	532	632
Madison	259	341	451	584	712
Morrill	253	328	416	532	630
Nemaha	253	326	416	532	605
Otoe	253	326	416	532	634
Perkins	253	326	416	532	605
Pierce	253	326	416	532	605
Polk	253	326	416	532	605
Richardson	253	326	416	532	605
Saline	253	340	416	532	605
Scotts Bluff	257	338	429	532	630
Sheridan	253	326	416	532	606
Sioux	253	326	416	532	633
Thayer	253	343	416	532	605
Thurston	253	326	416	532	605
Wayne	289	326	416	532	630
Wheeler	253	326	416	533	605

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Las Vegas, NV--AZ MSA	606	719	856	1191	1407	Clark, Nye
Reno, NV MSA	556	644	828	1153	1364	Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	489	498	664	915	1086	Douglas	439	640	804	1116	1241
Elko	444	509	677	894	1113	Esmeralda	472	589	663	826	926
Eureka	361	589	663	825	923	Humboldt	530	557	671	881	941
Lander	365	564	663	828	1085	Lincoln	362	544	663	830	928
Lyon	431	516	663	922	1086	Mineral	367	501	666	874	1093
Pershing	502	509	677	847	969	Storey	509	515	677	943	1113
White Pine	362	499	663	894	940	Carson	380	520	696	967	1141

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA--NH PMSA	1007	1135	1419	1775	2084	Rockingham county towns of Seabrook town, South Hampton town
Lawrence, MA--NH PMSA	639	771	971	1214	1492	Rockingham county towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Lowell, MA--NH PMSA	682	881	1065	1334	1491	Hillsborough county towns of Pelham town
Manchester, NH PMSA	499	712	888	1110	1244	Hillsborough county towns of Bedford town, Goffstown town, Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town, Londonderry town
Nashua, NH PMSA	588	820	1016	1382	1643	Hillsborough county towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
Portsmouth--Rochester, NH--ME PMSA	604	723	930	1193	1463	Rockingham county towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap	474	548	720	974	1182	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll	395	543	724	908	1131	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire	492	583	746	973	1152	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos	340	415	531	694	820	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township, Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton	437	527	702	908	1146	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 34

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Warren town, Waterville Valley town, Wentworth town, Woodstock town
Hillsborough	465	581	775	1024	1233	Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack	489	585	729	935	1042	Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham	508	594	796	1104	1274	Deerfield town, Northwood town, Nottingham town
Strafford	449	610	814	1020	1143	Middleton town, New Durham town, Strafford town
Sullivan	473	480	624	819	874	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic--Cape May, NJ PMSA	561	639	850	1064	1217	Atlantic, Cape May
*Bergen--Passaic, NJ PMSA	793	967	1133	1510	1862	Bergen, Passaic
Jersey City, NJ PMSA	772	911	1061	1349	1484	Hudson
Middlesex--Somerset--Hunterdon, NJ PMSA	851	932	1164	1581	1825	Hunterdon, Middlesex, Somerset
Monmouth--Ocean, NJ PMSA	666	798	1013	1346	1578	Monmouth, Ocean
*Newark, NJ PMSA	640	819	987	1242	1569	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA--NJ PMSA	587	721	892	1115	1399	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	573	798	973	1318	1591	Mercer
Vineland--Millville--Bridgeton, NJ PMSA	541	658	793	990	1113	Cumberland

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	451	539	673	928	1096	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	315	396	471	645	761	Dona Ana
Santa Fe, NM MSA	457	646	798	1072	1214	Los Alamos, Santa Fe

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	292	340	422	568	641	Chaves	292	331	436	601	641
Cibola	303	331	422	568	641	Colfax	292	338	422	568	641
Curry	292	338	442	568	641	De Baca	292	331	422	568	641
Eddy	299	330	422	568	660	Grant	345	393	503	675	762
Guadalupe	292	330	422	568	645	Harding	292	330	422	568	641
Hidalgo	292	330	422	568	641	Lea	292	330	422	568	641
Lincoln	330	338	446	587	735	Luna	320	352	451	605	683
McKinley	292	365	465	579	650	Mora	292	330	422	568	641
Otero	292	330	422	588	641	Quay	292	421	474	594	664
Rio Arriba	340	348	428	568	641	Roosevelt	292	330	422	568	641
San Juan	329	352	439	610	723	San Miguel	322	330	435	568	641
Sierra	292	330	422	568	641	Socorro	292	330	422	568	658
Taos	500	506	675	844	1111	Torrance	319	345	422	568	641
Union	292	355	422	568	641						

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany--Schenectady--Troy, NY MSA	419	516	634	795	888	Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	376	422	527	668	752	Broome, Tioga
*Buffalo--Niagara Falls, NY MSA	437	517	624	778	873	Erie, Niagara
Dutchess County, NY PMSA	671	851	1054	1369	1599	Dutchess
Elmira, NY MSA	376	422	518	657	781	Chemung
Glens Falls, NY MSA	376	489	596	746	834	Warren, Washington
Jamestown, NY MSA	376	422	509	657	752	Chautauqua
Nassau--Suffolk, NY PMSA	901	1085	1324	1843	1974	Nassau, Suffolk
New York, NY PMSA	848	944	1073	1342	1504	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Westchester County MSA**	814	1062	1294	1680	2006	Westchester
Newburgh, NY--PA PMSA	538	697	855	1084	1237	Orange
Rochester, NY MSA	405	527	639	820	895	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	403	485	600	766	849	Cayuga, Madison, Onondaga, Oswego
Utica--Rome, NY MSA	376	422	509	657	752	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	376	422	509	657	752	Cattaraugus	376	422	509	657	752
Chenango	401	422	509	657	752	Clinton	376	422	548	684	767
Columbia	471	495	635	831	889	Cortland	376	450	563	703	833
Delaware	376	422	509	657	808	Essex	376	428	538	673	752
Franklin	376	422	509	657	752	Fulton	376	422	509	657	752
Greene	376	489	586	756	922	Hamilton	376	453	521	657	752
Jefferson	405	478	562	703	789	Lewis	376	422	509	657	752
Otsego	376	446	513	661	841	St. Lawrence	376	422	509	657	752
Schuyler	407	435	516	718	846	Seneca	402	433	522	674	752
Steuben	390	444	509	664	752	Sullivan	489	548	667	922	935
Tompkins	492	529	679	949	1118	Ulster	462	643	773	1007	1266

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wyoming	376	422	509	657	752
Yates	376	422	509	657	752

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	369	446	582	758	819	Buncombe, Madison
Charlotte--Gastonia--Rock Hill, NC--SC MSA	549	619	697	920	1101	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	404	460	515	713	848	Cumberland
Goldsboro, NC MSA	367	423	513	661	774	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	438	500	595	821	834	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin
Greenville, NC MSA	454	461	597	805	984	Pitt
Hickory--Morganton--Lenoir, NC MSA	418	455	529	667	790	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	378	440	499	691	818	Onslow
*Norfolk--Virginia Beach--Newport News, VA--NC MSA	562	632	748	1044	1226	Currituck
Raleigh--Durham--Chapel Hill, NC MSA	561	680	799	1073	1264	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	353	382	464	615	678	Edgecombe, Nash
Wilmington, NC MSA	486	532	651	891	1063	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	312	365	436	562	665	Anson	312	359	436	562	637
Ashe	312	359	436	562	637	Avery	347	392	477	598	667
Beaufort	312	359	436	562	637	Bertie	312	359	436	562	637
Bladen	312	359	436	562	637	Camden	312	398	531	663	744
Carteret	352	387	471	655	729	Caswell	312	359	436	562	637
Cherokee	312	359	436	562	637	Chowan	312	359	436	562	637
Clay	312	359	436	562	637	Cleveland	397	465	556	736	813
Columbus	312	359	436	562	637	Craven	312	390	468	614	657
Dare	323	512	590	809	827	Duplin	312	359	436	562	637
Gates	312	359	436	562	637	Graham	312	359	436	562	637
Granville	329	359	436	577	654	Greene	312	359	436	562	637
Halifax	312	359	436	562	637	Harnett	351	406	493	637	720
Haywood	324	369	449	603	656	Henderson	403	415	513	682	786
Hertford	312	359	436	562	637	Hoke	312	359	436	562	637
Hyde	312	359	436	562	637	Iredell	421	431	568	711	794
Jackson	383	442	537	751	981	Jones	312	359	436	562	637
Lee	312	398	471	610	661	Lenoir	312	359	436	562	637
McDowell	312	380	455	622	737	Macon	312	372	436	562	637
Martin	312	359	436	562	637	Mitchell	312	407	467	638	667
Montgomery	312	359	436	562	637	Moore	358	432	516	706	846
Northampton	312	359	436	562	637	Pamlico	312	359	436	562	637
Pasquotank	359	385	479	665	672	Pender	376	455	525	678	828
Perquimans	312	359	436	562	637	Person	312	359	467	610	715
Polk	404	513	574	729	828	Richmond	312	359	436	562	637
Robeson	312	367	436	562	637	Rockingham	312	359	436	562	637

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rutherford	386	440	535	689	782
Scotland	312	359	436	562	637
Surry	312	359	436	562	637
Transylvania	360	386	488	647	690
Vance	330	373	436	562	637
Washington	312	359	436	562	637
Wilkes	353	399	449	621	697
Yancey	312	366	436	562	658
Sampson	312	359	436	562	637
Stanly	312	359	443	598	637
Swain	312	359	436	562	637
Tyrrell	312	359	436	562	637
Warren	312	359	436	562	637
Watauga	406	488	617	839	1012
Wilson	325	359	442	562	637

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	380	425	565	787	933	Burleigh, Morton
Fargo--Moorhead, ND--MN MSA	372	512	619	859	919	Cass
Grand Forks, ND--MN MSA	385	458	603	832	929	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	249	312	404	524	612
Benson	283	312	404	524	612
Bottineau	249	312	404	524	612
Burke	270	312	404	524	612
Dickey	270	312	404	524	612
Dunn	249	312	404	524	612
Emmons	249	312	404	524	612
Golden Valley	249	322	426	533	612
Griggs	249	312	404	524	612
Kidder	249	312	404	524	612
Logan	249	312	404	524	612
McIntosh	249	312	404	524	612
McLean	264	312	404	524	612
Mountrail	275	312	404	524	612
Oliver	249	312	404	524	612
Pierce	249	312	404	540	612
Ransom	255	312	404	524	612
Richland	262	312	412	524	612
Sargent	249	312	404	524	612
Sioux	249	312	404	524	612
Stark	249	312	404	524	612
Stutsman	297	312	408	567	669
Traill	262	334	404	524	612
Ward	249	343	457	618	736
Williams	249	312	404	524	612
Barnes	249	315	417	545	612
Billings	270	312	404	524	612
Bowman	249	312	404	524	612
Cavalier	249	323	428	534	659
Divide	249	312	404	524	612
Eddy	249	312	404	524	612
Foster	249	312	406	524	612
Grant	249	312	404	524	612
Hettinger	249	312	404	524	612
LaMoure	270	312	404	524	612
McHenry	249	312	404	524	612
McKenzie	249	312	404	524	612
Mercer	249	312	404	524	612
Nelson	249	312	404	524	612
Pembina	249	312	404	532	632
Ramsey	257	343	457	573	747
Renville	288	312	404	527	624
Rolette	269	344	415	524	612
Sheridan	249	312	404	524	612
Slope	249	312	404	524	612
Steele	249	312	404	524	612
Towner	285	322	426	533	703
Walsh	333	354	440	551	617
Wells	265	312	404	524	612

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	423	513	658	824	923	Portage, Summit

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 38

OHIO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Brown County MSA**	325	382	476	617	681	Brown
Canton--Massillon, OH MSA	309	402	512	641	721	Carroll, Stark
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Clermont, Hamilton, Warren
*Cleveland--Lorain--Elyria, OH PMSA	483	606	752	956	1075	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	422	499	640	813	935	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton--Springfield, OH MSA	413	462	589	760	854	Clark, Greene, Miami, Montgomery
Hamilton--Middletown, OH PMSA	355	504	647	809	905	Butler
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Lawrence
Lima, OH MSA	309	370	486	621	680	Allen, Auglaize
Mansfield, OH MSA	309	370	471	588	658	Crawford, Richland
Parkersburg--Marietta, WV--OH MSA	329	395	452	586	635	Washington
Steubenville--Weirton, OH--WV MSA	309	363	457	582	649	Jefferson
Toledo, OH MSA	387	470	574	739	802	Fulton, Lucas, Wood
Wheeling, WV--OH MSA	337	369	457	582	649	Belmont
Youngstown--Warren, OH MSA	361	427	535	671	764	Columbiana, Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	297	353	439	559	627	Ashland	297	353	463	579	648
Athens	410	463	544	714	875	Champaign	297	362	470	587	658
Clinton	339	435	522	727	733	Coshocton	297	353	439	559	627
Darke	326	353	442	559	627	Defiance	353	401	529	666	739
Erie	297	396	494	666	808	Fayette	322	353	439	559	627
Gallia	297	353	439	559	627	Guernsey	297	353	439	559	627
Hancock	376	380	482	616	674	Hardin	297	353	439	559	627
Harrison	297	353	439	559	627	Henry	342	378	472	611	693
Highland	297	353	439	559	627	Hocking	297	353	439	559	627
Holmes	297	353	439	559	627	Huron	344	374	466	616	655
Jackson	297	353	439	559	627	Knox	350	385	493	637	704
Logan	349	354	456	614	639	Marion	297	353	439	559	627
Meigs	297	353	439	559	627	Mercer	297	353	439	559	645
Monroe	297	353	439	559	627	Morgan	297	358	439	559	627
Morrow	297	353	439	559	627	Muskingum	297	353	439	559	627
Noble	297	353	439	559	636	Ottawa	297	439	504	686	733
Paulding	297	353	439	559	627	Perry	297	353	439	559	627
Pike	312	371	461	590	659	Preble	304	361	449	576	643
Putnam	307	353	439	559	627	Ross	344	359	439	559	627
Sandusky	297	386	494	623	688	Scioto	297	353	439	559	627
Seneca	298	353	439	565	627	Shelby	297	362	483	603	676
Tuscarawas	297	353	460	576	645	Union	297	410	542	678	784
Van Wert	297	357	439	559	627	Vinton	297	353	439	559	627
Wayne	297	393	483	614	676	Williams	329	368	459	586	656
Wyandot	297	353	439	559	627						

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	319	324	429	597	683	Garfield

OKLAHOMA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR--OK MSA	359	363	479	639	671	Sequoyah
Lawton, OK MSA	395	397	506	702	770	Comanche
*Oklahoma City, OK MSA	398	432	561	779	872	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie
*Tulsa, OK MSA	381	455	595	829	978	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	266	305	381	506	580	Alfalfa	266	305	381	506	580
Atoka	266	305	381	506	580	Beaver	266	309	381	506	580
Beckham	270	305	381	506	580	Blaine	266	305	381	506	580
Bryan	266	305	381	506	580	Caddo	266	305	381	506	580
Carter	266	307	384	534	580	Cherokee	278	314	381	506	588
Choctaw	266	305	381	506	580	Cimarron	266	305	381	506	580
Coal	266	305	381	506	580	Cotton	266	305	381	506	580
Craig	266	305	381	519	614	Custer	266	305	390	543	626
Delaware	266	305	381	506	590	Dewey	266	305	381	506	580
Ellis	266	305	381	506	580	Garvin	266	305	381	506	584
Grady	292	305	394	536	648	Grant	266	305	381	506	580
Greer	266	305	381	506	580	Harmon	266	305	381	506	580
Harper	266	305	381	506	580	Haskell	266	305	381	506	580
Hughes	266	305	381	506	580	Jackson	266	345	420	552	623
Jefferson	266	305	381	506	580	Johnston	266	305	381	506	580
Kay	295	311	410	571	668	Kingfisher	266	313	389	510	580
Kiowa	266	305	381	506	580	Latimer	266	305	381	506	580
Le Flore	266	305	381	506	580	Lincoln	284	305	381	506	580
Love	266	305	385	506	580	McCurtain	266	305	381	506	580
McIntosh	266	305	381	506	580	Major	266	319	381	528	580
Marshall	266	305	381	506	580	Mayes	266	309	412	519	580
Murray	266	305	381	506	580	Muskogee	287	323	381	526	580
Noble	266	305	381	506	580	Nowata	266	305	381	506	580
Okfuskee	266	305	381	506	580	Okmulgee	270	305	381	506	580
Ottawa	285	305	381	506	580	Pawnee	300	305	394	507	580
Payne	359	424	543	750	841	Pittsburg	266	305	381	506	580
Pontotoc	266	305	381	506	580	Pushmataha	266	305	381	506	580
Roger Mills	266	305	381	506	580	Seminole	266	305	381	506	580
Stephens	270	305	381	506	604	Texas	266	315	381	507	580
Tillman	266	305	381	506	580	Washington	266	364	443	588	688
Washita	266	305	381	506	580	Woods	266	305	381	506	580
Woodward	266	305	381	506	580						

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Corvallis, OR MSA	431	560	710	1068	1133	Benton
Eugene--Springfield, OR MSA	378	518	675	943	1089	Lane
Medford--Ashland, OR MSA	376	492	659	916	1021	Jackson

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OREGON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Portland--Vancouver, OR--WA PMSA	524	644	795	1106	1200	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	445	525	671	925	969	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	338	400	520	716	797	Clatsop	390	461	605	826	928
Coos	338	412	548	763	797	Crook	338	400	520	716	797
Curry	338	459	610	782	961	Deschutes	417	481	642	895	1036
Douglas	338	400	520	716	851	Gilliam	338	427	520	716	797
Grant	338	400	520	716	797	Harney	338	400	520	716	797
Hood River	397	447	607	790	935	Jefferson	338	400	520	716	797
Josephine	338	410	528	716	834	Klamath	338	400	520	716	846
Lake	338	400	520	716	797	Lincoln	410	416	555	773	840
Linn	406	483	625	860	959	Malheur	338	400	520	716	797
Morrow	338	400	520	716	797	Sherman	338	400	520	716	797
Tillamook	338	400	520	716	797	Umatilla	338	400	520	716	797
Union	338	400	520	716	797	Wallowa	338	400	520	716	797
Wasco	411	510	571	777	874	Wheeler	338	400	520	716	797

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown--Bethlehem--Easton, PA MSA	401	545	647	844	946	Carbon, Lehigh, Northampton
Altoona, PA MSA	306	390	466	608	681	Blair
Erie, PA MSA	310	405	477	616	689	Erie
Harrisburg--Lebanon--Carlisle, PA MSA	368	471	604	762	850	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	310	395	474	616	689	Cambria, Somerset
Lancaster, PA MSA	409	500	624	814	876	Lancaster
Newburgh, NY--PA PMSA	538	697	855	1084	1237	Pike
*Philadelphia, PA--NJ PMSA	587	721	892	1115	1399	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA MSA	418	511	615	770	860	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	323	477	589	735	829	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	328	459	550	686	829	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	340	395	474	616	689	Mercer
State College, PA MSA	446	547	677	886	947	Centre
Williamsport, PA MSA	310	397	477	616	689	Lycoming
York, PA MSA	346	474	589	734	821	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	304	409	542	703	889	Armstrong	308	408	462	604	759
Bedford	304	387	462	604	674	Bradford	308	391	476	623	683
Cameron	304	387	462	604	674	Clarion	304	387	462	604	674
Clearfield	304	387	462	604	674	Clinton	304	387	462	604	674
Crawford	304	387	462	604	674	Elk	304	387	462	604	674
Forest	304	387	462	604	674	Franklin	304	387	469	646	674

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Fulton	304	387	462	604	674	Greene	304	387	462	604	674
Huntingdon	304	387	462	604	674	Indiana	348	389	462	604	674
Jefferson	304	387	462	604	674	Juniata	304	387	462	604	674
Lawrence	304	387	462	604	674	McKean	304	389	462	604	674
Mifflin	338	387	462	604	674	Monroe	486	580	716	977	1092
Montour	359	387	486	674	797	Northumberland	320	406	496	658	733
Potter	304	387	462	604	674	Schuylkill	304	387	481	604	674
Snyder	365	387	463	604	674	Sullivan	304	387	462	604	674
Susquehanna	363	387	462	604	717	Tioga	304	387	462	604	674
Union	366	487	609	761	850	Venango	304	387	462	604	674
Warren	304	387	462	604	674	Wayne	305	471	555	707	909

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London--Norwich, CT--RI MSA	541	654	797	997	1140	Washington county towns of Hopkinton town, Westerly town
Providence--Fall River--Warwick, RI--MA MSA	414	564	678	851	1050	Bristol county towns of Barrington town, Bristol town, Warren town Kent county towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport county towns of Jamestown town, Little Compton town, Tiverton town Providence county towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Newport	614	715	918	1149	1286	Middletown town, Newport city, Portsmouth town
Washington	725	816	917	1182	1302	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta--Aiken, GA--SC MSA	411	493	580	788	931	Aiken, Edgefield
Charleston--North Charleston, SC MSA	433	504	578	768	895	Berkeley, Charleston, Dorchester

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlotte--Gastonia--Rock Hill, NC--SC MSA	549	619	697	920	1101	York
Columbia, SC MSA	465	512	588	779	895	Lexington, Richland
Florence, SC MSA	352	391	509	635	712	Florence
Greenville--Spartanburg--Anderson, SC MSA	418	506	571	718	846	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	457	464	594	743	832	Horry
Sumter, SC MSA	372	413	468	640	761	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	307	357	434	558	637	Allendale	307	357	434	558	637
Bamberg	307	357	434	558	637	Barnwell	322	357	436	558	637
Beaufort	437	537	618	771	864	Calhoun	307	357	434	558	637
Chester	307	357	434	558	637	Chesterfield	307	357	434	558	637
Clarendon	307	357	434	558	637	Colleton	307	357	434	558	637
Darlington	307	357	434	558	637	Dillon	307	357	434	558	637
Fairfield	307	410	467	582	654	Georgetown	307	390	437	558	664
Greenwood	308	357	434	558	637	Hampton	307	357	434	558	637
Jasper	307	357	434	558	637	Kershaw	307	357	434	558	637
Lancaster	321	358	434	558	637	Laurens	307	357	434	558	637
Lee	307	357	434	558	637	McCormick	307	357	434	558	679
Marion	307	357	434	558	637	Marlboro	307	357	434	558	637
Newberry	307	357	434	558	637	Oconee	307	357	434	558	637
Orangeburg	307	357	434	558	637	Saluda	307	357	434	558	637
Union	307	357	434	558	637	Williamsburg	307	357	434	558	637

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	392	467	622	845	1024	Pennington
Sioux Falls, SD MSA	380	524	665	841	967	Lincoln, Minnehaha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	276	370	460	609	706	Beadle	276	367	460	609	706
Bennett	276	367	460	609	706	Bon Homme	306	367	460	609	706
Brookings	295	469	520	704	829	Brown	304	404	507	670	776
Brule	276	367	460	609	706	Buffalo	276	367	460	609	712
Butte	320	434	578	755	890	Campbell	276	367	460	609	706
Charles Mix	276	367	460	609	706	Clark	276	367	460	609	706
Clay	307	408	512	679	841	Codington	319	422	531	703	812
Corson	276	367	460	609	706	Custer	276	367	460	609	706
Davison	308	390	491	657	751	Day	308	367	460	609	706
Deuel	276	367	460	609	706	Dewey	276	367	460	609	706
Douglas	306	367	460	609	706	Edmunds	276	367	460	609	706
Fall River	315	367	460	609	706	Faulk	276	367	484	609	706
Grant	276	367	460	609	706	Gregory	278	367	460	609	706

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haakon	276	375	460	609	706	Hamlin	276	367	460	609	706
Hand	276	367	460	609	706	Hanson	281	384	511	642	719
Harding	276	375	460	609	706	Hughes	314	379	503	661	784
Hutchinson	276	367	460	609	706	Hyde	276	373	460	609	706
Jackson	276	372	460	609	706	Jerauld	276	370	460	609	706
Jones	276	367	460	609	706	Kingsbury	300	367	460	609	706
Lake	276	372	460	609	706	Lawrence	317	456	574	786	889
Lyman	276	367	460	609	706	McCook	276	367	460	609	706
McPherson	276	367	460	609	706	Marshall	327	367	460	609	706
Meade	388	438	585	765	902	Mellette	330	372	460	609	706
Miner	276	372	460	609	706	Moody	276	367	460	609	706
Perkins	276	367	460	609	706	Potter	276	367	460	609	706
Roberts	276	367	460	609	706	Sanborn	276	367	460	609	706
Shannon	276	372	460	609	706	Spink	299	367	468	609	706
Stanley	276	375	460	609	706	Sully	276	367	460	609	706
Todd	304	367	460	609	706	Tripp	276	367	460	609	706
Turner	276	367	460	609	706	Union	290	367	460	609	706
Walworth	276	375	460	609	706	Yankton	276	367	460	609	706
Ziebach	276	367	460	609	706						

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN--GA MSA	393	460	552	713	814	Hamilton, Marion
Clarksville--Hopkinsville, TN--KY MSA	365	408	481	654	673	Montgomery
Jackson, TN MSA	283	373	501	692	696	Chester, Madison
Johnson City--Kingsport--Bristol, TN--VA MSA	328	391	486	629	745	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	328	403	507	676	812	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN--AR--MS MSA	458	534	626	870	913	Fayette, Shelby, Tipton
Nashville, TN MSA	460	550	678	924	1036	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	254	326	399	503	559	Benton	274	312	375	494	553
Bledsoe	254	297	375	494	553	Bradley	254	320	427	577	703
Campbell	256	297	375	494	553	Cannon	254	297	375	494	553
Carroll	254	309	375	494	553	Claiborne	254	297	375	494	553
Clay	258	297	375	494	553	Cocke	254	297	375	494	553
Coffee	254	353	398	553	630	Crockett	254	297	375	494	553
Cumberland	267	297	390	543	553	Decatur	254	297	375	494	553
DeKalb	254	297	375	494	553	Dyer	317	321	428	536	667
Fentress	254	297	375	494	553	Franklin	265	297	375	516	607
Gibson	254	297	375	494	553	Giles	254	323	400	501	560
Grainger	258	297	375	494	553	Greene	254	297	375	494	553
Grundy	254	297	375	494	553	Hamblen	254	298	392	520	553
Hancock	254	297	375	494	553	Hardeman	254	297	375	494	553
Hardin	254	297	375	494	553	Haywood	266	310	412	516	577

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Henderson	254	297	375	494	553
Hickman	300	304	403	532	564
Humphreys	254	310	375	494	553
Jefferson	277	297	386	494	613
Lake	254	297	375	494	553
Lawrence	254	297	375	494	553
Lincoln	254	297	380	494	553
McNairy	254	297	375	494	553
Marshall	298	325	424	536	596
Meigs	254	297	375	494	553
Moore	254	297	375	494	553
Obion	294	298	382	506	553
Perry	254	300	375	494	553
Polk	254	297	375	494	553
Rhea	254	317	375	500	553
Scott	254	297	375	494	553
Smith	254	297	375	494	553
Trousdale	254	312	414	519	680
Warren	282	297	385	494	553
Weakley	275	297	375	494	553

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Henry	254	297	375	494	553
Houston	254	297	375	494	553
Jackson	254	297	375	494	553
Johnson	254	297	375	494	553
Lauderdale	254	297	379	494	553
Lewis	254	297	375	494	553
McMinn	254	297	375	496	553
Macon	254	297	375	494	553
Maury	364	371	494	619	689
Monroe	254	297	375	494	553
Morgan	254	297	375	494	553
Overton	254	297	375	494	553
Pickett	254	297	375	494	553
Putnam	309	312	400	550	592
Roane	274	297	375	505	607
Sequatchie	254	297	375	494	553
Stewart	254	297	375	494	553
Van Buren	254	297	375	494	553
Wayne	254	297	375	494	553
White	258	297	375	494	553

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	360	400	517	697	848	Taylor
Amarillo, TX MSA	305	385	479	667	787	Potter, Randall
*Austin--San Marcos, TX MSA	567	686	914	1269	1501	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont--Port Arthur, TX MSA	347	420	512	677	716	Hardin, Jefferson, Orange
Brazoria, TX PMSA	525	584	730	1017	1196	Brazoria
Brownsville--Harlingen--San Benito, TX MSA	319	402	503	630	787	Cameron
Bryan--College Station, TX MSA	405	472	596	832	981	Brazos
Corpus Christi, TX MSA	380	467	595	811	958	Nueces, San Patricio
*Dallas, TX PMSA	589	678	871	1205	1425	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	428	481	569	788	934	El Paso
*Fort Worth--Arlington, TX PMSA	536	585	757	1058	1246	Hood, Johnson, Parker, Tarrant
Galveston--Texas City, TX PMSA	514	528	662	920	1086	Galveston
Henderson County MSA**	346	412	502	685	822	Henderson
*Houston, TX PMSA	523	588	760	1060	1248	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen--Temple, TX MSA	427	445	563	784	861	Bell, Coryell
Laredo, TX MSA	346	398	523	654	736	Webb
Longview--Marshall, TX MSA	343	387	474	646	705	Gregg, Harrison, Upshur
Lubbock, TX MSA	328	416	540	749	831	Lubbock
McAllen--Edinburg--Mission, TX MSA	297	394	451	563	633	Hidalgo
Odessa--Midland, TX MSA	328	379	506	703	816	Ector, Midland
San Angelo, TX MSA	305	389	472	647	764	Tom Green
*San Antonio, TX MSA	425	491	635	883	1044	Bexar, Comal, Guadalupe, Wilson

TEXAS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Sherman--Denison, TX MSA	305	417	503	642	769	Grayson
Texarkana, TX--Texarkana, AR MSA	331	404	495	652	692	Bowie
Tyler, TX MSA	381	421	514	711	753	Smith
Victoria, TX MSA	377	381	482	668	753	Victoria
Waco, TX MSA	331	405	535	710	748	McLennan
Wichita Falls, TX MSA	365	407	493	655	773	Archer, Wichita

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	355	400	448	624	630	Andrews	296	341	412	552	630
Angelina	322	375	421	584	689	Aransas	296	363	485	673	679
Armstrong	296	341	446	559	630	Atascosa	296	341	412	552	630
Austin	296	341	412	565	630	Bailey	296	341	412	552	630
Bandera	316	341	412	559	630	Baylor	296	341	412	552	630
Bee	296	341	412	552	630	Blanco	296	341	435	607	640
Borden	296	341	412	552	630	Bosque	296	341	412	552	630
Brewster	296	341	412	556	666	Briscoe	296	341	412	552	630
Brooks	296	341	412	552	630	Brown	296	341	413	554	678
Burleson	296	341	432	584	712	Burnet	376	434	534	742	868
Calhoun	315	341	412	570	673	Callahan	296	341	412	552	630
Camp	400	405	506	633	708	Carson	296	341	412	552	630
Cass	296	341	412	552	630	Castro	298	341	412	552	630
Cherokee	330	342	419	552	630	Childress	296	341	412	552	630
Clay	296	348	412	552	643	Cochran	296	341	412	552	630
Coke	296	341	412	552	630	Coleman	296	341	412	552	630
Collingsworth	296	341	412	552	630	Colorado	296	341	412	552	630
Comanche	296	341	412	552	630	Concho	296	341	412	552	630
Cooke	320	341	433	588	654	Cottle	296	341	412	552	630
Crane	296	341	412	552	630	Crockett	296	341	412	552	630
Crosby	296	341	412	552	630	Culberson	296	341	412	552	630
Dallam	296	341	412	552	630	Dawson	296	341	412	552	630
Deaf Smith	296	341	412	552	641	Delta	296	354	412	552	630
DeWitt	296	341	412	552	630	Dickens	296	341	412	552	630
Dimmit	296	341	412	552	630	Donley	296	341	412	552	630
Duval	296	341	412	552	630	Eastland	296	341	412	552	630
Edwards	296	341	412	552	630	Erath	306	347	448	580	630
Falls	296	341	412	552	630	Fannin	300	341	412	554	630
Fayette	296	341	412	552	630	Fisher	296	341	412	552	630
Floyd	296	341	412	552	630	Foard	296	341	412	552	630
Franklin	296	341	412	570	630	Freestone	296	341	412	552	630
Frio	296	341	412	552	630	Gaines	302	341	412	552	630
Garza	296	341	412	552	630	Gillespie	296	373	481	663	676
Glasscock	296	341	412	552	630	Goliad	296	341	412	552	630
Gonzales	296	341	412	552	630	Gray	323	341	438	552	652
Grimes	296	341	412	556	657	Hale	296	341	412	552	630
Hall	296	341	412	552	630	Hamilton	296	341	412	552	630
Hansford	296	341	412	552	648	Hardeman	296	341	412	552	630

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hartley	296	341	412	552	630
Hemphill	296	381	425	594	630
Hockley	302	352	412	557	630
Houston	296	341	412	552	630
Hudspeth	356	402	448	563	739
Irion	296	341	412	552	630
Jackson	296	342	412	552	630
Jeff Davis	296	341	412	552	630
Jim Wells	296	341	412	552	639
Karnes	296	341	412	552	630
Kenedy	296	341	412	552	630
Kerr	296	383	477	665	785
King	296	341	412	552	630
Kleberg	359	373	453	633	745
Lamar	296	366	431	603	712
Lampasas	296	341	412	559	661
Lavaca	296	341	412	552	630
Leon	296	380	424	552	699
Lipscomb	296	341	412	552	630
Llano	296	381	506	634	832
Lynn	296	341	412	552	630
McMullen	296	341	412	552	630
Marion	296	341	412	552	654
Mason	296	341	412	552	630
Maverick	296	341	412	552	630
Menard	296	341	412	552	630
Mills	296	341	412	552	630
Montague	296	341	412	552	630
Morris	296	341	412	552	630
Nacogdoches	311	377	488	609	720
Newton	296	341	412	552	630
Ochiltree	296	341	412	552	630
Palo Pinto	296	341	412	552	656
Parmer	296	341	412	552	630
Polk	330	360	419	565	685
Rains	296	383	463	642	648
Real	296	341	412	552	630
Reeves	296	341	412	552	630
Roberts	296	345	412	552	630
Runnels	296	341	412	552	630
Sabine	296	341	412	552	630
San Jacinto	309	349	412	552	645
Schleicher	296	341	412	552	630
Shackelford	296	341	412	552	630
Sherman	296	341	412	552	630

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haskell	296	341	412	552	630
Hill	296	341	412	552	630
Hopkins	345	371	435	607	654
Howard	314	341	412	556	630
Hutchinson	296	341	425	594	701
Jack	296	341	412	552	630
Jasper	296	341	420	559	687
Jim Hogg	296	341	412	552	630
Jones	296	341	412	552	630
Kendall	296	431	485	673	797
Kent	296	341	412	552	630
Kimble	296	341	448	562	630
Kinney	296	341	412	552	630
Knox	296	341	412	552	630
Lamb	296	341	412	552	630
La Salle	296	341	412	552	630
Lee	335	377	422	589	662
Limestone	296	341	412	552	630
Live Oak	296	341	412	552	630
Loving	296	341	412	552	630
McCulloch	304	341	412	552	630
Madison	296	351	412	552	650
Martin	296	341	412	552	630
Matagorda	341	374	463	642	648
Medina	296	341	412	552	630
Milam	296	341	412	552	630
Mitchell	296	341	412	552	630
Moore	296	347	412	552	641
Motley	296	341	412	552	630
Navarro	421	444	532	676	750
Nolan	304	341	412	552	630
Oldham	296	341	446	559	655
Panola	296	348	412	552	630
Pecos	296	341	412	556	657
Presidio	296	341	412	552	630
Reagan	377	383	508	639	835
Red River	296	381	425	552	630
Refugio	296	341	412	552	630
Robertson	296	391	436	552	630
Rusk	308	341	412	552	630
San Augustine	296	341	412	552	630
San Saba	296	341	412	552	630
Scurry	296	341	426	596	704
Shelby	296	341	412	552	630
Somervell	338	381	425	584	630

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starr	296	341	412	552	630	Stephens	296	341	412	552	630
Sterling	296	341	412	552	630	Stonewall	296	341	412	552	630
Sutton	296	341	412	552	630	Swisher	296	341	412	552	630
Terrell	296	341	412	552	630	Terry	296	341	412	552	630
Throckmorton	296	341	412	552	630	Titus	313	390	441	610	630
Trinity	307	347	412	552	630	Tyler	296	341	439	552	724
Upton	296	341	412	552	630	Uvalde	296	341	412	552	630
Val Verde	296	392	462	576	680	Van Zandt	315	341	426	582	704
Walker	398	423	518	688	726	Ward	296	341	412	552	630
Washington	366	375	500	624	820	Wharton	296	341	412	552	630
Wheeler	296	341	412	552	630	Wilbarger	296	341	412	552	651
Willacy	296	341	412	552	630	Winkler	296	341	412	552	630
Wise	296	345	414	577	630	Wood	296	341	425	594	701
Yoakum	296	389	477	597	785	Young	296	341	412	552	639
Zapata	296	341	412	552	630	Zavala	296	341	412	552	630

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County MSA**	344	424	529	710	854	Kane
Provo--Orem, UT MSA	476	503	622	862	1020	Utah
*Salt Lake City--Ogden, UT MSA	514	595	756	1052	1232	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	325	396	498	665	800	Box Elder	362	399	502	670	809
Cache	362	445	556	744	895	Carbon	348	396	498	665	800
Daggett	352	481	639	802	898	Duchesne	325	396	498	665	800
Emery	325	396	498	665	800	Garfield	325	396	498	665	800
Grand	325	396	498	665	800	Iron	332	451	560	703	825
Juab	325	396	498	665	800	Millard	325	396	498	665	800
Morgan	325	396	498	665	800	Piute	325	396	498	665	800
Rich	325	396	498	665	800	San Juan	325	396	498	665	800
Sanpete	325	396	498	665	800	Sevier	329	396	498	665	800
Summit	479	592	738	997	1213	Tooele	401	510	616	824	990
Uintah	325	396	498	665	800	Wasatch	325	413	498	665	800
Washington	398	493	652	873	1067	Wayne	325	396	498	665	800

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	521	638	850	1159	1400	Chittenden county towns of Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 48

VERMONT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Shelburne town, South Burlington city, Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison	463	559	650	907	1016	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington	418	528	678	862	1006	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia	404	482	588	740	850	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Chittenden	425	687	775	1077	1269	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Essex	384	464	573	723	829	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Franklin	463	525	643	816	938	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin town, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle	400	480	594	748	859	Alburg town, Isle La Motte town, North Hero town
Lamoille	370	513	613	840	961	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange	383	503	621	819	918	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town,

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans	356	430	531	669	768	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland	423	549	670	842	941	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington	399	494	666	833	935	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham	459	530	704	892	983	Athens town, Brattleboro town, Brookline town, Dover town, Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor	494	559	698	895	1062	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	462	547	698	928	1040	Albemarle, Fluvanna, Greene,

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Charlottesville city
Clarke County MSA**	369	521	674	926	945	Clarke
Culpeper County MSA**	457	666	775	1024	1227	Culpeper
Danville, VA MSA	315	397	466	626	755	Pittsylvania, Danville city
Johnson City--Kingsport--Bristol, TN--VA MSA	328	391	486	629	745	Scott, Washington, Bristol city
King George County MSA**	447	595	667	927	934	King George
Lynchburg, VA MSA	374	414	476	626	755	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk--Virginia Beach--Newport News, VA--NC MSA	562	632	748	1044	1226	Gloucester, Isle of Wight, James, Mathews, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
*Richmond--Petersburg, VA MSA	596	673	785	1091	1288	Charles, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA MSA	317	397	515	660	822	Botetourt, Roanoke, Roanoke city, Salem city
Warren County MSA**	361	495	661	865	1080	Warren
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	365	395	461	613	738	Alleghany	320	389	456	613	738
Amelia	308	389	456	613	738	Appomattox	308	389	456	613	738
Augusta	308	399	485	639	776	Bath	308	389	456	613	738
Bland	308	389	456	613	738	Brunswick	308	389	456	613	738
Buchanan	308	389	456	613	738	Buckingham	308	389	456	613	738
Caroline	436	442	591	784	826	Carroll	308	389	456	613	738
Charlotte	308	389	456	613	738	Craig	308	389	456	613	738
Cumberland	308	423	490	613	738	Dickenson	308	389	456	613	738
Essex	308	433	511	712	841	Floyd	308	389	456	613	738
Franklin	308	389	456	613	738	Frederick	419	483	581	795	952
Giles	308	389	456	613	738	Grayson	308	389	456	613	738
Greensville	308	399	456	613	738	Halifax	308	389	456	613	738
Henry	308	389	456	613	738	Highland	308	389	456	613	738
King and Queen	308	442	498	622	738	King William	308	423	473	613	738
Lancaster	386	432	488	650	792	Lee	308	389	456	613	738
Louisa	308	401	495	687	738	Lunenburg	308	389	456	613	738
Madison	309	459	516	648	848	Mecklenburg	308	389	456	613	738
Middlesex	308	391	456	613	738	Montgomery	316	417	489	679	803
Nelson	308	389	456	613	738	Northampton	308	389	456	613	738
Northumberland	308	389	456	613	738	Nottoway	308	389	456	613	738
Orange	342	464	622	866	1016	Page	358	403	456	613	738
Patrick	308	389	456	613	738	Prince Edward	345	391	456	613	738
Pulaski	308	389	456	613	738	Rappahannock	312	506	570	790	932

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Richmond	308	412	460	613	757
Rockingham	308	427	540	740	868
Shenandoah	406	417	512	710	807
Southampton	308	389	456	613	738
Sussex	308	389	456	613	738
Westmoreland	308	417	553	696	900
Wythe	321	389	456	613	738

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rockbridge	308	389	456	613	738
Russell	308	389	456	613	738
Smyth	308	389	456	613	738
Surry	319	389	456	613	738
Tazewell	308	389	456	613	738
Wise	308	389	456	613	738

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	433	562	747	1033	1224	Whatcom
Bremerton, WA PMSA	522	602	781	1053	1281	Kitsap
Olympia, WA PMSA	536	660	823	1132	1335	Thurston
Portland--Vancouver, OR--WA PMSA	524	644	795	1106	1200	Clark
Richland--Kennewick--Pasco, WA MSA	540	618	740	1031	1209	Benton, Franklin
Seattle--Bellevue--Everett, WA PMSA	599	729	923	1282	1515	Island, King, Snohomish
Spokane, WA MSA	346	471	569	773	865	Spokane
Tacoma, WA PMSA	463	553	736	1023	1156	Pierce
Yakima, WA MSA	390	480	596	798	833	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	343	410	535	705	782
Chelan	343	410	535	705	782
Columbia	343	410	535	705	782
Douglas	400	424	535	705	782
Garfield	343	410	535	705	782
Grays Harbor	350	410	540	727	839
Kittitas	343	410	535	705	782
Lewis	343	410	535	705	782
Mason	389	483	593	780	839
Pacific	343	410	535	705	782
San Juan	424	578	771	1015	1209
Skamania	343	410	535	705	782
Wahkiakum	343	410	535	705	782
Whitman	369	421	559	777	920

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Asotin	343	410	535	705	782
Clallam	399	494	628	808	884
Cowlitz	385	430	554	770	782
Ferry	343	410	535	705	782
Grant	368	410	535	705	782
Jefferson	343	443	545	738	782
Klickitat	343	410	535	705	782
Lincoln	343	410	535	705	782
Okanogan	343	410	535	705	782
Pend Oreille	343	410	535	705	938
Skagit	466	571	674	841	940
Stevens	343	410	535	705	782
Walla Walla	343	410	535	714	844

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County MSA**	485	518	609	762	856	Berkeley
Charleston, WV MSA	308	419	531	729	797	Kanawha, Putnam
Cumberland, MD--WV MSA	361	435	539	712	812	Mineral
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Cabell, Wayne
Jefferson County MSA**	489	543	672	874	990	Jefferson
Parkersburg--Marietta, WV--OH MSA	329	395	452	586	635	Wood
Steubenville--Weirton, OH--WV MSA	309	363	457	582	649	Brooke, Hancock
Wheeling, WV--OH MSA	337	369	457	582	649	Marshall, Ohio

WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	274	347	389	500	582
Braxton	274	334	389	500	582
Clay	274	334	389	500	582
Fayette	274	334	389	500	582
Grant	274	334	389	500	582
Hampshire	274	334	391	513	582
Harrison	301	370	427	533	640
Lewis	274	365	389	500	582
Logan	280	334	389	503	595
Marion	274	345	426	545	629
Mercer	274	334	389	500	582
Monongalia	344	382	463	640	756
Morgan	372	420	470	590	657
Pendleton	274	334	389	500	582
Pocahontas	274	334	389	500	582
Raleigh	315	372	433	558	653
Ritchie	274	334	389	500	582
Summers	274	334	389	500	582
Tucker	274	334	389	500	582
Upshur	274	334	391	500	582
Wetzel	309	334	420	524	660
Wyoming	274	334	389	500	582

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Boone	274	334	389	500	582
Calhoun	274	334	389	500	582
Doddridge	283	334	389	500	582
Gilmer	301	334	389	500	582
Greenbrier	274	377	402	502	582
Hardy	274	334	389	500	582
Jackson	274	342	389	532	582
Lincoln	274	334	389	500	582
McDowell	274	334	389	500	582
Mason	274	334	389	500	597
Mingo	274	334	389	500	589
Monroe	274	334	389	500	582
Nicholas	274	334	389	500	582
Pleasants	282	334	389	500	596
Preston	274	350	389	500	582
Randolph	274	334	389	500	582
Roane	274	334	389	500	582
Taylor	335	361	395	500	582
Tyler	274	334	409	511	582
Webster	274	334	389	500	582
Wirt	274	334	389	500	582

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton--Oshkosh--Neenah, WI MSA	344	424	540	678	783	Calumet, Outagamie, Winnebago
Duluth--Superior, MN--WI MSA	302	389	499	666	776	Douglas
Eau Claire, WI MSA	371	404	530	679	766	Chippewa, Eau Claire
Green Bay, WI MSA	407	448	576	800	805	Brown
Janesville--Beloit, WI MSA	379	478	592	741	830	Rock
Kenosha, WI PMSA	452	560	688	945	1064	Kenosha
La Crosse, WI--MN MSA	306	394	501	670	812	La Crosse
Madison, WI MSA	471	592	716	993	1172	Dane
Milwaukee--Waukesha, WI PMSA	419	547	688	861	962	Milwaukee, Ozaukee, Washington, Waukesha
*Minneapolis--St. Paul, MN--WI MSA	578	743	951	1286	1457	Pierce, St. Croix
Racine, WI PMSA	372	462	609	786	859	Racine
Sheboygan, WI MSA	328	423	515	644	800	Sheboygan
Wausau, WI MSA	403	418	520	712	788	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	294	343	437	556	628
Barron	294	343	437	556	628
Buffalo	294	343	437	556	628
Clark	294	343	437	556	628
Crawford	294	343	437	556	628
Door	294	364	451	581	705

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	320	356	437	556	628
Bayfield	294	343	437	556	628
Burnett	294	343	437	556	628
Columbia	294	350	459	601	675
Dodge	372	377	496	622	693
Dunn	294	343	448	599	739

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Florence	294	343	437	556	628	Fond du Lac	341	462	547	745	767
Forest	294	343	437	556	628	Grant	298	343	437	556	628
Green	299	343	437	587	628	Green Lake	294	343	437	556	628
Iowa	304	343	437	574	628	Iron	294	343	437	556	628
Jackson	294	343	437	556	628	Jefferson	294	390	505	654	715
Juneau	300	343	437	556	628	Kewaunee	294	343	437	556	628
Lafayette	299	343	437	556	628	Langlade	294	343	437	556	628
Lincoln	294	343	437	556	628	Manitowoc	297	343	437	556	628
Marinette	294	343	437	556	628	Marquette	294	343	437	556	628
Menominee	294	343	437	556	628	Monroe	294	343	437	582	628
Oconto	294	343	437	556	628	Oneida	294	344	437	560	673
Pepin	294	343	437	556	628	Polk	294	343	444	556	628
Portage	358	377	489	612	756	Price	294	343	437	556	628
Richland	294	343	437	556	628	Rusk	294	343	437	556	628
Sauk	344	356	474	590	662	Sawyer	294	343	437	556	628
Shawano	299	343	437	556	628	Taylor	294	343	437	556	628
Trempealeau	294	343	437	556	628	Vernon	294	343	437	556	628
Vilas	294	343	437	556	628	Walworth	306	432	559	729	820
Washburn	294	343	437	556	628	Waupaca	294	343	437	556	660
Waushara	294	343	437	556	628	Wood	318	365	452	568	638

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	356	412	527	722	854	Natrona
Cheyenne, WY MSA	401	504	673	860	1045	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	336	420	559	777	919	Big Horn	320	367	470	624	717
Campbell	345	367	470	626	738	Carbon	320	367	470	624	717
Converse	320	367	470	624	717	Crook	320	367	470	624	717
Fremont	320	367	470	624	717	Goshen	320	367	470	624	717
Hot Springs	320	367	470	624	717	Johnson	320	367	470	624	717
Lincoln	320	367	470	624	717	Niobrara	320	367	470	624	717
Park	320	367	470	624	724	Platte	320	367	470	624	717
Sheridan	320	367	470	624	724	Sublette	354	398	470	624	717
Sweetwater	333	367	470	626	738	Teton	425	541	719	968	1055
Uinta	335	367	470	625	755	Washakie	320	367	470	624	717
Weston	320	367	470	624	717						

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	760	913	1081	1356	1524						

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 54

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	227	277	329	408	461	Aguada, Aguadilla, Moca
Arecibo, PR PMSA	246	298	350	439	495	Arecibo, Camuy, Hatillo
Caguas, PR PMSA	288	345	407	513	571	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayagüez, PR MSA	270	329	390	487	547	Añasco, Cabo Rojo, Hormigueros, Mayagüez, Sabana Grande, San Germán
Ponce, PR MSA	267	328	386	485	543	Guayanilla, Juana Díaz, Peñuelas, Ponce, Villalba, Yauco
San Juan--Bayamón, PR PMSA	361	440	519	650	730	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Ceiba, Comerío, Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Luquillo, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	213	263	309	390	431	Aibonito	213	263	309	390	431
Arroyo	213	263	309	390	431	Barranquitas	213	263	309	390	431
Ciales	213	263	309	390	431	Coamo	213	263	309	390	431
Culebra	213	263	309	390	431	Guánica	213	263	309	390	431
Guayama	213	263	309	390	431	Isabela	213	263	309	390	431
Jayuya	213	263	309	390	431	Lajas	213	263	309	390	431
Lares	213	263	309	390	431	Las Marías	213	263	309	390	431
Maricao	213	263	309	390	431	Maunabo	213	263	309	390	431
Orocovis	213	263	309	390	431	Patillas	213	263	309	390	431
Quebradillas	213	263	309	390	431	Rincón	213	263	309	390	431
Salinas	213	263	309	390	431	San Sebastián	213	263	309	390	431
Santa Isabel	213	263	309	390	431	Utuado	213	263	309	390	431
Vieques	213	263	309	390	431						

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix Island	509	618	729	909	1019	St. John/St. Thomas	654	792	934	1167	1307

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the MSA name. 09/23/2003
Note3: HUD defined MSAs are followed by **

SCHEDULE D - FY 2004 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	Los Angeles--Long Beach, CA PMSA	$463
	Orange County, CA PMSA	$562
	Riverside--San Bernardino, CA PMSA	$369
	San Diego, CA MSA	$579
	Vallejo--Fairfield--Napa, CA PMSA	$483
Colorado	Boulder--Longmont, CO PMSA	$423
	Denver, CO PMSA	$402
Maryland	Hagerstown, MD PMSA	$257
	St. Mary's County	$376
Nevada	Reno, NV MSA	$445
New York	Newburgh, NY--PA PMSA	$396
	Rochester, NY MSA	$258
	Utica--Rome, NY MSA	$232
Oregon	Deschutes County	$282
	Portland--Vancouver, OR--WA PMSA	$324
	Salem, OR PMSA	$401
Washington	Olympia, WA PMSA	$474
West Virginia	Logan County	$340
	McDowell County	$340
	Mercer County	$340
	Mingo County	$340
	Wyoming County	$340

[FR Doc. 03–24962 Filed 9–30–03; 8:45 am]
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Federal Register

Wednesday,
October 1, 2003

Part V

Federal Communications Commission

47 CFR Part 64

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, DA 03–2994, FCC 03–153]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collections contained in the Commission's telemarketing rules at §§ 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1). Sections 64.1200(a)(5), (a)(6) and (c)(2) are already to be effective October 1, 2003 per dates published at 68 FR 44144, July 25, 2003. OMB is continuing its review of the information collections associated with the fax advertising rules.

DATES: 47 CFR 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1) published at 68 FR 44144, July 25, 2003, are effective October 1, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 03–2994, released on September 29, 2003, announcing OMB approval for three years of the information collections contained in §§ 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1) of the Commission's rules implementing the Telephone Consumer Protection Act (TCPA) of 1991. The information collections were approved by OMB on September 29, 2003. OMB Control No. 3060–0519. The Commission publishes this notice of the effective date of the rules. As noted in the Commission's Report and Order, 68 FR 44144, July 25, 2003, the national do-not-call rules at § 64.1200 (c)(2) and the call abandonment rules at § 64.1200 (a)(5) and (a)(6) become effective on October 1, 2003 and the caller ID rules at § 64.1601(e) go into effect on January 29, 2004. If you have any comments on these burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0519, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collections via the Internet, if you send them to *Leslie.Smith@fcc.gov* or call (202) 418–0217.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval for three years from OMB on September 29, 2003 for the collection(s) of information contained the Commission's telemarketing rules at 47 CFR 64.1200. OMB is continuing its review of the information collections associated with the fax advertising rules.

The OMB Control Number is 3060–0519. The annual reporting burden for this collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 30,000 respondents, an average of 60 hours per response per annum, for a total annual hour burden of 1,728,600, and $855,000 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB 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 OMB Control Number. The OMB Control Number is 3060–0519.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25064 Filed 9–30–03; 8:45 am]

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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 1, 2003

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Integral lap/shoulder safety belts; rear seats requirement; comments due by 10-6-03; published 8-6-03 [FR 03-20024]

TREASURY DEPARTMENT

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Bank activities and operations and real estate lending and appraisals:
National banks; State law applicability; comments due by 10-6-03; published 8-5-03 [FR 03-19906]

TREASURY DEPARTMENT

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At-risk limitations; interest other than that of creditor; comments due by 10-6-03; published 7-8-03 [FR 03-17090]
Defined contribution plans; distribution forms elimination; comments due by 10-6-03; published 7-8-03 [FR 03-17089]
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Vans and light trucks; depreciation; cross-reference; comments due by 10-6-03; published 7-7-03 [FR 03-17086]
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Fees for copies of exempt organizations' material open to public inspection; authorization; cross-reference; comments due by 10-7-03; published 7-9-03 [FR 03-17228]
Information reporting penalties waiver; prompt

correction determination; comments due by 10-7-03; published 7-9-03 [FR 03-17229]

Return information disclosure by officers and employees for investigative purposes; cross-reference; comments due by 10-8-03; published 7-10-03 [FR 03-17385]

Testimony or production of records in court or other proceeding; comments due by 10-7-03; published 7-9-03 [FR 03-17230]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3161/P.L. 108–82

To ratify the authority of the Federal Trade Commission to establish a do-not-call registry. (Sept. 29, 2003; 117 Stat. 1006)

H.R. 2657/P.L. 108–83

Legislative Branch Appropriations Act, 2004 (Sept. 30, 2003; 117 Stat. 1007)

H.J. Res. 69/P.L. 108–84

Making continuing appropriations for the fiscal year 2004, and for other purposes. (Sept. 30, 2003; 117 Stat. 1042)

S. 520/P.L. 108–85

Fremont-Madison Conveyance Act (Sept. 30, 2003; 117 Stat. 1049)

S. 678/P.L. 108–86

Postmasters Equity Act of 2003 (Sept. 30, 2003; 117 Stat. 1052)

Last List September 26, 2003

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Oct 1	Oct 16	Oct 31	Nov 17	Dec 1	Dec 30
Oct 2	Oct 17	Nov 3	Nov 17	Dec 1	Dec 31
Oct 3	Oct 20	Nov 3	Nov 17	Dec 2	Jan 2
Oct 6	Oct 21	Nov 5	Nov 20	Dec 5	Jan 6
Oct 7	Oct 22	Nov 6	Nov 21	Dec 8	Jan 6
Oct 8	Oct 23	Nov 7	Nov 24	Dec 8	Jan 6
Oct 9	Oct 24	Nov 10	Nov 24	Dec 8	Jan 7
Oct 10	Oct 27	Nov 10	Nov 24	Dec 9	Jan 8
Oct 14	Oct 29	Nov 13	Nov 28	Dec 15	Jan 13
Oct 15	Oct 30	Nov 14	Dec 1	Dec 15	Jan 13
Oct 16	Oct 31	Nov 17	Dec 1	Dec 15	Jan 14
Oct 17	Nov 3	Nov 17	Dec 1	Dec 16	Jan 15
Oct 20	Nov 4	Nov 19	Dec 4	Dec 19	Jan 21
Oct 21	Nov 5	Nov 20	Dec 5	Dec 22	Jan 21
Oct 22	Nov 6	Nov 21	Dec 8	Dec 22	Jan 21
Oct 23	Nov 7	Nov 24	Dec 8	Dec 22	Jan 21
Oct 24	Nov 10	Nov 24	Dec 8	Dec 23	Jan 22
Oct 27	Nov 12	Nov 26	Dec 11	Dec 26	Jan 27
Oct 28	Nov 12	Nov 28	Dec 12	Dec 29	Jan 27
Oct 29	Nov 13	Nov 28	Dec 15	Dec 29	Jan 27
Oct 30	Nov 14	Dec 1	Dec 15	Dec 29	Jan 28
Oct 31	Nov 17	Dec 1	Dec 15	Dec 30	Jan 29